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Securities Exchange Board of India

In exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market the Securities Exchange Board of India (“SEBI”) has issued *Circular dated March 26, 2021* (“Circular”). The following are the clarifications provided in the Circular regarding the transfer of business (SEBI regulated business activity) from one legal entity which is a SEBI registered intermediary (“transferor”) to other legal entity (“transferee”):

1. The transferee shall obtain fresh registration from SEBI in the same capacity before the transfer of business if it is not registered with SEBI in the same capacity. SEBI shall issue new registration number to transferee different from transferor’s registration number in case where the business is being transferred through regulatory process (pursuant to merger/ amalgamation/corporate restructuring by way of order of primary regulator / Government / National Company Law Tribunal, etc) or non-regulatory process (as per private agreement / Memorandum of Understanding pursuant to commercial dealing / private arrangement) irrespective of transferor continues to exist or ceases to exist after the said transfer.
2. In case of change in control pursuant to both regulatory and non-regulatory process, prior approval and fresh registration shall be obtained. While granting fresh registration to same legal entity pursuant to change in control, same registration number shall be retained.
3. If the transferor ceases to exist, its certificate of registration shall be surrendered.
4. In case of complete transfer of business by transferor, it shall surrender its certificate of registration.
5. In case of partial transfer of business by transferor, it can continue to hold certificate of registration.



Securities Exchange Board of India

In exercise of the powers conferred by Section 11(1) of the Securities and Exchange Board of India Act, 1992 the Securities Exchange Board of India (“SEBI”) vide its *Circular dated March 30, 2021* issued additional guidelines pertaining to surrender of Foreign Portfolio Investor (“FPI”) Registration to come into force with immediate effect.

In terms of SEBI (Foreign Portfolio Investors) Regulations, 2019, any FPI desirous of surrendering the certificate of registration may request for such surrender to the Designated Depository Participants (“DDP”) by following the procedure laid down by SEBI vide its *Circular dated November 05, 2019* for processing such requests.

In order to have a uniform market practice for processing of such surrender requests, DDPs shall adhere to the following additional guidelines:

- a. While making an application to SEBI for seeking No Objection Certificate (“NOC”) for surrender, the DDP shall ensure the following with respect to the FPI:
 - i) Accounts held by the applicant in the capacity of FPI have NIL balance and are blocked for further transactions. Further, the Custodian Participant Code (“CP code”) of the FPI is also blocked.
 - ii) There are no dues/ fees pending towards SEBI.
 - iii) There are no actions/ proceedings pending against the said applicant FPI.
- b. DDP shall ensure that:
 - i) all the accounts (including bank account and securities account) held by the applicant in the capacity of FPI are closed; and
 - ii) the CP code is deactivated within ten (10) working days from the date of receipt of NOC from SEBI.

The Custodians and DDPs are advised to bring the provisions of this circular to the notice of their clients.



Securities Exchange Board of India

In exercise of powers conferred by Section 11(1) and Section 11A of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market the Securities Exchange Board of India (“SEBI”) issued the *Circular dated March 31, 2021* revising the time limit for unblocking / refund of application money as follows:

1. Presently, under Regulation 45(2), 86(2), 141(2), 202(2)(b) and 202(3)(a) and (b) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“**ICDR Regulations**”), the time limit provided to the issuer for refund of all application monies in case of non-receipt of minimum subscription, is within a period of “fifteen days” from the closure of the issue.

Similarly, the present provisions of Regulation 53(2), 94(2), 149(2), 208(2), 272(2) stipulate that in case the issuer fails to obtain listing or trading permission from the stock exchanges where the specified securities were to be listed, it shall refund the entire monies received within “seven days” of receipt of intimation from stock exchanges rejecting the application for listing of specified securities.

