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SEBI (Listing Obligations & Disclosure Requirements) (Second Amendment) Regulations, 2021 1
SEBI: Circular dated May 21, 2021 3
SEBI: SEBI (Portfolio Managers) Regulations, 2020 4
MCA: Circular on Corporate Social Responsibility 5
Case Summary: Regional Provident Commissioner vs. Vandana Garg Company 6
Case Summary: Lalit Kumar Jain v. Union of India 8

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Securities and Exchange Board of India

The Securities and Exchange Board of India ("**SEBI**") has notified the *SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021* ("**LODR Amendment Regulations**") on May 05, 2021. The LODR Amendment Regulations make significant changes to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**Principal Regulations**"). Some of the amendments brought about by the LODR Amendment Regulations are as follows:

1. In Regulation 3 of the principal regulations sub-section (2) has been inserted which states that these regulations once applicable to listed entities shall continue to apply even if they fall below the thresholds prescribed in this regard.
2. The LODR Amendment Regulations have added the female pronoun (her/she) alongside the male pronouns (he/him/his) wherever applicable.
3. The terms "institutional trading platform" has been substituted with "Innovators Growth Platform" wherever applicable.
4. The LODR Amendment Regulations has inserted the following proviso to Regulation 15(2)(a) as follows:

   > *"Provided further that once the above regulations become applicable to a listed entity, they shall continue to remain applicable till such time the equity share capital or the net-worth of such entity reduces and remains below the specified threshold for a period of three consecutive financial years."*

5. Regulation 21(2) of the Principal Regulations shall be substituted with the following provision:

   > *"The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors."*

6. Regulation 21(3A) now mandates that the Risk Management Committee meet at least twice a year such that not more than one hundred and eighty (180) days shall elapse between any two consecutive meetings. The quorum shall be either two members or one third of the members of the committee, whichever is higher, and shall include at least one member of the board of directors in attendance

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7. The erstwhile Regulation 24(5) states that a listed entity shall not dispose shares in its material subsidiary which shall result in the reduction of its shareholding in the material subsidiary to less than 50% without passing a special resolution in its general meeting. The same has now been amended to include that a reduction in shareholding equal to 50% shall also require to comply with Regulation 24(5) of the Principal Regulations.

8. Regulation 27(2)(a) of the LODR Amendment Regulations requires that the listed entity shall submit a quarterly compliance report on corporate governance in the prescribed format within twenty-one (21) days from the end of each quarter.

9. Regulation 31A (9) has been substituted with the following and a sub-regulation 31A (10) has been added as follows:

> *"(9) The provisions of sub-regulations (3), (4) and clauses (a) and (b) of sub-regulation (8) of this regulation shall not apply if reclassification of promoter(s) is as per the resolution plan approved under section 31 of the Insolvency Code or pursuant to an order of a Regulator under any law subject to the condition that such promoter(s) seeking re-classification shall not remain in control of the listed entity.*
>
> *(10) In case of reclassification pursuant to an open offer or a scheme of arrangement, the provisions of clause (a) of sub-regulation (3) and clauses (a) and (b) of sub-regulation (8) of this regulation shall not apply if the intent of the erstwhile promoter(s) to reclassify has been disclosed in the letter of offer or scheme of arrangement:*
>
> *Provided that the provisions of clause (c)(i) of sub-regulation (3) of this regulation shall not apply in case of reclassification pursuant to an open offer."*

10. Regulation 45(3) shall be substituted with the following:

> *"Upon compliance with the conditions for change of name laid down in Companies Act, 2013 and rules made thereunder, the listed entity, in the explanatory statement to the notice seeking shareholders' approval for change in name, shall include a certificate from a practicing chartered accountant stating compliance with conditions provided in sub-regulation (1)."*

The Schedules have also been amended suitably in line with the amendments made to the Principal Regulations.

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Securities and Exchange Board of India

Securities and Exchange Board of India ("**SEBI")** in exercise of powers conferred to it under Section 11(1) of the Securities and Exchange Board of India Act, 1992 issued a *Circular dated May 21, 2021* so as to enhance the overall limit for overseas investment made by Alternative Investment Funds ("**AIFs**") / Venture Capital Funds ("**VCFs**").

SEBI registered AIFs and VCFs were permitted to invest overseas subject to an overall limit of USD 750 million. However, after due consultation with the Reserve Bank of India and with a view to promote the development of the securities market, SEBI vide the said Circular has now enhanced the investment limit to **USD 1,500 million**.

