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ACL
ALLIANCE CENTRE FOR CORPORATE AND COMMERCIAL LAW

NEWSLETTER

ALLIANCE CENTRE FOR CORPORATE AND COMMERCIAL LAW

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MESSAGE FROM EDITOR-IN-CHIEF

It gives me immense pleasure to introduce Alliance Centre for Corporate and Commercial Law (ACCL) Newsletter of Vol-2, Issue-2 on "Corporate and Commercial Law Updates", compiled and edited by Alliance Centre for Corporate and Commercial Law- ACCL.

The newsletter is an initiative of the ACCL to update readers on the latest developments in the area of corporate and commercial laws.

I would like to express my appreciation to the entire faculty, staff of the University and student members of the Centre who have been instrumental in the process of content development, editing, designing and the publishing of this volume. I wish the Centre for Corporate and Commercial Law the very best and hope that the readers will find the Newsletter useful and will stimulate further research in the areas that find mentioned in this volume.

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Dr. V. Shaym Kishore
Interim Dean,
Alliance School of Law
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MESSAGE FROM EXPERT

Corporate law is a dynamic subject matter mainly because of the kinds and volumes of transactions we are having. The technology used in performance by parties to business transaction may involve numerous factors right from international free trade agreements, applicability of various statutes in the countries where the performance under the contracts is expected, the taxation and customs and other Regulatory compliance and legal Framework.

Addressing the issues pertaining to compliance is one hurdle but the major challenge could be to answer the inquiry from market regulators. One commercial Agreement today might be inviting the attention of regulators like SEBI, RBI, Competition Commission, CGST and Income Tax Authorities and so on. Business regulation is at its peak. It is a good opportunity for the lawyers and researchers to investigate the upcoming legal issues and contribute it in one way or the other.

I am sure that the Alliance Centre for Corporate and Commercial Law – ACCL Newsletter will have a great contribution from all the stake holders including the researchers which will give a great input for the readers.

Dr. Swapnil Bangali

Advocate & Honorary Director,

CICTL, MNLU Mumbai

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Mergers and Acquisitions play a transformative role in reshaping the corporate landscape often leading to enhanced growth opportunities, but when the same corporate bodies decide to team up and act as partners and engage in Mergers and Acquisitions (M&A), unique challenges and disputes and discrepancies may arise. The Companies Act of 2013 contains elaborate provisions under Chapter XV (Sections 230 to 240) to ensure that any amalgamations, arrangements, and compromises take place under the aegis of the National Company Law Tribunal (NCLT). The NCLT plays a vital role in protecting the interests of all the stakeholders, especially by vetting the fairness of the transaction between two body corporates. However, the definition of body corporate under Section 2(11) of the Companies Act, 2013 is restrictive and unfortunately omits partnership firms (registered under the Indian Partnership Act, 1932), sole proprietorships, etc.

In the era of startups and entrepreneurial upsurge in India, many businesses prefer to establish themselves as a Partnership / Proprietorship for the sake of convenience. However, when corporate investors approach such ventures with a bid to invest / take over, most Partnership / Proprietorship concerns are left in the lurch as neither are they given the protection of the NCLT nor are they governed by the Chapter XV of the Companies Act, 2013. This point of law was buttressed in *Re: Kediya Ceramics and Ors.*[3], wherein the Hon'ble NCLT specifically denied the benefits of the Companies Act, 2013 to Non-Corporate Entities such as Partnership / Proprietorship firms. Hence it is very pertinent to analyse the limited options available for Partnership / Proprietorship firms when being acquired by a Corporate Entity. Most startup establishments are under immense pressure for funding needs, and before seeking wise counsel, they jump the gun and decide to blindly sign on the dotted lines. In the absence of application of Chapter XV of the Companies Act, 2013, non-corporate entities will have to enter into Asset

[1] Advocate, B. Com, ACA, LLM, CFE (USA)
[2] 3rd year BA LLB Student, The Alliance School of Law.
[3] NCLT – Ahmedabad) MANU/NC/1003/2017

Purchase Agreements which may or may not be duly stamped and registered by the Purchaser. In the absence of registration, the said Asset Purchase Agreements become null and void ab-initio and enforceability becomes a very serious issue. Further, the levy of exorbitant stamp duties makes it very expensive for executing the documents and when used in the courts, the possibility of impounding the unstamped documents cannot be ruled out. Moreover, the Non-Corporate Entities cannot approach the NCLT for reprieve in the event of any default by the Acquiring Companies. The options to litigate will be with the District / City Civil Courts, which would again entail huge court fees as per the State Court Fee enactments (For instance, The Karnataka Court Fees & Suits Valuation Act, 1958 mandates payments of more than Rs. 2.5 Lakhs and a 0.5% fee on claims exceeding Rs. 80 Lakhs).

Further, the Non-Corporate Entities are barred from approaching the Commercial Courts, established under the Commercial Courts Act, 2015 due to the restrictive definition of "Commercial Dispute" under Section 2(c) of the said enactment. Asset Purchase Agreements prevalent in the acquisition of Non-Corporate Entities do not come under the said definition and hence Commercial Courts which possess the expertise and the wherewithal to grant expeditious disposal of such cases cannot be approached.