2. However, with Application Supported by Blocked Amount (“**ASBA**”) facility being made mandatory for all applicants in public issues, the application money is not transferred but only blocked in the account of the investor and is debited only upon allotment and unblocked if there is no/part allotment. Further, post introduction of Unified Payments Interface (“**UPI**”) mechanism in public issues, intermediaries are responsible to compensate the investors for any delay in unblocking of amounts in the ASBA accounts exceeding four working days from the bid/issue closing date.
3. Thus, based on various consultations with the market participants it has been decided to reduce the timelines for refund of the moneys to the investors in the above mentioned events to “**four days**”.
4. Also, in Regulation 45(2), 86(2), 141(2), 202(2)(b) and 202(3)(a) and (b) the words ‘fifteen days’ shall be substituted by ‘**four days**’ and in Regulation 53 (2), 94(2), 149(2), 208(2), 272(2) the word ‘seven days’ and ‘eighth day’ shall be substituted with ‘**four days**’.



Insolvency and Bankruptcy Board of India

The Insolvency and Bankruptcy Board of India in exercise of the powers conferred by Section 196 (1)(t) read with Section 240 of the Insolvency and Bankruptcy Code, 2016 (“**IBC, 2016**”) has amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**Principal Regulations, 2016**”) on March 15, 2021.

These regulations shall be called the ***Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2021***. The following amendments have been made to the Principal Regulations:

1. After regulation 12, of the Principal Regulations, 2016 the following regulation shall be inserted –

“12A. Updation of claim.

A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.”

2. In regulation 40B of the Principal Regulations, 2016, after sub-regulation (1), the following sub-regulation shall be inserted -

“(1A) Where any activity stated in column (2) of table below is not complete by the date specified therein, the interim resolution professional or resolution professional, as the case may be, shall file Form CIRP 7 within three days of the said date, and continue to file Form CIRP 7, every 30 days, until the said activity remains incomplete –



Sr. No (1)	Activity requiring filing of Form CIRP 7, if not completed by the specified date (2)	Timeline for filing Form CIRP 7 for the first time (3)	Timeline for subsequent filing of Form CIRP 7 (4)
1.	Public announcement is not made by T+3 rd day	Date specified in column (2) + 3 days	X+30 th day, X+60 th day, X+90 th day, and so on, till the activity is completed.
2.	Appointment of Resolution Professional is not made by T+30 th day		
3.	Information memorandum is not issued within 51 days from the date of public announcement		
4.	Request for Resolution Plan is not issued within 51 days from the date of issue of information memorandum		
5.	Corporate Insolvency Resolution Process is not completed by T+180 th day		

It should be noted that a time period of not less than thirty (30) days should have lapsed from the date of filing of earlier Form CIRP 7. It means that only one Form CIRP 7 shall be filed at any time even if one or more activity is not complete by the specified date.

3. The Schedule to Principal Regulation was also amended to substitute Form C which is filed by the Financial Creditor for Submission of their Claims.

The Insolvency and Bankruptcy Board of India in exercise of its powers conferred under Section 196 (1) (aa), (g), (h), (k) of IBC, 2016, and regulation 40B of the Corporate Insolvency Resolution Process (“CIRP”) Regulations issued a *Circular dated March 18, 2021* to be applicable for all the processes ongoing as on the date of this circular, wherein it gave the following explanation and also made available the format of Form CIRP 7.



Explanation: Regulation 40A of the Principal Regulations provides a model timeline for carrying out various activities envisaged in a CIRP. Regulation 40B of the CIRP Regulations require an interim resolution professional / resolution professional to file a set of forms i.e Form CIRP 1 to Form CIRP 6 within seven days of completion of specific activities to enable monitoring progress of CIRP. This means that the said forms could not be filed until the related activity is not completed for whatever reason. This makes monitoring of progress difficult. Regulation 40B of CIRP Regulations require filing of Form CIRP 7 within three (3) days of due date of completion of any activity stated in column (2) of the table above is delayed, and continue to file Form CIRP 7 after every thirty (30) days, until the said activity remains incomplete.



Insolvency and Bankruptcy Board of India

In exercise of the powers conferred by Section 196 (1) (t) read with section 240 of the Insolvency and Bankruptcy Code, 2016 the Insolvency and Bankruptcy Board of India (“**the Board**”) has amended the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (“**Principal Regulations**”) on March 04, 2021 to be known as the *Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021*. The following amendments have been made to the Principal Regulations: -

1. In Regulation 31 of the Principal Regulations –

- (i) for sub-regulation (2), the following sub-regulation shall be substituted -

“(2) The liquidator shall file the list of stakeholders with the Adjudicating Authority within forty-five days from the last date for receipt of the claims.”