It is to be noted that all other regulations governing such overseas investment by eligible AIFs/VCFs shall remain unchanged. Also, the requirements, terms and conditions specified in previous SEBI Circulars dated August 09, 2007; October 01, 2015 and July 03, 2018 shall remain unchanged.

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Securities and Exchange Board of India

In exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 43 of the SEBI (Portfolio Managers) Regulations, 2020 ("**SEBI Regulations, 2020**") SEBI has issued a *Circular dated May 12, 2021* ("**Circular**") to protect the interests of investors in securities market and to promote the development of, and to regulate the securities market.

The conditions for registration of a Portfolio Manager is prescribed under Regulation 11 of SEBI Regulations, 2020. Vide SEBI (Portfolio Managers) (Second Amendment) Regulations, 2021 notified on April 26, 2021, a Sub regulation (aa) was inserted in Regulation 11 which provides that a Portfolio Manager shall obtain prior approval of SEBI in case of change in control in such manner as may be specified by SEBI.

Accordingly, the said Circular enumerates the following procedure to be followed by all SEBI registered Portfolio Managers in case they propose a change in control:

A. An online application shall be made to SEBI for prior approval through the SEBI Intermediary Portal.
B. The prior approval granted by SEBI shall be valid for a period of six (6) months from the date of such approval.
C. Applications for fresh registration pursuant to change in control shall be made to SEBI within six (6) months from the date of prior approval.
D. Pursuant to grant of prior approval by SEBI, all the existing investors/ clients shall be informed about the proposed change prior to effecting the same, in order to enable them to take well informed decision regarding their continuance or otherwise with the changed management.

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Ministry of Corporate Affairs

The Ministry of Corporate Affairs ("**MCA**") on March 31, 2020 had made an appeal to Managing Directors / Chief Executive Officers of top 1000 companies based on market capitalisation to contribute generously to Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund ("**PM CARES Fund**"). In the same appeal it was mentioned that such contribution may, inter-alia, include the unspent Corporate Social Responsibility ("**CSR**") amount if any, and an amount over and above the minimum prescribed CSR amount for FY 2019-20, shall later be set off against the CSR obligation arising in subsequent financial years.

In pursuance to the said appeal and issues raised by various companies claiming for setting off the excess CSR amount spent by them in FY 2019-20 by way of contribution to PM CARES Fund against the mandatory CSR obligation for FY 2020-21.

After examining the issues raised by companies the Ministry vide its *Circular dated May 20, 2021* clarified that where a company has contributed any amount to PM CARES Fund on March 31, 2020, which is over and above the minimum amount as prescribed under section 135(5) of the Companies Act, 2013 ("**CA, 2013**") for FY 2019-20, and such excess amount or part thereof is offset against the requirement to spend under section 135(5) of CA, 2013 for FY 2020-21 in terms of the aforementioned appeal, then the same shall not be viewed as a violation subject to the conditions that:

i. the amount offset as such shall have factored the unspent CSR amount for previous financial years, if any;
ii. the Chief Financial Officer shall certify that the contribution to PM CARES Fund was indeed made on March 31, 2020 in pursuance of the appeal and the same shall also be so certified by the statutory auditor of the company; and
iii. the details of such contribution shall be disclosed separately in the Annual Report on CSR as well as in the Board's Report for FY 2020-21 in terms of section 134(3)(o) of the CA, 2013.

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CASE SUMMARY

Case Name	: Regional Provident Commissioner vs. Vandana Garg Company Appeal (AT) (CH) (Ins.) No. 50 of 2021
Court Name	: The Hon'ble National Company Law Appellate Tribunal (Chennai Bench)
Order Date	: May 12, 2021

Facts of the case:

1. A Corporate Insolvency Resolution Process ("**CIRP**") was initiated against GVR Infra Projects Limited ("**Corporate Debtor**") vide the order of the National Company Law Tribunal, Chennai Bench ("**NCLT**") dated October 15, 2018 ("**Impugned Order**").

2. On issue of a public announcement inviting claims against Corporate Debtor, the Regional Provident Commissioner of Employees Provident Fund Organisation ("**Appellant**") submitted its claims to the Interim Resolution Professional ("**IRP**") in Form F for an amount of Rs. 1,95,01,301/-

3. IRP forwarded the claim of Appellant to the Resolution Professional ("**RP**") who requested the Appellant to file the same in Form B. The claims of Appellant amounting to Rs. 1,95,01,301/- were approved by Committee of Creditors and decided to be paid according to the Resolution Plan.