More importantly, such Asset Purchase Agreements, may contain one sided Arbitration clauses, skewed against the Non-Corporate Entities. Such clauses can be debilitating to most acquisition deals as the acquiring company may browbeat and oppress the rights of the Non-Corporate Entities. Moreover, the Non-Corporate Entities may not have the ability to finance expensive arbitration proceedings. Another aspect that most Non-Corporate Entities ignore is the tax implication of a possible take-over. Sale of Assets whether tangible (such as immovable / movable property) or intangibles (such as patents, copyrights, trademarks etc.) attract Capital Gains Tax.[4]

To combat all the above issues faced by Non-Corporate Entities, the only solution is perhaps all Non-Corporate Entities can convert themselves into a Body Corporate at the stage of negotiations during a possible merger / acquisition. However, thanks to the cumbersome

[4] Income Tax Act, 1961

procedures involved, this would be easier said than done. Most corporate takeovers are spearheaded by highly skilled lawyers representing the purchasing company. These lawyers, in a bid to promote their client's interests, ensure that the Non-Corporate Entities receive a raw deal. Hence, timely advice by the proper professionals may help such Non-Corporate Entities, however, the urge for survival and the need for appeasing the prospective acquirer, renders most Non-Corporate Entities vulnerable towards accepting debilitating conditions.

(Quick Note: Tax implications and competent and qualified lawyers are important in such transactions)

CRITICAL ANALYSIS ON MENSTRUAL LEAVE IN INDIA

Mahantesh B Madiwalar[5]

Globally, the working environment and work culture have been constantly changing. Employers are adopting new dynamics for best practices. The new world of professionalism is inter alia driven by Diversity, Equity and Inclusion and Environmental, social, and corporate Governance practice. Employers are doing their best efforts to adopt dynamic circumstances and progressive practices to accommodate a diverse workforce. Organizations have also implemented modification of infrastructure, and grievance redressal mechanism and implementing several others initiative to address barriers that may arise on account of gender bias. Menstruation is one of the phenomena every woman is facing in day-to-day life. And it is also termed as an unexplainable stigma. In India the women workforce participation is lowest in the world according to recent studies from International Labour Organization in this regard there must be a new policy to address this issue.[6]

Demand of separate menstrual leave

Many of the women are experience physical discomfort and pain during their menstrual cycle. This involves hormonal variations in body which results emotions. During such period women may face and find difficult to maintain consistent level of productivity in workplace. Many women also suffer from disorders related to menstruation such ovarian cysts, endometriosis, dysmenorrheal, in view of the same; the concept of menstrual leave remains a highly neglected issue in India.

According to the statute of labour laws menstruation leave is not considered and not regulated. It may be considered as special leave that an employer may grant or offer to female employees on account of experience discomfort at workplace. And employees can claim different categories of leaves like earned, casual, and sick leave. And there would possibilities that, women may lose her professional benefits under the stigma of menstruation. Hence there would be need of in introduction of menstrual leave and also promote healthy discussions around menstruation but will also ensure sensitization of the workforce and society at large.

[5] Associate professor K L E Society's Law College, Bengaluru.
[6] https://feminisminindia.com/2023/03/06/ site visited on 24/7/2023.

If the employers are given leave facility for women workers, it would be more benefit and also the productivity shall be increases with more focus on professional assignments. If the employer formulates these policies under employment rules it would be more concern to the employees. There are different arguments like women are getting more benefits in workplace why the separate menstruation leaves need to implement in workplace. Menstruation is a biological process this is totally different from disease. This is the time to accommodate and support women needs where necessary. With respect to professional commitments are concerned.

Menstrual leave and law

Globally the concept of menstruation leaves is a remote topic. But few countries in this world have laws Ex. Japan in 1947 framed a statute that an employer to allow a woman employee to avail leave on days of the menstrual cycle as and when requested.[7]

In Indonesian labour law enforce corporation to provide minimum two days leaves for women who is facing physical pain during menstruation or dates times. South Korean law provides one day paid leave for women employees at the time of menstruation period. The same system in Taiwan that every female employee can seek one day leave at the time of period, that will be deduct from sick leaves. In Zambia also the female employees can seek period days leave without providing any medical certificate in that regard. In European countries the first country Spain has executed first law for menstrual leave on production of doctors note.

Indian position

At present the Indian labour laws not directly expressing paid/unpaid leave on account of menstruation. But the states have power to implement such schemes for empowerment of women employees. Ex. Bihar government in 1992 under Bihar Vikas Mission under this scheme special leaves for women employees. Before the India independence 1912, a government school in Kerala provided menstrual leave to its students during their annual examination and permitted them to attempt the same at later stage.

[7] Anushal Prakash, "Looking beyond the Law: The Case of Menstrual Leave in India" Practical Lawyer PP. 67-70 Apr 2023.

In 2017, a private member of parliament was introduced bill before the parliament of India, Lok Sabha by Mr. Ninong Ering (a former Lok Sabha Member of Parliament From Arunachal Pradesh) the bill facilitated women employees for menstrual leaves and also grievance redressal mechanism . but the bill was not tabled for discussion. In 2022, the same been tabled at budget session at state assembly, but the bill was withdrawn. Hence there is not legal position in this regard in India.

