

SEBI: Circular on Relaxations relating to procedural matters – Issues and Listing 1

SEBI: Circular on reportings by Alternate Investment Funds. 3

SEBI: Circular relaxing compliance of the SEBI LODR Regulations, 2015 4

IBBI: IBBI (Information Utilities) (Amendment) Regulations, 2021 7

RBI: Circular on parking of unutilized External Commercial Borrowings 8

MCA: Circular clarifying the spending of Corporate Social Responsibility fund 9

Ministry of Law and Justice: Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 10

Case Study: Appellate Tribunal's Order dated April 27, 2021 in Appeal Nos. 377 of 2019, 378 of 2019 and 14

Securities and Exchange Board of India

Circular on Relaxations relating to procedural matters – Issues and Listing

Securities and Exchange Board of India (“SEBI”) in exercise of powers conferred under Section 11(1) read with Section 11 A of the Securities Exchange Board of India Act, 1992 read with Regulation 299 and 300 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2011 has issued *Circular dated April 02, 2021* granting relaxations in procedural matters for Issues and Listing.

SEBI vide its *Circular dated May 06, 2020* bearing No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 (“**Circular dated May 06, 2020**”) granted one (1) time relaxation from strict enforcement of certain regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 pertaining to Rights Issue opening upto July 31, 2020.

Upon representations made by market participants, SEBI vide its Circular dated July 24, 2020 bearing No. SEBI/HO/CFD/DIL1/CIR/P/2020/136 further extended the validity of these relaxations for Rights Issues opening up to December 31, 2020.

The relaxation granted vide SEBI Circular dated May 06, 2020, that is, institution of optional mechanism to accept applications of the shareholders, was further extended for Rights Issues opening up to September 30, 2021; provided that the issuer along with the Lead Managers will continue to comply with point (v) of Circular dated May 06, 2020 which pertains to aforementioned mechanism.

Further, in respect of mechanism and compliance requirements of point (iv) and (v) of the Circular dated May 06, 2020, the issuer along with the Lead Managers, Registrar and other recognized intermediaries (as incorporated in the mechanism) shall also ensure the following:



- a. Refund for un-allotted / partial allotted application shall be completed on or before T+1 day (T: Basis of allotment day).
 - b. Registrar to the issue, shall ensure that all data with respect to refund instructions is error free to avoid any technical rejections. Further, in case of any technical rejection of refund instruction, same shall be addressed promptly.
-



Securities and Exchange Board of India

The Securities and Exchange Board of India (“SEBI”) further to its Circular dated July 29, 2013 (“**Previous Circular**”); Circular dated July 18, 2014 and in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, issued a *Circular dated April 07, 2021* thereby regulating the reporting done by Alternate Investment Funds (“AIFs”).

Under the Previous Circular AIFs were required to submit periodical reports to SEBI relating to their activities. Following the consultation and recommendations of various stakeholders and Alternative Investment Policy Advisory Committee and with a view to provide ease of compliance, it was decided to review and rationalize the existing regulatory reporting requirements.

Thus, it was decided that all AIFs shall submit report on their activity as an AIF to SEBI on quarterly basis within ten (10) calendar days from the end of each quarter in the revised formats as specified in *Annexure I*. Further, Category III AIFs shall also submit report on leverage undertaken, on quarterly basis in the revised formats as specified in *Annexure II*. These reports are to be submitted online through SEBI intermediary portal. This modified reporting requirements, shall be applicable for quarter ending, that is, December 31, 2021 onwards.

Further, by partially modifying paragraph 3 of Circular dated July 18, 2014, it was notified that any changes in terms of private placement memorandum and in the documents of the fund/scheme shall be intimated to investors and SEBI on a consolidated basis, within one (1) month of the end of each financial year. Such intimation shall specifically mention the changes carried-out in the private placement memorandum and the documents of the fund/scheme, along with the relevant pages of revised sections/clauses. It should be noted that these provisions shall come into effect immediately.



Securities and Exchange Board of India

The Securities and Exchange Board of India (“SEBI”) in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 101 of the SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015 (“SEBI LODR Regulations”) issued a *Circular dated April 29, 2021*, relaxing compliance of certain provisions of the LODR Regulations, 2015 / other applicable circulars due to the COVID-19 pandemic.