4. NCLT under Section 30 (6) of Insolvency and Bankruptcy Code ("**Code**") read with Regulation 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 approved the resolution plan which crystallised all debts of the Corporate Debtor.

5. Post such approval of NCLT the Appellant raised a claim of Rs. 2,84,69,797/- which was much higher than the amount claimed by it before the Resolution Professional in Form B. The Appellant contended that non-payment of this claim pertaining to Provident Fund dues will not only be the violation of Section 11 of the Employees Provident Fund Act ("**EPF Act**"), but also, is a violation of Section 36 (4) (a) (iii) and Section 30 (2) (e) of the Code.

Hon'ble National Company Law Appellate Tribunal's Ruling

1. While deciding on applicability of Section 36(4)(a)(iii) of the Code, it was held that this section shall arise at the stage of formation of Liquidation Estate by the Liquidator. Since the Corporate Debtor has not gone into Liquidation in this case and is currently under Insolvency Resolution, this Section 36 cannot be applied. Moreover, no fund could be excluded from the Liquidation Estate in terms of Section 36(4)(a)(iii) of the Code.

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2. While deciding on the tenability of the Appellants enhanced and unreasoned claim, it was held that:

> *"That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan"*

3. In light of above mentioned circumstances the appeal was dismissed with no order to costs.

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CASE SUMMARY

Case Name	***: Lalit Kumar Jain v. Union of India- Transferred Case No. 245 of 2020***
Court Name	: Supreme Court of India
Order Dated	: May 21, 2021
Sections cited	: Article 32 of Constitution of India, Article 139A of Constitution of India, Section 1(3) of Insolvency and Bankruptcy Code, 2016 (“**Code**”), Part-III of Code, Section 5(22) of Code, Section 60(2) of Code, Section 60(5) of Code, Section 179 of Code, Section 243 of Code, Sections 128 to 131 of Indian Contract Act, 1872 (“**ICA, 1872**”), Section 133 of ICA, 1872, Section 140 of ICA, 1872, Presidency Towns Insolvency Act, 1999 (“**PTI Act, 1999**”), Provincial Insolvency Act, 1920 (“**PI Act, 1920**”), Insolvency and Bankruptcy Code (Amendment) Act, 2018 (“**Amendment Act, 2018**”).

Facts of the Case

- This judgment deals with the validity of Notification dated November 15, 2019 issued by Central Government through Ministry of Corporate Affairs (“**Impugned Notification**”) bringing into effect Section 2(e) of Code, Section 78 of Code (except fresh start process), Sections 79 of Code, Sections 94 to 187 (both inclusive) of Code, Section 239(2)(g), (h) and (i) of Code, Section 239(2)(m) to (zc) of Code, Section 239(2)(zn) to (zs) of Code and Section 249 of Code so far as they relate to personal guarantors to corporate debtors.

- The writ petitioners (“**Petitioners**”) had furnished personal guarantees to banks and financial institutions which led to release of advances to various companies in which the Petitioners were associated either as directors, promoters or in some instances, as chairman or managing directors. The personal guarantees furnished were invoked and the insolvency proceedings against Petitioners had commenced which were at different stages.

The Petitioners’ submissions are summarized as follows:

a. Section 1(3) of Code is an instance of ‘conditional legislation’, where legislature has enacted the law and the only function of executive is to bring the law into operation. It is termed as ‘conditional legislation’ because legislature has in all its completeness made the law. Reliance was placed on *Delhi Laws Act, 1912, In Re v. Part ‘C’ States (Laws) Act, 1950-1951 SCR 747, State of Tamil Nadu v. K. Sabanayagam (1998) 1 SCC 318, Vasu Dev Singh & Ors. v. Union of India & Ors. (2006) 12 SCC 753, State of Bombay v. Narothamdas Jethabhai 1951 2 SCR 51, Sarder Inder Singh v. State of Rajasthan 1957 SCR 605, Hamdard Dawakhana v. Union of India 1960 (2) SCR 671, Swiss Ribbons Private Limited & Anr. v. Union of India & Ors. (2019) 4 SCC 17, Babulal Vardharji Gurjar v. Gurjar Aluminum Industries Private Limited & Anr. (2020) 15 SCC 1, Jatindra Nath Gupta v. Province of Bihar (1949-50) 11 FCR 595, Committee of Creditors of Essar Steel India Private*