Recently, the Minster of women and Child Development has, in the response to question at Lok Sabha with regarding to implementation of menstrual leaves for government women employees. And said that government has undertaken various initiatives for raising awareness regarding menstrual hygiene and health.

In January 2023, a public Interest Litigation was filed before the SC,[8] seeking directing to all states to implement menstrual leave policies for students and as well as women employees under the Maternity benefit Act, 1961. However, the PIL been disposed and asked the petitioner to submit representation to Union Minister of Women and Child Development which may take appropriate decision in this regard.[9]

Industrial position in India

According to present scenery there is law is governed menstruation leaves in India. The organization is free to independently take a decision and contractually extend more beneficial terms of employment than those provided under the applicable legal provisions. With respect to Indian industries and owners are implementing internal protocols to employees' wellness and extending benefits including menstrual leaves for their employees. Ex: the Mumbai based News company announced a policy of offering leave to women of their period. The food delivery company Zomato also adopted such policy of menstrual leave. BY JU'S the education technology sector updated its leave policy. Some of the companies have also adopted new policies of providing sanitary pads at a nominal rate at their premises for their employees. From decade's women employees are facing menstruation stigma. Implementation of menstrual leave is a meaningful step towards female employees. It is an obligation on organization to create

[8] Shailendra Mani Tripathi v. Union of India February 2023.
[9] Supra note 2 pp.69.

hygiene, and safe environment for women employees in this regards many organizations have extended menstrual leave benefits.

(Quick Note: The organizations policies may change from time to time hence the government has made compulsory menstrual policy for all organization, it would reach to more no of women employees in this nation)

IMPACT OF COVID PANDEMIC ON INDIAN CORPORATE AND COMMERCIAL SECTOR

Asha K [10]

The COVID pandemic affected developed countries, developing countries and underdeveloped countries. A virus that grew stealthily has become one of the deadliest viruses. Countries around the world have imposed mass travel bans, tare killing people worldwide. The world health organization has declared the outbreak as a pandemic. On the social side, we see a dramatic loss of employment with a decline of almost present in total working hours, some 1.6 billion students have been affected by the school closures and the crisis will push an additional 40 - 60 million people into extreme poverty. The second wave has led to further state-imposed lockdown impacting the economy while putting several restrictions impact on key business.

Advisory Committee for the COVID-19 Response for People with Disability – Summary of outcomes 23 August 2023.The pandemic is affected on public health and causing unprecedented disruptions to economics and labour markets, including for works and enterprises in the forest sector[11], restricted human movement the COVID pandemic most affected on constructions, manufacturing and contract, intensive services like trade, transport, real estate and small-scale business and share market. India is also impacted, almost every industrial sector has seen a fall in sales and revenue. India's GDP growth has fallen during the pandemic.[12] The Indian government is planning to setup an amount to support MSMEs to overcome the crisis during the phase of shut down, cash flow difficulty and working capital issues. China is one of the largest exporters of many raw materials to India, shutting down of factories has damaged the supply chain. Some of the other products that have seen a rise in their prices like, gold market health-based amenities sanitizers, smart phones, medicines, hospitals, laptops, etc., the aviation sector and automobile companies, hotels and transport business are the hardest hit among the rest.

[10] Vice principal, Shri Balaji College of Law, Bangaluru.
[11] *https://www.nabard.rog*
[12]https://www.health.gov.au/resources/publications/advisory-committee-for-the-covid-19-response-for-people-with-disability-summary-of-outcomes-23-august-2023

As per the report of FEDERATION OF INDIAN CHAMBERS OF COMMERCE AND INDUSTRY 53%[2] of companies are impacted by COVID - 19 slow economic activity is resulting cash flow problems eventually impacting repayments, interest, taxes etc....as of now, there is no light at the end of the problems still now people are facing hard time. Indian economy is not highly impacted, as compared to other countries like China, Italy, Iran, as India started taking early precautionary measures to prevent the spread of corona virus. Our previous Executive Trend Survey found that **64% of executives anticipated the coronavirus to have short-term negative business impact** with the majority expecting 'business as usual' within 2 – 3 months.[13] After 5 months of the pandemic, in one of our surveys with over 1,000 decision makers across Europe, out of the organizations that were negatively impacted by the pandemic, **31% said that they were currently in the recovery stage** while **12% were already headway into the growth stage.**

Every individual this planet has to stand and fight against this pandemic, people need to remove corona virus from its roots and start to rebuild the Indian economy, after this pandemic end, and accommodating remote workers will become more commonplace, but this it means that law firm should adopt video conferencing software, without a physical presence in the office, it will be more important than ever to embrace digital transformation. without a physically present in the office, many law firms will find their lives both during and after the pandemic improved by embracing technology like e- discovery solutions, contract management system, and fully commit to implementing and using advanced tools at our firm to make life easier post – crisis, although life will return to normal after the coved, a company need not hold a general meeting at a physical venue but many conduct it wholly or partly by electronic mode, company schools and colleges are reopened, business also comes to normal, the rise of digital transactions in India has been exponential in recent years, by the government push towards cashless economy and incising adoption of mobile devices, to ensure that all sections of society can access digital payment system, the world normal means exactly the same thing as it did before.