Upon considering the representations made by listed entities, professional bodies, industry associations, market participants etc., regarding the extension of timelines for various filings and relaxation from certain compliance obligations under the LODR Regulations and taking into the account the ongoing second wave of COVID-19 pandemic and restrictions imposed by various state governments, SEBI decided to grant the following relaxations from compliance with certain provisions of the LODR Regulations / other applicable circulars: –

Sr. No	Regulation	Requirement	Due date	Extended deadline for the quarter / half year / year ending March 31, 2021
	For entities that have listed their debt securities under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Issue and Listing of Non – convertible Redeemable Preference Shares Regulations, 2013, and SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008			
1.	Regulation 52(1) - Half-yearly financial results	Forty-five (45) days from end of the quarter /	May 15, 2021/	June 30, 2021
	Regulation 52 (2) - Annual audited financial results	Sixty (60) days from end of the financial year	May 30, 2021	



2.	<i>Regulation 52(7) read with SEBI circular no. SEBI/HO/DDHS/08/2020 dated January 17, 2020 on Statement of deviation or variation in use of funds</i>	Along with the financial results within forty five (45) days of end of each quarter/ sixty (60) days from end of the financial year)	May 15, 2021/ May 30, 2021	June 30, 2021
For entities that have listed their bonds under the SEBI (Issue and Listing of Municipal Bonds) Regulations, 2015				
3.	<i>Requirements as per circular no. SEBI/HO/DDHS/CIR/P/134/2019 dated November 13, 2019</i> Annual audited financial results	Sixty (60) days from end of the financial year	May 30, 2021	June 30, 2021
For entities that have listed Commercial Paper				
4.	<i>Requirements as per SEBI/HO/DDHS/DDHS/CIR/P/2019/115 dated October22, 2019</i> Half Yearly financial results Annual audited financial results	Forty-five(45) days from end of the Half Year/ Sixty (60) days from end of the financial year	May 15, 2021 / May 30, 2021	June 30, 2021



Listed entities making authentication / certification of filings / submissions to stock exchanges under the SEBI LODR Regulations are permitted to use digital signature certification for all their filings until December 31, 2021. Entities that have listed their municipal bonds or Commercial Paper may also opt to use digitally signed documents for making filings with the stock exchanges.



Insolvency and Bankruptcy Board of India

The Insolvency and Bankruptcy Board of India (“IBBI”) vide Notification dated April 13, 2021 notified the *IBBI (Information Utilities) (Amendment) Regulations, 2021* (“**Amendment Regulations**”) under the powers conferred to it by Section 196 read with Section 260 of the Insolvency and Bankruptcy Code, 2016.

The following amendments have been made to the IBBI (Information Utilities) Regulations, 2017 (“**Principal Regulations**”):

1. In Regulation 15, in sub-regulation (3), after clause (b) of the Principal Regulations, the following clauses have been inserted:

“(ba) minimum service quality standards, including timelines for –

- (i) registration of users,*
- (ii) issuance of record of default, and*
- (iii) issuance of annual statement to registered users.*

(bb) adoption of quality standards and quality standards certifications.”

2. The following shall substitute Regulation 27(1) of the Principal Regulations:

“(1) A user, who has submitted information in Form C of the Schedule to an information utility, shall submit the information updated as on the last day of every month, in the first week of following month: Provided that information of default shall be updated within seven days of occurrence of default.”

3. Regulation 36A has been inserted to the Principal Regulations as follows:

“36A. Publication of statistical information –

- (1) An information utility shall publish statistics relating to debt related information in its possession, quarterly.*
- (2) The statistics in sub-regulation (1) shall provide distribution of debts in terms of currency, geography, sector, size, tenor, type, lending arrangement, and incidence of default.”*

4. Further Form C in the Schedule of the Principal Regulation has been substituted and the same has been provided in the Amendment Regulations.



Reserve Bank of India

The Reserve Bank of India vide its *Circular dated April 07, 2021* under section 10 (4) and 11(2) of the Foreign Exchange Management Act, 1999 has relaxed the period of parking of unutilised External Commercial Borrowings (“ECB”) proceeds in term deposits.

Under paragraph 4.2 of the *Master Direction No.5 dated March 26, 2019* on “External Commercial Borrowings, Trade Credits and Structured Obligations”, ECB borrowers were allowed to park ECB proceeds in term deposits with Authorized Dealer Category-I (“AD Category-I”) banks in India for a maximum period of twelve (12) months cumulatively. However, based on the requests from stakeholders, including industry associations, and with a view to provide relief to the ECB borrowers affected by the Covid-19 pandemic, it was decided to relax the above stipulation as a **one-time measure**.