- (ii) in sub-regulation (5), after clause (c), the following clause shall be inserted -

“(d) filed on the electronic platform of the Board for dissemination on its website:

Provided that this clause shall apply to every liquidation process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021.”;

In exercise of the powers conferred under Section 196 (1)(aa) of the Insolvency and Bankruptcy Code, 2016 the Board issued a *Circular dated March 04, 2021* (“**Circular**”) explaining the aforementioned Notification.

The said Circular directed the insolvency professionals to file the list of stakeholders of the respective corporate debtor under liquidation and modification thereof, in a format as provided in the Circular, within **three (3) days** of the preparation of the list or modification thereof, as the case may be. The filings due as on the date of Circular shall be filed within **fifteen (15) days** of this Circular.



The purpose of this requirement is to improve transparency and enable stakeholders to ascertain the details of their claims at a central platform. This requirement is applicable to every liquidation process -

- (a) Ongoing as on the date of notification of Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2021, and;
- (b) Commencing on or after the said date.

The Board has made available an electronic platform for filing of list of stakeholders as well as updating it thereof. The platform permits multiple filings by the liquidator as and when the list of stakeholders is updated by him. The format of list of stakeholders, as finalised in consultation with the insolvency professional agencies, is provided as Annexure in the Circular.



Ministry of Corporate Affairs

In exercise of the powers conferred by Section 467 (1) & (2) of the Companies Act, 2013 (“the Act”) the Central Government increased the limits of remuneration being paid to managerial person in a company and brought directors within the ambit of managerial person. The Ministry of Corporate Affairs vide *Notification dated March 18, 2021* made following amendments to Schedule V of the Act -

1. Under the head Remuneration in Part II of Schedule V of the Act,
 - (a) In Section I, after the words managerial person or persons, the words “or other director or directors” shall be inserted.

“Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons ‘or other director or directors’ not exceeding the limits specified in such section.”

- (b) In Section II, wherever the words managerial person has occurred, the words “or other director” shall be inserted after them and for Table (A) therein, the following table shall be substituted –

(1)		(2)	(3)
Sr. No.	Where the effective capital (in rupees) is	Limit of yearly remuneration payable shall not exceed (in Rupees) in case of a managerial person	Limit of yearly Remuneration payable shall not exceed (in rupees) in case of other director
1.	Negative or less than 5 crores.	60 lakhs	12 Lakhs
2.	5 crores and above but less than 100 crores.	84 lakhs	17 Lakhs
3.	100 crores and above but less than 250 crores.	120 lakhs	24 Lakhs
4.	250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores.	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores.



- (c) In Section III, wherever the words managerial person has occurred, except in clause (i) of the proviso, the words '*or other director*' shall be inserted. The following explanation shall be inserted at the end -

*“Explanation – For the purposes of Section I, Section II and Section III, the term – ‘or other director’ shall mean a **non-executive director or an independent director.**”*



Ministry of Corporate Affairs

In exercise of powers conferred by Section 134 read along with Section 469 of the Companies Act, 2013 the Central Government vide its *Notification dated March 24, 2021* amended the Companies (Accounts) Rules, 2014 (“**Principal Rules**”) to be called as the Companies (Accounts) Amendment Rules, 2021 which shall come into force from April 01, 2021.

1. In Rule 3(1) of the Principal Rules the following proviso shall be inserted –

“Provided that for the financial year commencing on or after the 1st day of April, 2021, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.”

2. In Rule 8(5) after clause (x), the following clauses shall be inserted –

“(xi) the details of application made or any proceedings under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) during the year alongwith their status as at end of the financial year.

(xii) the details of difference between amount of the valuation done at the time of onetime settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.”