(Quick note: Companies need to make their remote working practices resilient to cyberattacks and enhance their development and application of security measures.)

[13] https://managementevents.com/news/the-impact-of-covid-19-on-businesses/

THE ASCENDANCY AND RISE OF ARTIFICIAL INTELLIGENCE: LEGAL AND ETHICAL CHALLENGES IN AI DEVELOPMENT AND DEPLOYMENT

Varshini Janardhana[14]

"Artificial intelligence is the future, and the future is here." - Dave Waters[15]

The ascendancy and rise of artificial intelligence (AI) have brought about numerous legal and ethical challenges in its development and deployment. A man-made creation showcasing the potential to shape the near future and significantly impact various aspects of human life. Life and technology have become inextricably intertwined in today's world. Technology has taken on the position of being an integral part of our lives, from communication to social interactions, education, transportation, healthcare, and more. The technology sets in both boon and bane, and it is important to recognize the positive and negative impacts and work towards maximizing the benefits while mitigating the drawbacks and harnessing the potential for greater good and maximum ascendancy of society and humanity.

AI itself is a product of human intelligence, and its capabilities and applications have brought about remarkable changes in society across various domains. As AI continues to evolve, its influence is expected to grow and bring about various changes in different fields. Following are some notable ways in which AI has impacted society at large.[16]

1. Industry transformation: AI-powered automation has transformed the production and distribution of industries. Robots and AI based systems now perform the tasks more efficiently within the limited time frame, leading to reduced production costs and enhanced productivity.
2. Language processing and conversational AI technologies: voice assistants like Alexa, Siri, and Google Assistant understand and respond to human language, enabling users to interact with the machines through voice commands or chats. This helps in language

[14] 1st year BA LLB Student, BMS College of Law, Bengaluru
[15] Dave Waters: founder of AI Investors.
[16] https://www.frontiersin.org/articles/10.3389/fsurg.2022.862322/full

translation across the world with different languages, putting an end to the language barriers.

3. Healthcare and medical diagnosis: AI powered tools read the images and datasheets and predict the outcomes of the patients, which helps in the diagnosis of various diseases like cancer. They also assist in data analysis, genetic analysis, and drug discovery, leading to more accurate and personalized treatments for patients.

There are various other domains in society that have undergone tremendous changes due to AI power, like transportation (AI-automated cars), education and skill development, fraud detection, cybersecurity assistance, scientific research, and exploration. AI assists in rendering justice through case predictions, legal research, document analysis, and even online dispute resolution. Online platforms powered by AI facilitate the resolution of disputes outside traditional court systems, saving the court's time. While AI brings advantages like efficiency and accessibility, it must be deployed ethically, addressing prospect biases and upholding fundamental rights, to ensure fair and just outcomes. [17]

On the legal backend, the fundamental rights of a person can be infringed by the wrong or fallacious programming of AI-powered tools, posing a threat to humanity. Other legal and ethical challenges include:

1. Accountability and liability: The AI systems are developed by various manufacturers, developers, data scientists, and data providers, and establishing clear lines of responsibility and accountability in cases of AI-related harm is a significant legal challenge.
2. Intellectual property: Protection and ownership of AI generated works or inventions can be challenging. AI tools contribute to the creation and innovation processes, and a proper legal framework needs to be formed for the protection of intellectual property by AI.
3. Data protection and privacy: The AI system relies on vast amounts of data, creating concerns about the data protection and privacy of individuals' personal information.
4. Ethical considerations: The ethical implications of AI raise legal challenges that go beyond regulatory compliance. Adhering to ethical principles, such as fairness,

[17] https://www.chathamhouse.org/2022/03/challenges-ai

transparency, and accountability, can help address legal concerns and ensure responsible AI use.

5. Employment and workforce displacement: The rise of AI has led to concerns about job displacement and its impact on the workforce. As AI systems automate tasks previously performed by humans, there is a need to address the social and economic consequences, including retraining and providing support for affected workers.

6. Ethical considerations: The ethical implications of AI raise legal challenges that go beyond regulatory compliance. Adhering to ethical principles, such as fairness, transparency, and accountability, can help address legal concerns and ensure responsible AI use.

Much ink has been spilled over the opportunities and challenges of AI in both legal and ethical domains. The goal is to render justice by recognizing equity rather than equality, which would in turn strengthen good governance. It is important to recognize that while AI has the potential to contribute to equity, it is not a silver bullet. Collaborative efforts and a multi-stakeholder approach that involves policymakers, technologists, and researchers are necessary to develop and adapt legal frameworks to keep pace with the evolving nature of AI.