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Limited v. Satish Kumar Gupta (2020) 8 SCC 531 and Dr. Vishnu Kumar Agarwal v. Pirmal Enterprises Limited 2019 SCCOnline NCLAT 542.

b. Part III of Code does not create any distinction between an individual and a personal guarantor to a corporate debtor. The Impugned Notification is ex facie violation of the principles of delegation, in as much as Central Government has effected a classification of individuals and ensured that one (1) category, that is, personal guarantors to corporate debtors are considered along with insolvency proceedings. Reliance was placed on R v. Burah 1878 (3) App. Cases 889.

c. The Central Government has mistakenly assumed that inclusion of personal guarantors in the definition of provisions by amending Section 2 and inserting Section 2(e) automatically results in amendment of Section 1(3) of Code. Amendment Act, 2018 would apply to personal guarantors.

d. The Impugned Notification suffers from non-application of mind because the Central Government failed to bring into effect Section 243 of Code which would have repealed PTI Act, 1999 and PI Act, 1920.

<u>The Respondents' submissions are summarized as follows:</u>

a. The intention was clearly to distinguish personal guarantors to corporate debtors from other individuals. The amendment to Section 60(2) of Code was to achieve unified adjudication through the same forum for resolution of issues and disputes concerning corporate resolution processes as well as bankruptcy and insolvency processes with respect to personal guarantors to corporate debtors.

b. It was submitted that a separated and stage-wise implementation of laws was held valid in multiple decisions since it provided a clear understanding of the impact of laws on a subject matter. Reliance was placed on *Basant Kumar Sarkar v. Eagle Rolling Mills Limited (1964) 6 SCR 913 and Bishwambhar Singh v. State of Orissa (1954) SCR 842.* It was also submitted that Section 1(3) shall be interpreted flexibly.

<u>Analysis by the Hon'ble Supreme Court of India</u>

- The Hon'ble Supreme Court analysed the varied judgments referred by the Petitioners and Respondents. It also took note of the various dates on which the provisions of Code were brought into force and observed that the Central Government has followed a stage by stage process of bringing into force the provisions of Code.

- The Amendment Act, 2018 altered Section 2(e) and subcategorized three (3) categories of individuals resulting in Section 2(e), (f) and (g) and with Amendment Act, 2018, it provided a backing to Central Government to achieve its objective to ensure that adjudicating body dealing with insolvency of corporate debtors also had before it the insolvency proceedings of personal guarantors to such corporate debtors.

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- The Amendment Act, 2018 also altered Section 60(2) of Code. Though, 'personal guarantor' was not defined and fell within larger rubric of 'individual' under Code, the adjudicating authority for insolvency and liquidations process of corporate persons including personal guarantors was National Company Law Tribunal ("NCLT"). NCLT would be able to consider the whole picture as it were, about the nature of the assets available, either during the corporate debtors' insolvency process and the same would facilitate the Committee of Creditors in framing realistic plans in realizing the creditor's dues from personal guarantors.

- It held that sanction of a resolution plan and finality imparted by Section 31 of Code does not per se operate as discharge of the guarantor's liability would depend on terms of guarantee itself. Reliance was placed on Section 31 of Code, Sections 128 to 131 of ICA, 1872.

- In view thereof, the Hon'ble Supreme Court was of the opinion that there was sufficient legislative guidance for the Central Government before Amendment Act, 2018 was made effective and to distinguish and classify personal guarantors separately from other individuals.

- It is held that the Impugned Notification is not an instance of legislative exercise, or amounting to impermissible and selective application of provisions of Code and has been issued within the power granted by Parliament and is not ultra vires. There is sufficient indication in Code that personal guarantors though forming large part of the larger grouping of individuals were to be in view of their intrinsic connection with corporate debtors dealt differently through the same adjudicatory process and by the same forum.

Held by Hon'ble Supreme Court:

1. The Impugned Notification is legal and valid;
2. Approval of resolution plan relating to a corporate debtor does not operate so as to discharge the liabilities of personal guarantees; and
3. The writ petitions, transferred cases and transfer petitions were accordingly dismissed.

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Warm Regards,

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