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Insolvency and Bankruptcy Board of India

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The Insolvency and Bankruptcy Board of India (“IBBI”) vide a notification dated February 12, 2020 amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“Regulations”).

Regulation 40B of the Regulations, sub-regulation (4), the following sub-regulation shall be substituted, namely: -

“(4) The filing of a Form under this regulation after due date of submission, whether by correction, updation or otherwise, shall be accompanied by a fee of five hundred rupees per Form for each calendar month of delay after 1st April, 2020.

Example: A Form is required to be filed by 30th April, 2020. It shall be filed along with a fee as under:

If filed on	Fees in Rupees
29 th April, 2020	0
30 th April, 2020	0
1 st May, 2020	500
Any day in May, 2020	1000
Any day in June, 2020	1500



Ministry of Corporate Affairs

Clarification of procedure for filing under MCA 21 registry by an Insolvency Professional

Ministry of Corporate Affairs (“MCA”) has vide a [Circular dated February 17, 2020](#), provided clarification and the following procedure with respect to filing of documents in MCA 21 Registry where an Insolvency Professional (“IP”) [Interim Resolution Professional (“IRP”) or Resolution Professional (“RP”) or Liquidator] has been appointed under Insolvency and Bankruptcy Code, 2016 (“Code”) in respect of a company:

1. The IP will first file the order of NCLT in Form INC 28 on the MCA21 portal which approves him as a IRP/RP/Liquidator. The designation to be selected is “others” at the time of filing this form.
2. Once INC 28 has been approved by the Registrar of Companies (“RoC”) of respective jurisdiction, the IP shall then be allowed to file any form on behalf of the company with the designation of the Chief Executive Officer (CEO) of such company.
3. It should be noted that the IP shall not be allowed to file any e-forms in role of designated CEO unless INC 28 has been approved.
4. The Master Data of the company on such approval of INC 28 shall clearly show that the said company is under CIRP or Liquidation as the case may be and shall also mention the name of IP in the CEO column.
5. With regards to Form SH 8 (Letter of Offer) and SH 9 (Declaration of Solvency) and iXBRL (Filing of Financial Statements), the IP shall be allowed to file the same in his role as CEO instead of the form being signed by two Directors of the Company.
6. In case of Form MGT 7 (Annual Return) the IP shall sign it instead of a Director and thereafter the same shall be certified by a Company Secretary in practice.
7. The IP shall again file Form INC 28 in his capacity as Designated CEO upon approval



of the resolution plan, initiation of liquidation proceedings or upon withdrawal of application for Corporate Insolvency Resolution Process (“**CIRP**”) based on which the status of the Company shall be suitably reflected in the company master data.

Further, in case an order of admission of a company (Corporate Debtor) into CIRP or into liquidation is stayed or set aside by the Tribunal or Appellate Tribunal or other courts, such order shall be filed in Form INC-28 by the concerned IP, and the status of the company and the authorization for filing of forms on behalf of company would then change accordingly.



Companies (Appointment and Qualification of Directors) Rules, 2014

MCA vide its *Notification dated the 28th February, 2020* has notified the the Companies (Appointment and Qualification of Directors) Amendment Rules, 2020 which has made the following amendments the *Companies (Appointment and Qualification of Directors) Rules, 2014* ("**Rules**") namely:-

In the Rules, in rule 6, -

(a) in sub-rule (1), in clause (a), for the words, three months, the words "five months" shall be substituted;

(b) in sub-rule (4),

- (i) for the first proviso, namely:-

the following proviso shall be substituted, "Provided that an individual shall not be required to pass the online proficiency self-assessment test, when he has served as a director or key managerial personnel, for a total period of not less than ten years, as on the date of inclusion of his name in the databank, in more of the following, namely:-

(a) listed public company; or

(b) unlisted public company having a paid-up share capital of rupees ten crore or more

(c) body corporate listed on a recognized stock exchange

(ii) in the second proviso, for the word, companies, the words "companies or bodies corporate" shall be substituted.

Appellate Tribunal for Electricity

Case No. 122 of 2017-Century Rayon vs Maharashtra State Electricity Distribution Company Limited (MSEDCL) & Anr.