(Quick Note: AI technologies are used in a manner that upholds legal rights, safeguards individuals, protects fundamental rights and societal interests, and aligns with ethical principles)

ONLINE DISPUTE RESOLUTION FOR ONLINE PAYMENTS

Anusha Nanaware [18]

The Reserve Bank of India announced an online portal for dispute resolution for digital payments in 2020 which is in line with the 'Payment and Settlement Systems in India: Vision 2019 – 2021' [19]policy document issued by the RBI. The aim of such a portal was to increase the usage of online payment for the citizens of India so that there is a time-bound online grievance redressal mechanism for addressing any disputes arising in the process. On July 31, the market regulator Securities and Exchange Board of India issued a master circular, streamlining the existing dispute resolution mechanism in the securities market for the protection of stock exchanges and depositories. The Online Dispute Portal (ODR) was established by creating a system that harnesses online conciliation and online arbitration for resolution of disputes arising in the securities market, especially in the sector of Payment System Operators (Banking and Non-Banking) for failed transactions in payment systems.

According to the Master Circular for Online Dispute Resolution by SEBI, each Market Infrastructure Institution will identify and enroll one or more independent ODR institutions which will have conciliators and arbitrators. Additionally, they can establish a portal for Online Dispute Resolution where all listed companies, specified intermediaries, and regulated entities in the securities will be enrolled. This ODR system is intended to operate in an automated way where the customers will have to provide minimum details of the grievance through online or offline modes and get an appropriate resolution for the same hassle-free.

Under the Framework reversal of payment should be done within 5-7 business days from the date of transaction for failed transactions effected through various payment systems such as ATMs, credit/debit card transactions, the unified payment interface (UPI), the prepaid payment instrument (PPI), the immediate payment system (IMPS), etc. Customers may contact the banking ombudsmen (who are RBI-appointed officers tasked with investigating complaints) under the Banking Ombudsman Scheme, 2006, in the event that the timelines and procedures stated in the Framework are not followed.

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[18] 5th year BBA LLB Student, Alliance School of Law, Alliance University
[19]Payment and Settlement Systems in India: Vision 2019 – 2021

Based on feedback from the introduction of ODR systems for unsuccessful transactions, the RBI plans to expand the ODR process to other types of payment disputes in the future. The platform has encouraged citizens to trust online payment and provided encouragement for citizens to move forward with digitalized payments. Additionally, this would greatly encourage the development of automated dispute resolution systems in the payments industry.[20]

(Quick Note: Hassle free online portal for dispute resolution for digital payments was introduced by RBI with proper rules and regulations for any grievance caused due to failure of payment)

[20](https://www.sebi.gov.in/legal/master-circulars/aug-2023/online-resolution-of-disputes-in-the-indian-securities-market_75220.html)
Circular No. SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/145, Circular issued by Securities and Exchange Board of India, 2023 (India)

SHARING OF INFORMATION TO DEBENTURE TRUSTEES BY THE CREDIT RATING AGENCIES

Manne Vaishnavi Rao[21]

SEBI on 4th September 2023, in a vide notification SEBI had issued a circular[22] on mechanisms for sharing information by the Credit Rating Agency (CRAs) to the Debenture Trustees (DT). This circular will be in effect from 1st October 2023. This is one of SEBI's many initiatives to promote and enhance efficiency of CRA during sharing of information. These mechanisms make sure that the CRAs are sharing the information to the DT while complying with the SEBI (Credit Rating Agencies) regulations[23].

The circular highlights that the information shared must be structured and submitted in a specified format. This is due to the large volume of information shared by CRAs to DT on a daily basis. When information is shared in a structured format, according to the circular it will be easier for accessibility and analysis of such data. The circular in its Annexure provides an excel template which shall be used by the CRAs for their submissions of rating revisions on a daily basis to DT. The CRAs shall send the submissions on the very same day as the rating revisions to DT. Either a generic email which is being used for regulatory purposes or an email ID/URL which was communicated earlier by the DT for this purpose should be used as the channel for sharing of the submissions. As mandated by regulation 22 of the CRA regulations, a half yearly internal audit for CRAs shall be done to monitor this circular. SEBI, by issuing this circular, wanted to safeguard the interests of the investors who invest in securities, also to further the development of markets and to oversee the securities market. This thorough mechanism for data sharing was introduced to make the flow of information seamless. It also monitors the information which is shared so it isn't misused. Structured information sharing benefits the concerned parties and also it promotes more transparency.

(Quick Note: Now that SEBI had provided for structured format for data sharing by CRAs to the DT, it promotes efficiency, accountability, and transparency.)

[21] 5th year BA LLB Student, Alliance School of Law, Alliance University
[22] Circular No. SEBI/HO/DDHS/DDHS-POD2/P/CIR/2023/ 151, Circular issued by Securities and Exchange Board of India, 2023 (India).
[23] Securities and Exchange Board of India (Credit Rating Agencies) regulations 1999, Regulations of SEBI, 1999 (India).

RBI ISSUES A REVISED FRAMEWORK FOR THE INVESTMENT PORTFOLIO

-Deepanshi Kapoor[24]

The Reserve Bank of India on September 12, 2023, came up with the Master Direction on Classification, Valuation, and Operation of Investment Portfolio of Commercial Banks (Directions), 2023.[25] The present regulatory guidelines are based on a for commercial banks' investment portfolios issued in October 2000, which drew upon the prevailing global standards and best practices at that time. However, due to significant developments in global financial reporting standards, the linkages with the capital adequacy framework, and progress in domestic financial markets, there was a need to review and update these norms.