Case Summary

Case Name : *Suo Motu Writ Petition (Civil) No.3 of 2020*
Court Name : The Hon'ble Supreme Court of India
Order Date : March 08, 2021

Facts of the case:

1. The outbreak of COVID-19 pandemic resulted in a situation of grave difficulties being faced by the litigants across the nation for filing of petitions / applications / suits / appeals /and all other proceedings within the time period of limitation prescribed under the general law of limitation or under any special laws as laid down by both the Centre or the State.
2. The Hon'ble Supreme Court of India ("**Hon'ble Court**") by its order dated March 27, 2020 extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from March 15, 2020 until further orders.
3. As the end of pandemic was not seen in near future the order dated March 15, 2020 was thus extended from time to time for the benefit of litigants.
4. The lockdown has now been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. The Hon'ble Court is thus, of the opinion that the order dated March 15, 2020 has served its purpose and in view of the changing scenario relating to the pandemic, the extension of limitation should come to an end.

Directions of the Hon'ble Court:

1. In computing the period of limitation for any suit / appeal / application or proceeding, the period from March 15, 2020 till March 14, 2021 shall stand excluded.
2. The balance period of limitation remaining as on March 15, 2020 (if any), shall become available with effect from March 15, 2021.
3. In cases where the limitation expired between the period of March 15, 2020 and March 14, 2021 notwithstanding the actual balance period of limitation remaining, all persons shall now have a limitation period of ninety (90) days commencing from March 15, 2021.



4. In events where the actual balance period of limitation remaining, with effect from March 15, 2021 is greater than ninety (90) days, that longer period shall be applicable to such litigants. In other words, the limitation period now shall be ninety (90) days or remaining balance period whichever is greater.
5. The period from March 15, 2020 till March 14, 2021 shall also stand excluded while computing the periods as prescribed under:
 - (a) Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996,
 - (b) Section 12A of the Commercial Courts Act, 2015,
 - (c) Provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881, and;
 - (d) Any other laws, wherein the period(s) of limitation is prescribed for the purpose of instituting any proceedings, or outer limits (within which the court or tribunal can condone delay) and termination of proceedings.
6. The Hon'ble Court also directed the Central Government to amend the guidelines which are applicable to the containment zones to regulate the movement of essential services by stating as under –

“Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.”
7. The Suo Motu Writ Petition was thus disposed of accordingly.



Case Summary

Case Name : *Gujarat Urja Vikas Nigam Limited Vs. Mr. Amit Gupta & Ors.*
[Civil Appeal No. 9241 of 2019]

Court Name : The Hon'ble Supreme Court of India

Order Date : March 08, 2021

Facts of the case:

1. Gujarat Urja Vikas Nigam Limited (“**the Appellant**”) and Alex Green Energy Private Limited (“**Corporate Debtor**”) entered into a Power Purchase Agreement (“**PPA**”) for a period of 25 years commencing from December 2012 under which the Corporate Debtor set up a solar photovoltaic based power project (“**Plant**”) in the State of Gujarat.
2. Between July to December 2015 there was heavy rainfall and floods in the State of Gujarat, due to which the Plant of the Corporate Debtor was shut down for two (2) months and the generation of electricity was temporarily paused. By December 2015, normalcy was restored and the Plant was generating electricity at 70% of its total generating capacity. During June and July 2017, the State of Gujarat was again hit by floods and the Plant was severely damaged due to which it was able to operate at only 10-15% of its original capacity.
3. Due to the disruptions and damages caused by floods the Corporate Debtor was unable to restore the Plant’s generation capacity which lead to immense financial stress. The Corporate Debtor completely stopped supplying power under PPA from June 2018 and was also unable to service its debts to its financing parties who later declared the Corporate Debtor as a Non Performing Asset (“**NPA**”).
4. All these circumstances lead to filing of a Corporate Insolvency Resolution Process (“**CIRP**”) petition by the Corporate Debtor under Section 10 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) which was admitted by the National Company Law Tribunal, Kolkata (“**NCLT**”) on November 20, 2018.
5. CIRP commenced in respect of the Corporate Debtor and NCLT issued an order of moratorium under Section 14(1) of the IBC in February 2019. Thereafter, the Appellant even after having complete knowledge of the moratorium being granted to the Corporate Debtor issued two notices in May 2019 terminating the PPA for occurrence of an event of default as the Corporate Debtor was undergoing the CIRP process under IBC.