Accordingly, the unutilised ECB proceeds drawn down on or before March 01, 2020 can now be parked in term deposits with AD Category-I banks in India prospectively for an additional period up to **March 01, 2022**.

It must be noted that all other provisions relating to ECB policy remain unchanged. AD Category-I banks were directed to bring the contents of this circular to the notice of their constituents/ customers.



Ministry of Corporate Affairs

The Ministry of Corporate Affairs (“MCA”) vide its *Circular dated April 22, 2021* had issued clarifications regarding the spending of Corporate Social Responsibility (“CSR”) funds in continuation of its general circular No. 10/2020 dated March 23, 2020.

In its previous general circular dated March 23, 2020 MCA had clarified that spending of CSR funds for COVID-19 shall be an eligible CSR activity. However, it further clarified that spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities shall also be considered eligible CSR activity under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 which relates to promotion of health care, including preventive health care, and disaster management respectively.

The companies are suggested to undertake the aforesaid activities in consultation with State Governments subject to fulfilment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR issued by MCA from time to time.



Ministry of Law and Justice

In exercise of the powers conferred by clause (1) of Article 123 of the Constitution of India, the President promulgated an Ordinance to be called as the *Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 ("Ordinance")* on April 04, 2021.

This Ordinance primarily abolished the Intellectual Property Appellate Board ("IPAB") which had appellate jurisdiction for matters falling under various Intellectual Property Rights laws ("IPR laws") thereby amending the Cinematograph Act, 1952, the Copyright Act, 1957, the Customs Act, 1962, the Patents Act, 1970, the Airports Authority of India Act, 1994, the Trade Marks Act, 1999, the Geographical Indications of Goods (Registration and Protection) Act, 1999 and the Protection of Plant Varieties and Farmers' Rights Act, 2001. Following were major amendments made vide the said Ordinance –

1. The Cinematograph Act, 1952

- A. The abovementioned Ordinance amended the Cinematograph Act, 1952 ("**CA, 1952**") to omit the following sections :- Section 2(h); Section 5C (2); Sections 5D and 5DD; and Section 8(2) clauses (h), (i), (j), and (k).
- B. The Ordinance further amended the CA, 1952 to the following effect –
 - (i) in Section 5C for the word "Tribunal", at both the places where it occurs, the words "High Court" shall be substituted;
 - (ii) in Section 6, the words "or, as the case may be, decided by the Tribunal (but not including any proceeding in respect of any matter which is pending before the Tribunal)" shall be omitted;
 - (iii) in Sections 7A and 7C, for the word "Tribunal", wherever it occurs, the words "High Court" shall be substituted;
 - (iv) in Sections 7D, 7E and 7F, the words "the Tribunal," , wherever they occur, shall be omitted;

2. The Copyright Act, 1957

- A. The abovementioned Ordinance amended the Copyright Act, 1957 ("**CA, 1957**") to the effect that Section 2(aa), Section 11, Section 12, Section 78(2) clauses (cA) and (ccB) shall stand omitted.



- B. The Ordinance further amended the CA, 1957 as follows –
- Section 2(fa) shall be re-lettered as clause (faa) and before the clause (faa) so re-lettered, the following clause shall be inserted, namely –

‘(fa) “Commercial Court”, for the purposes of any State, means a Commercial Court constituted under section 3, or the Commercial Division of a High Court constituted under section 4, of the Commercial Courts Act, 2015;’
 - In Section 2(u), the following clause shall be substituted, namely –

*‘(u) “prescribed” means –
(A) in relation to proceedings before a High Court, prescribed by rules made by the High Court; and
(B) in other cases, prescribed by rules made under this Act;’*
 - In Section 6 –

*(i) for the words “Appellate Board”, wherever they occur, the words “Commercial Court” shall be substituted;
(ii) the words “constituted under section 11 whose decision thereon shall be final” shall be omitted;*
 - In Chapter II, in the Chapter heading, the words “AND APPELLATE BOARD” shall be omitted;
 - In Sections 19A, 23, 31, 31A, 31B, 31C, 31D, 32, 32A and 33A, for the words “Appellate Board”, wherever they occur, the words “Commercial Court” shall be substituted;
 - In Section 50, for the words “Appellate Board”, wherever they occur, the words “High Court” shall be substituted
 - In section 53A –

*(i) for the words “Appellate Board”, wherever they occur, the words “Commercial Court” shall be substituted;
(ii) in sub-section (2), the words “and the decision of the Appellate Board in this behalf shall be final” shall be omitted;*
 - In section 54, for the words “Appellate Board”, the words “Commercial Court” shall be substituted;
 - For section 72, the following section shall be substituted, namely -

“72. (1) Any person aggrieved by any final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the High Court.