The Directions grant the Reserve Bank of India (RBI) supervisory powers to require banks to provide evidence for the classification of investments, valuation methodologies, and compliance with the regulatory guidelines. It also specifies that banks must adhere to the guidelines issued by the RBI for transactions in government securities, including the use of Subsidiary General Ledger (SGL) accounts and the facilitation of short sale transactions. The document further emphasizes the need for a bank to ensure that role of brokers is restricted to bringing parties together in a deal and that the identity of the counterparty is disclosed after the decision to enter into the transaction. The revised framework incorporates introduces a symmetric treatment of fair value gains and losses, establishes a clearly identifiable trading book under Held for Trading (HFT), removes the 90-day ceiling on holding period under HFT, removes ceilings on Held to Maturity, and requires more detailed disclosures on the investment portfolio.[26] It also provides instructions for the engagement of brokers and sets limits on the business put through individual brokers. Banks are required to undertake a half-yearly review

[24] 5th year BA LLB Student, Alliance School of Law, Alliance University
[25] Reserve Bank of India, Master Direction, "*Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2023"*, RBI/DOR/2023-24/104 (September 12, 2023).
[26] Taxmann, "*RBI Issues Revised Norms for Classification and Valuation of Investment Portfolios by Banks*" (September 14, 2023).

of their investment portfolio and submit a statement of reconciliation to the RBI, duly certified by their auditors.

Overall, the document aims to update the regulatory framework for commercial banks' investment portfolios, aligning it with global standards and best practices, and emphasizes the importance of internal control, risk management, and compliance with the regulatory guidelines. It provides guidance on various aspects of the investment portfolio, including classification, valuation, operation, and transactions in government securities, engagement of brokers, and audit and reporting requirements.

(Quick Note: Banks must reclassify their investments from one category to another as from the effective date, and this must be shown in the financial statements for FY24. The new norms, however, have been criticized by certain experts who project it as a restraint on the mobility of banks to shift their portfolios freely across categories thereby affecting their profits slightly.)

INITIAL PUBLIC OFFERING RULES: REDUCTION IN THE TIMELINE FOR LISTING OF SHARE IN PUBLIC ISSUE

Dipendra Singh Tomar [27]

The Securities Exchange Board of India_ (hereinafter, referred to as "SEBI") issued a circular[28], while exercising in accordance with the powers provided under Section 11 and Section 11A of the "Securities and Exchange Board of India Act, 1992," to all the recognised stock exchanges, depositors, registered stock brokers, depository participants, self-certified syndicate banks and all other agencies involved in the listing of shares in public issue. As per the aforesaid circular, the SEBI has reduced the timeline for listing of shares in public issues to T+3 days from T+6 days. 'T' being the issue closing date. From the effect of this circular, the share to the competent applicant shall be issued in T+3 days after the closing of the Initial Public Offering ("IPO"). As part of the applicability of the aforesaid circular, the SEBI directed to implement this circular will be implemented in two phases. On a mandatory basis for public issues on or after December 1, 2023, and on a voluntary basis for public issues on or after September 1, 2023, notwithstanding anything mentioned in the SEBI Regulations[29].

The reduction in the timeline for the allotment of shares after the closing of the IPO will benefit both investors as well as the issuer. The issuer of the share will have an explosion to the capital raised and it will enhance the ease of doing business and the investor in the public issue will have early credit and liquidity of their investment.

The registrar to an issue would undertake third-party verification of the applications by matching the Permanent Account Number ("PAN") attached in the demat account with the PAN available in the bank account of the applicant. In circumstances of discrepancy or matching of PAN, such application shall be an invalid application for finalising the basis of allotment. The Annexure attached in the aforesaid circular contains the detailed indicative timeline of the activities for the listing of shares through public issues on T+3 days, the same can be accessed at this link.

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[27] 4TH Year BA LLB Student, Alliance School of Law, Alliance University

[28] The aforesaid circular number is "SEBI/HO/CFD/TPD1/CIR/P/2023/140"

[29] "The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulation, 2018 .

The present circular stated that, the timelines prescribed for the public issues as mentioned in the SEBI circular dated November 1, 2018, June 28, 2019, November 8, 2019, March 30, 2020, March 16, 2021, June 2, 2021, and April 2022 shall stand modified as per this aforesaid circular.

The step taken by securities market regulator SEBI in the reduction of timeline from T+6 to T+3 days (T as issue closing date) is generously welcomed by the issuer, depositories, banks, brokers, investors and all the agencies and individuals involved in the security market. As it allows and benefited both the principal parties involved in the IPO i.e., Issuer and Investor. The security market players and agencies considered this step as a boost in the ease of doing business scheme.

All-inclusive, this step of the regulator will help the investor in the early trading of newly listed shares and the issuer will have early credit and liquidity of their investment.