6. Applications under Section 60(5) of IBC were filed before the NCLT in May, 2019 against the notices issued by the Appellant to the Corporate Debtor. NCLT vide its Order dated August 29, 2019, allowed the applications and restrained the Appellant from terminating the PPA.
7. An appeal was filed by the Appellant before the National Company Law Appellate Tribunal (“NCLAT”) against this Order of NCLT. NCLAT vide its Judgment dated October 15, 2019 dismissed the appeal against the order of NCLT and held as follows:

‘The NCLAT noted that the Appellant attempted to terminate the PPA on the sole ground that the CIRP has been initiated for the Corporate Debtor. It observed that during the CIRP, the first respondent has to maintain the Corporate Debtor as a ‘going concern’ and the termination of its sole PPA, under which it supplied electricity only to the appellant, would render the Corporate Debtor defunct. Hence, the NCLAT held that the Appellant could not terminate the PPA. Further, it restrained the Appellant from terminating the PPA even in the event that the Corporate Debtor underwent liquidation.’

8. Aggrieved by the order of NCLAT the present appeal is filed before the Hon’ble Supreme Court of India by the Appellant vide Civil Appeal No. 9241 of 2019.

Issues and Observations of the Apex Court

Issue I : NCLT and NCLAT do not possess jurisdiction under the IBC to adjudicate on a contractual dispute between the Appellant and the Corporate Debtor

Courts Observation

NCLT owes its existence to statute and the powers and functions which it exercises are those which are conferred upon it by the Code. Under Section 60 (5)(c), NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing so, the NCLT and NCLAT must ensure that they do not usurp the legitimate jurisdiction of other courts and tribunals when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist. Resolution Professional (“RP”) can approach the NCLT for adjudication of disputes that are related to the CIRP and not otherwise. For instance, if the dispute in present



matter related to the non-supply of electricity, the RP would not have been entitled to invoke the jurisdiction of the NCLT under the Code. If the jurisdiction of the NCLT were to be confined to actions prohibited by Section 14 of the Code, there would have been no requirement for the legislature to enact Section 60(5)(c) of the Code.

NCLT cannot derive its powers from the 'spirit' or 'object' of the Code. Section 60(5)(c) of the Code vests the NCLT with wide powers since it can entertain and dispose of any question of fact or law arising out or in relation to the insolvency resolution process. The NCLT's residuary jurisdiction, though wide, is nonetheless defined by the text of the Code. Specifically, the NCLT cannot do what the Code consciously did not provide it the power to do.

Issue II : In any event, the termination of the PPA was validly made under Article 9.2.1(e) and Article 9.3.1 of the PPA

Courts Observation

The inclusion of the Explanation to Section 14(1) and Section 14(2A) of IBC indicates that the Parliament has been amending the Code to ensure that the status of a Corporate Debtor as a 'going concern' is not hampered on account of varied situations, which may not have been in contemplation at the time of enacting the Code. The continuation of PPA assumes enormous significance for the successful completion of the insolvency resolution process. PPA in this case has been terminated solely on the ground of insolvency, which gives the NCLT jurisdiction under Section 60(5)(c) to adjudicate this matter and invalidate the termination of the PPA as it is the forum vested with the responsibility of ensuring the continuation of the insolvency resolution process which requires preservation of the Corporate Debtor as a going concern.

Held by the Hon'ble Supreme Court

1. The NCLT/NCLAT can exercise jurisdiction under Section 60(6)(c) of the Code to stay termination of PPA only on account of CIRP being initiated against the Corporate Debtor.
2. NCLT/NCLAT correctly stayed the termination of PPA, since allowing it to terminate the PPA would certainly result in the corporate death of the Corporate Debtor due to the PPA being its sole contract.
3. Broader question of validity / invalidity of *ipso facto* clauses in contracts was left open for the legislative intervention.

The appeal was dismissed accordingly.

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Warm Regards,

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