(2) Every such appeal shall be heard by a single Judge of the High Court:

Provided that any such Judge may, if he so thinks fit, refer the appeal at any stage of the proceeding to a Bench of the High Court.

(3) Where an appeal is heard by a single Judge, a further appeal shall lie to a Bench of the High Court within three months from the date of decision or order of the single Judge. (4) In calculating the period of three months provided for an appeal under this section, the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded.”;

- In sections 74 and 75, the words “and the Appellate Board”, wherever they occur, shall be omitted;
 - In section 77, the words “and every member of the Appellate Board” shall be omitted;
 - In section 78, in sub-section (2)(f), the words “and the Appellate Board” shall be omitted.
- C. In other words, the powers of the Appellate Board under the Act shall now vest with the Commercial Courts as defined under Section 2(fa) of the Act, by this Ordinance.

3. The Patents Act, 1970

- A. The abovementioned Ordinance amended the Patents Act, 1970 (“**PA, 1970**”), and omitted Section 2(1)(a), Section 2(1)(u)(B), Section 116, section 117, 117B, 117C, 117D, 117F, 117G, 117H, Section 159 (2), clauses (xiia), (xiib) and (xiic).
- B. The PA, 1970 was further amended to the following effect –
- The words “Appellate Board or”, wherever they occur, shall be omitted in the Act under following sections: - in Section 52, 58, 59, 64(1), 76, 113(1), 113(3) and 151(1) respectively;
 - In Section 71, for the words “Appellate Board” and “Board”, wherever they occur, the words “High Court” shall be substituted;
 - In Chapter XIX, for the Chapter heading, the Chapter heading “APPEALS” shall be substituted;
 - In Section 117A, for the words “Appellate Board”, wherever they occur, the words “High Court” shall be substituted;
 - In Section 117E, for the words “Appellate Board”, wherever they occur, the words “High Court” shall be substituted;



- In Section 151 (3), for the words “the Appellate Board or the courts, as the case may be”, the words “the courts” shall be substituted; and
 - In Section 58 and Section 113(1), “as the case may be” shall be omitted.
- C. In other words, the powers of the Appellate Board under the Act shall now vest with respective High Courts
4. The Trade Marks Act, 1999
- A. Vide the Ordinance amending the Trade Marks Act, 1999 (“**TM Act, 1999**”) the following sections/clauses/sub-clauses were omitted – Section 2(1) (a), (d), (f), (k), (n), (ze) and (zf), Sections 83, 84, 85, 86, 87, 88, 89, 89A, 92, 93, 95, 96, 99, 100, Section 157(2) clauses (xxxi) and (xxxii)
- B. The Ordinance further amended the TM Act, 1999 as follows –
- for Section 2(1) clause (s), the following clause shall be substituted, namely –
 - ‘(s) “prescribed” means –*
 - (i) in relation to proceedings before a High Court, prescribed by rules made by the High Court; and*
 - (ii) in other cases, prescribed by rules made under this Act;’*
 - for the word “tribunal”, the words “Registrar or the High Court, as the case may be,” shall be substituted in the following sections of the TM Act, 1999 – Section 10, 26, 46(3), 47, 55(1), 57, 71(3), 113, 144 respectively.
 - for the words “Appellate Board”, at both the places where it occurs, the words “High Court” shall be substituted; in the following sections of the TM Act – Section 47, 57, 91, 97, 98, 113, 124, 125, 141 and 157 (2) clause (xxxiii) respectively
 - in Chapter XI, for the Chapter heading, the Chapter heading “APPEALS” shall be substituted;
 - for section 94, the following section shall be substituted, namely -
 - “94. On ceasing to hold the office, the erstwhile Chairperson, Vice-Chairperson or other Members, shall not appear before the Registrar.”*
 - In other words, the powers of the Appellate Tribunals/Board shall now vest with the High Court having appropriate jurisdiction.