(Quick Note: Reduction in the timeline for listing of shares)

STREAMLINING MERGERS AND AMALGAMATIONS: A CLOSER LOOK AT THE MODIFIED RULE 25, COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) RULES, 2016

Gaurav Jonnagadla[30]

The Ministry of Corporate Affairs on 15th June 2023 notified the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023 with a view to amend the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. In a bid to enhance efficiency in expedite the process of approving mergers and amalgamations the important amendment has been made to rule 25. This regulatory change aims to simplify the approval process while maintaining a keen focus on the public interest and welfare of creditors.[31]Let's delve into the details of the modified Rule 25 and its implications.

Deemed Approvals: An Overview

Under the modified rule 25, A significant change has been introduced, allowing for deemed approvals of mergers and amalgamations. Specifically, sub clause 5 rule 25 now states that if no suggestion or objection is received within a period of 30 days from the registrar of companies or the official liquidator, and if the central government deems the respective scheme to be favorable to the credit as or in the public interest, it can issue a confirmation order for the merger or amalgamation. This confirmation order is to be issued within 15 days after the lapse of the period of 30 days.

However, on account of failure to issue the confirmation order within a total of 60 days, it will then be automatically assumed that no objection or suggestion exists, and the confirmation order will be issued accordingly. This provision not only streamlines the process but will also emphasise the importance of timely decision making.

Addressing Objections and Suggestions

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[31]https://www.mca.gov.in/bin/dms/getdocument?mds=1Wyd8lldgilFPq8Dx6A3QA%253D%253D&type=open

In scenarios where objections or suggestions are received within the initial period of 30 days, rule 25 (6) Lays out a clear course of action for the central government. In case the objections are deemed to be unsustainable, and it is believed by the central government that the scheme serves the public interest or a favourable to the creditors a confirmation order will be promptly issued within 30 days.

However, if it is the opinion of the central government the proposed scheme is not aligned with public interest or favourable to the interest of creditors, it has the authority under section 232 of the Companies Act, 2013 to fill an application. This application, which outlines the objections and concerns, is to be presented before the tribunal within a period of 60 days.

Efficiency and Accountability

The amended rule 25 introduces a time sensitive approach that encourages prompt decisions. This not only benefits the entities involved in the merger or amalgamation but also aligns with the broader goals of expediting corporate processes and ensuring regulatory compliances.

By allowing deemed approvals and defining clear actions for situations with objections, the modified rule strikes a balance between efficient decision making and careful consideration of stakeholder's interests. The emphasis on the public interest and creditor welfare underscores the regulatory frameworks commitment to maintaining a fair and equitable business environment.

Conclusion

The recent modification to rule 25 introduces a welcome change in the approval process for mergers and amalgamations. By implementing a time bound approach and introducing the concept of deemed approvals, the regulatory authorities aimed foster a more efficient business landscape while safeguarding the interest of all the parties involved in the transaction. This adjustment aligns with the broader objectives of the Companies Act 2013, and signals are positive step towards simplifying and expediting vital corporate process.

(Quick Note - The revised sub-rules establish updated procedures for handling objections, suggestions, and confirmation orders in mergers or amalgamations under section 233 of the Companies Act, 2013.)

EMPOWERING THE NCLT AND NCLAT: RECALLING ORDERS FOR JUSTICE AND EFFICIENCY

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In India's legal system, the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) are extremely important. The NCLT and NCLAT only have authority over issues related to company law and insolvency. The NCLT deals with a variety of concerns, including corporate winding up, mismanagement, and oppression. On the other hand, the NCLAT functions as an appellate body, deciding appeals against decisions made by the NCLT. This division guarantees specialization and knowledge in these crucial fields, fostering accuracy and coherence in judicial judgments. The ability to recall orders, a jurisdiction aimed to repair mistakes and oversights in earlier decisions, is a key component of their authority. The Insolvency and Bankruptcy Code of 2016 and Section 420 of the Companies Act of 2013 give these tribunals the jurisdiction to review, modify, or recall their own orders to correct errors and promote fair and just outcomes.

This authority is not unrestricted, though; it is subject to several restrictions and requirements, when necessary, usually in cases of fraud, misrepresentation, or serious procedural errors. This highlights the need to exercise caution and a strong commitment to justice when using the recall power.

An Evolutionary Precedent

A significant change happened in the recent case of *Union Bank of India vs Dinkar T Venkatasubramanian*[33]. The NCLAT's five-member special bench overturned earlier rulings that denied the tribunals' ability to recall their rulings. The case entailed a complicated circumstance involving Amtek Auto's resolution plan, which led to financial creditors filing a "recall application." To support its arguments, the Union Bank of India cited earlier NCLAT rulings. As a result, the recall application was referred to the special bench, which addressed important

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[33] Company Appeal (AT) (Insolvency) No. 729 of 2020

issues relating to the recall power. Recall examines the fairness of the procedure that produced the judgment and evaluates procedural flaws and basic principles of justice.