Facts:

The Maharashtra State Electricity Distribution Company Limited (“MSEDCL”), filed a petition on August 10, 2017 seeking Review of the *Order dated February 15, 2017 in case No. 86 of 2015 (“MERC Order”)* passed by the Maharashtra Electricity Regulatory Commission’s (“State Commission”/ “MERC”). MSEDCL sought review of the Petition filed by Century Rayon Limited (“Appellant”) for refund of HT Continuous Tariff charges.

Precedent:

Reference was Learned MERC Order in Case No. 88 of 2012 (“Kalika case”) wherein the Learned MERC observed that the supply provided to the Petitioners was not in accordance with the expected norm and quality of continuous supply and thus, the DISCOM was ordered to refund the tariff charged for continuous electricity supply along with the interest liable and granted the prayers of the Petitioners. MSEDCL applied for a Review Petition for the Kalika case but the same was disposed off by the Learned MERC.

Background:

The Appellant after going through interruptions in the continuous supply filed a Petition bearing case No. 86 of 2015 in which the Learned Commission noticeably reiterated the dispensation in the Kalika Case and even though the Appellant’s claim for refund was not examined, it being referred to the Consumer Grievance Redressal Forum (“CGRF”) and mentioned that the judgement in the Kalika Case was of ‘general application’. Even before The Learned Commission gave detailed analysis to which the claim in Kalika case had been subjected and the earlier decision mandating ‘detailed scrutiny’ of each and every case, observing in this context that such relief could not be passed on simply because there were insignificant and random interruptions, perhaps on account of transient faults or otherwise. On such further basis above, the review petition was disposed off with the impugned order (May 04, 2018) holding that to be entitled to seek compensation from continuous to non-continuous supply, it is important to verify that such consumer suffered more than sixty (60) hours of interruptions/supply in a month.

Appeal:

The Appellant states that such introduction of new test of sixty (60) hours a month interruptions/no supply is a matter of consideration as no such rule/regulation mandated it.



It was the argument of the Appellant that sixty (60) hours test had been previously rejected as no merit was found. The Hon'ble Appellate Tribunal for Electricity ("APTEL") stated that the only point of scrutiny for them was the introduction of the sixty (60) hours test and referred to the Order by the Learned MERC dated November 3, 2016 in Case No. 48 of 2016. The Hon'ble APTEL laid down that it was not correct on part of the Learned MERC to change the rule by introduction of sixty (60) hour per month interruption test when the rule was already set in the Kalika Case. The Hon'ble APTEL further laid down that if the consumer was willing to pay a higher tariff for continuous supply and if the DISCOM had accepted him in such category, it is the duty of the DISCOM to provide quality supply of electricity which was uninterrupted wherein the only exceptions would be reasons of force majeure. In view thereof, the Hon'ble APTEL vacated the directions of the Learned MERC of introduction of sixty(60) hours test for interruption.



MCA

National Company Law Tribunal (Amendment) Rules, 2020

Ministry of Corporate Affairs (“MCA”) vide *Notification dated February 03, 2020* stated that the Central Government appoints February 03, 2020 as the date on which the provisions of sub-sections (11) and (12) of Section 230 of the National Company Law Tribunal Rules, 2016 come into force and are mentioned below:

Power to compromise or make arrangements with creditors and members

Section 230:

- (11) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed.

Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board

- (12) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Explanation– For the removal of doubts, it is hereby declared that the provisions of S66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.



Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020

Ministry of Corporate affairs vide a *Notification dated February 03, 2020* has amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 namely:-

In rule (3) after sub-rule (4), the following sub-rules shall be inserted:

1. A member of a company shall make an application for arrangement, for the purpose of takeover offer in terms of sub-section (11) of section 230, when such member along with any other member holds not less than three-fourths of the shares in the company, and such application has been filed for acquiring any part of the remaining shares of the company.

Explanation I - 'shares' mean the equity shares of the company carrying voting rights, and includes any securities such as depository receipts, which entitles the holder thereof to exercise voting rights.

Explanation II - Noting in this sub-rule shall apply to any transfer or transmission of shares through a contract, arrangement or succession, as the case maybe, or any transfer made in pursuance of any statutory or regulatory requirement.