Case Study

Case details	:	Appeal Nos. 319 of 2018– Roha Dyechem Private Limited Versus Maharashtra Electricity Regulatory Commission and Ors. Appeal Nos. 377 of 2019– Jsons Foundry Private Limited Versus Maharashtra Electricity Regulatory Commission and Ors. Appeal Nos. 378 of 2019– Western Precicast Private Limited Versus Maharashtra Electricity Regulatory Commission and Ors.
Forum	:	Hon'ble Appellate Tribunal for Electricity
Common Order Date	:	April 27, 2021

Facts of the Case:

1. Roha Dyechem Private Limited (“**Roha**”) owns 15 MW Solar Photo Voltaic (“**PV**”) project consisting of two phases of 10 MW and 5 MW each in a solar park developed in State of Maharashtra. Maharashtra State Electricity Distribution Company Limited (“**MSEDCL**”) despite granted permission to commission for 10 MW PV plant in January, 2018, granted open access permissions for the months of March, 2018 to January, 2019 only for 5 MW instead of the applied quantum for 10 MW . The same was challenged before the Maharashtra Electricity Regulatory Commission (“**MERC**”) in case No. 119 of 2018.
2. Jsons Foundry Private Limited (“**Jsons**”) and Western Precicast Private Limited (“**Western**”) own wind power generating units for which open access for self-use was availed by Jsons and Western. MSEDCL had unilaterally curtailed/denied the open access permissions for the aforesaid units retrospectively which also led to disconnection of some of units by MSEDCL on the ground of no valid open access permission during pendency of appeals. The actions of MSEDCL were challenged by Western before the MERC in case No. 118 of 2019 and by Jsons in case No. 119 of 2019.



3. MERC vide its Order dated July 12, 2018 in case No. 119 of 2018 wherein Roha was the petitioner and combined order dated September 9, 2019 in case Nos. 118 of 2019 and case No. 119 of 2019 had only partly allowed the prayers of the petitioners therein and rejected the reliefs sought against MSEDCL for wrongful unilateral denial/curtailment of open access permissions.
4. The orders of MERC were then challenged by Roha, Western and Jsons (hereinafter are collectively referred as “**Appellants**”) before Hon’ble Appellate Tribunal for Electricity (“**APTEL**”) vide the appeals, details of which are mentioned above.
5. MERC had accepted the fallacious interpretation of MSEDCL that 10% banking allowed to wind power project by virtue of the Wind Tariff Order, 2003 dated November 24, 2003 passed by MERC in Case No. 17 (3), 3, 4 and 5 of 2002 (“**Wind Tariff Order**”) was at any time and hence, the open access to be granted was curtailed on some devious methodology. MERC had upheld such calculation and consequent curtailment undertaken by MSEDCL on the ground that the open access cannot exceed contract demand by ignoring the infirm nature of wind and solar power.

Decision of Hon’ble APTEL in the present cases is as follows:

6. The Hon’ble APTEL while setting aside MERC’s orders had observed that MSEDCL had interpreted the Wind Tariff Order to conclude that generator cannot bank excess power more than 10% of the energy generated by the plant at any point in time and hence curtailed quantum sought by the Appellants. MSEDCL had thus interpreted that banking can only be allowed on the margins of the contract demand and therefore the open access can be decided and limited on the basis of the contract demand. The said interpretation was upheld by MERC. Hon’ble APTEL had held this interpretation to be incorrect.



6. Hon'ble APTEL held that 100% delivered energy to MSEDCL grid from wind or solar farm project could be banked for a period of one (1) year as such the period of banking is one (1) year. It was held that use of expression '10% of the energy (kWh) fed into the grid' is only in the context of limited procurement of unutilised banked energy at the end of financial year by the distribution utility and cannot be interpreted in any other manner and cannot be the basis for curtailment of open access quantum. Hon'ble APTEL observed that it is clear from the reading of the open access regulations and the practice directions on open access that the only test to be applied by distribution licensee is to verify the feasibility of infrastructure/capacity of the distribution system so that the resultant power flow can be accommodated in the existing distribution system, which wasn't done by MSEDCL in the current cases.
7. Hon'ble APTEL thus held that MERC had erred in interpreting the Wind Tariff Order, the Distribution Open Access Regulation, 2016 and also the practice directions dated 19.10.2016. The matter was remanded back to MERC to pass appropriate order on basis of observations of Hon'ble APTEL.

The Appellants were all represented by Eternity Legal before the Hon'ble APTEL.

Dear Readers,

In case you do not wish to receive our monthly update, please send us email on legalupdates@eternitylegal.com with the subject as “Unsubscribe”.

Warm Regards,

Dipali Sarvaiya Sheth

Founder



D-226, Neelkanth Business Park,

Vidyavihar (West), Mumbai– 400086

Email: contact@eternitylegal.com Tel no.: +91 22 2515-9001

Website: www.eternitylegal.com