Recalling the Past, Paving the Future

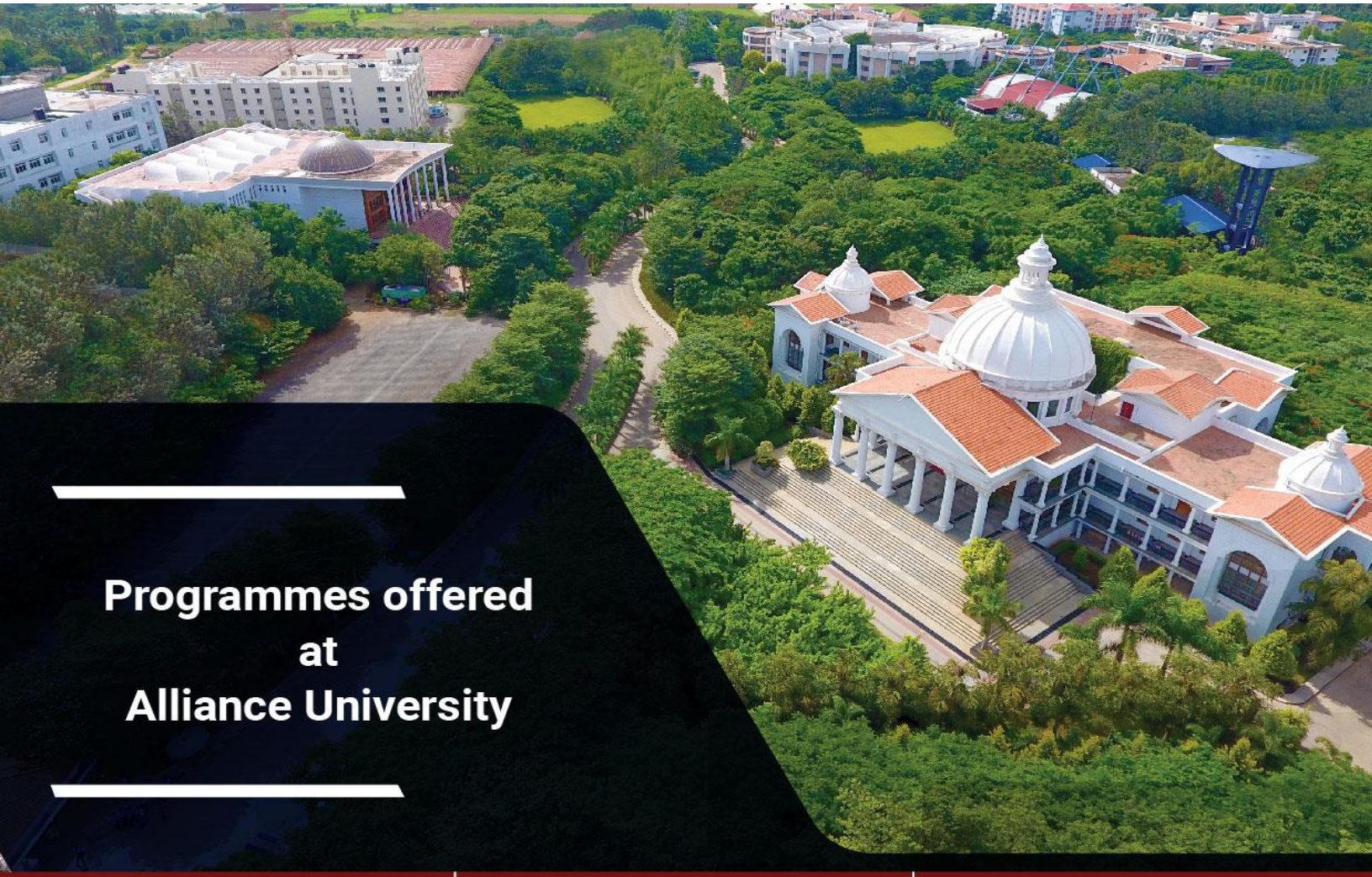
The special bench determined that the NCLAT lacked recall authority after reviewing past rulings in the cases of *Agarwal Coal Corporation Private Ltd vs Sun Paper Mill*[34] and *Rajendra Mulchand Varma vs KLJ Resources*[35]. But after careful consideration, the special bench changed its mind, claiming that the tribunals do in fact have the power to recall their decisions. This decision establishes a new standard for the reach of the recall power while upholding the position of earlier judgements on review powers.

Conclusion

The NCLT and NCLAT's ability to recall orders is a pillar in a legal system where accuracy and justice are crucial. This authority, which derives from legislative provisions, makes sure that injustices are made right, and that justice is done. The important *Union Bank of India v. Dinkar T Venkatasubramanian* case established these tribunals' power to review decisions. In addition to aligning the NCLAT and NCLT with well-established legal principles involving review and recall powers, this decision may also help cut down on pointless appeals. Unscrupulous litigants, on the other hand, can abuse this option by filing review applications under the guise of recall applications, reducing the effectiveness of the legal structure, especially for financial institutions and banks, and having an adverse effect on the financial landscape. As the NCLT and NCLAT wield their authority, the balance between justice and prudence will continue to define their impact on India's corporate and insolvency law.

(Quick note: NCLT/NCLAT's power to recall its orders.)

[34] Company Appeal (AT) (Insolvency) No. 412 of 2019
[35] Company Appeal (AT) (Insolvency) No. 359 of 2020



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