2. An application for takeover shall contain—

A report of a registered valuer disclosing the details of the valuation of the shares proposed to be acquired by the member after taking into account the following factors-

- i. the highest price paid by any person or group of persons for acquisition of shares during last twelve (12) months,
- ii. The fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net-worth book value of shares, earning per share, price earning multiple vis-à-vis the industry average, and such other parameters as are customary for valuation of shares of such companies.

- B. Details of a bank account, to be opened separately, by the member wherein the sum of amount not less than one-half of total consideration of the takeover offer is deposited.



C. In the principal rules, the following shall be substituted namely:

Sub-section (1) of section 230	3	Application for Rs. 5000'- compromise, arrangement and amalgam- ation
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Companies (Auditor's Report) Order, 2020

MCA vide a *Notification dated February 25, 2020*, the Central Government has notified the Companies (Auditor's Report) Order, 2020. A brief analysis is provided below:

I. Matters to be included in auditor's report. - The auditor's report on the accounts of a company to which this Order applies shall include a statement on the following matters, namely:-

(A) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of Property, Plant and Equipment;

(B) whether the company is maintaining proper records showing full particulars of intangible assets;

II. Whether the Property, Plant and Equipment have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;

III. Whether the title deeds of all the immovable properties (other than properties where the company is the lessee and the lease agreements are duly executed in favour of the lessee) disclosed in the financial statements are held in the name of the company, if not, provide the details thereof in the format below:-

Descrip- tion of property	Gross carrying value	Held in name of	Whether pro- moter, direc- tor or their relative em- ployee	Period held- indicate range, where appropriate	Reason for not being held in name of company
-	-	-	-	-	*also indicate if in dispute



- IV. Whether the company has revalued its Property, Plant and Equipment (including Right of Use assets) or intangible assets or both during the year and, if so, whether the revaluation is based on the valuation by a Registered Valuer; specify the amount of change, if change is 10% or more in the aggregate of the net carrying value of each class of Property, Plant and Equipment or intangible assets;
- V. Whether any proceedings have been initiated or are pending against the company for holding any benami property under the Benami Transactions (Prohibition) Act, 1988 (45 of 1988) and rules made thereunder, if so, whether the company has appropriately disclosed the details in its financial statements;
- VI. Whether physical verification of inventory has been conducted at reasonable intervals by the management and whether, in the opinion of the auditor, the coverage and procedure of such verification by the management is appropriate; whether any discrepancies of 10% or more in the aggregate for each class of inventory were noticed and if so, whether they have been properly dealt with in the books of account;
- VII. Whether during any point of time of the year, the company has been sanctioned working capital limits in excess of five crore rupees, in aggregate, from banks or financial institutions on the basis of security of current assets; whether the quarterly returns or statements filed by the company with such banks or financial institutions are in agreement with the books of account of the Company, if not, give details;
- VIII. Whether during the year the company has made investments in, provided any guarantee or security or granted any loans or advances in the nature of loans, secured or unsecured, to companies, firms, Limited Liability Partnerships or any other parties, if so,-
- A) whether during the year the company has provided loans or provided advances in the nature of loans, or stood guarantee, or provided security to any other entity [not applicable to companies whose principal business is to give loans], if so, indicate-
- B) the aggregate amount during the year, and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security to subsidiaries, joint ventures and associates;

the aggregate amount during the year, and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security to parties other than subsidiaries, jointventures and associates;

IX. Whether the company has defaulted in repayment of loans or other borrowings or in the payment of interest thereon to any lender, if yes, the period and the amount of default to be reported as per the format below:-

Nature of borrowing, including debt securities	Name of lender*	Amount not paid on due date	Whether principal or interest	No. of days delay or un-paid	Remarks, if any
	*lender wise details to be provided in case of defaults to				
	banks, financial institutions and Government.				

X. (Whether the company is a declared wilful defaulter by any bank or financial institution or other lender;

XI. Whether term loans were applied for the purpose for which the loans were obtained; if not, the amount of loan so diverted and the purpose for which it is used may be reported;

XII. Whether funds raised on short term basis have been utilised for long term purposes, if yes, the nature and amount to be indicated.

The detailed Companies (Auditor's Report) Order, 2020 can be found in the below link:

Companies (Auditor's Report) Order, 2020

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Warm Regards,

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