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Securities and Exchange Board of India

The Securities Exchange Board of India (“SEBI”) in exercise of its powers conferred upon it by Section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 33 of the SEBI (Real Estate Investment Trusts) Regulations, 2014 and Regulation 33 of the SEBI (Infrastructure Investment Trusts) Regulations, 2014, issued a *Circular dated June 03, 2022* for extending the timeline to conduct the annual meetings and other meetings of unitholders of Real Estate Investment Trusts (“REITs”) and Infrastructure Investment Trusts (“InvITs”) through Video Conferencing (“VC”) or through Other Audio-Visual means (“OAVM”).

SEBI vide its circular dated June 22, 2020 read with circular dated October 08, 2020 permitted REITs and InvITs to conduct annual meetings and other meetings of unitholders through VC and OAVM up to December 31, 2020. Further vide circular dated February 26, 2021 the facility to conduct annual meetings of unitholders through VC/OAVM was extended till December 31, 2021 and other meetings of unitholders through VC/OAVM till June 30, 2021.

Subsequently on receiving various representations from stakeholders of REITs/InvITs requesting further extension to aforesaid facility to conduct annual meetings and other meetings of unitholders through VC/OAVM. Also it has been observed that Ministry of Corporate Affairs vide circular dated May 05, 2022 has also extended the facility of holding AGMs and EGMs through VC/OAVM till December 31, 2022.

In view of the above, SEBI decided to extend the facility to conduct annual meetings of unitholders in terms of Regulation 22(3) of SEBI (REIT) Regulations, 2014 and Regulation 22(3)(a) of SEBI (InvIT) Regulations, 2014 and meetings other than annual meeting, through VC or OAVM till December 31, 2022.



MINISTRY OF CORPORATE AFFAIRS

In exercise of powers conferred under second proviso to Section 149 (1), Section 149 (4), Section 149 (6)(f), Section 150 (3), Section 150 (4), Section 151, Section 152 (5), Section 153, Section 154, Section 157, Section 160, Section 168 (1) and Section 170 read with Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government vide its *Notification dated June 01, 2022* ("**Notification**") further amended the Companies (Appointment and Qualification of Directors) Rules, 2014 ("**Companies AQD Rules, 2014**"). The Companies AQD Rules, 2014 shall now be called as Companies (Appointment and Qualifications of Directors) Amendment Rules, 2022 ("**Companies AQD Rules, 2022**") and shall come into force with effect from its publication in the Official Gazette.

Following amendments have been made to the Companies AQD Rules, 2014:

1. A new proviso has been inserted after Rule 8 which reads as follows,

"Provided further that in case the person seeking appointment is a national of a country which shares land border with India, necessary security clearance from the Ministry of Home Affairs, Government of India shall also be attached along with the consent."

2. A new proviso has been added to Rule 10(1) which states regarding generation of application number when a person is a national of a country sharing land border with India who applies for Director Identification Number, which reads as follows,

"Provided that no application number shall be generated in case of the person applying for Director Identification Number is a national of a country which shares land border with India, unless necessary security clearance from the Ministry of Home Affairs, Government of India has been attached along with application for Director Identification Number."

3. Further the Central Government has also made certain changes to Form DIR-12 and Form DIR-13 wherein it has added the followings declarations to be submitted in the said forms,



Form DIR-12

"I am not required to obtain the security clearance from the Ministry of Home Affairs, Government of India before seeking appointment as director; or

I am required to obtain the security clearance from the Ministry of Home Affairs, Government of India before seeking appointment as director and the same has been obtained and is attached."

Form DIR-13

"3A. I am not required to obtain the security clearance from the Ministry of Home Affairs, Government of India under sub-rule (1) of rule 10 before applying for director identification number; or

I am required to obtain the security clearance from the Ministry of Home Affairs, Government of India under sub-rule (1) of rule 10 before applying for director identification number and the same has been obtained and is attached."



MINISTRY OF CORPORATE AFFAIRS

In exercise of powers conferred upon by Section 248 (1), (2) and (4) read with Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government vide its *Notification dated June 09, 2022 (“Notification”)* further amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 (**“Companies RNCRC Rules, 2016”**). The Companies RNCRC Rules, 2016 shall now be called as Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022 (**“Companies RNCRC Rules, 2022”**) and shall come into force with effect from its publication in the Official Gazette.

Form STK-1, Form STK – 5 and Form STK- 5A of Companies RNCRC Rules, 2016 have been amended in Companies RNCRC Rules, 2022. Also Rule 4(4) has been added after Rule 4(3) of the Companies RNCRC Rules, 2016 which reads as follows:

“(4) (a) Where the Registrar, on examining the application made in Form STK-2, finds that it is necessary to call for further information or finds such application or any document annexed therewith is defective or incomplete in any respect, he shall inform to the applicant to remove the defects and re-submit the complete Form within fifteen days from the date of such information, failing which the Registrar shall treat the Form as invalid in the electronic record, and shall inform the applicant, accordingly.

(b) After the re-submission of the Form or document, if the Registrar finds that the Form or document is defective or incomplete in any respect, he shall give further time of fifteen days to remove such defects or complete the Form, failing which the Registrar shall treat the Form as invalid in the electronic record and shall inform the applicant, accordingly.

(c) Any re-submission of the application in Form STK-2 made prior to the commencement of the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022 shall not be counted for the purposes of reckoning the maximum number of re-submissions of such Form.”

MINISTRY OF CORPORATE AFFAIRS

In exercise of the powers conferred by Section 149 read with Section 469 of the Companies Act, 2013 (18 of 2013), Central Government vide its *Notification dated June 14, 2022 (“Notification”)* further amended the Companies (Appointment and Qualification of Directors) Rules, 2014 (**“Companies AQD Rules, 2014”**). The Companies AQD Rules, 2014 shall now be called as Companies (Appointment and Qualification of Directors) Second Amendment, Rules, 2022 (**“Companies AQD Rules, 2022”**) and shall come into force on the date of their publication in the Official Gazette.

Following sub-rule has been inserted after Rule 6(4) to Companies (Appointment and Qualification of Directors) Rules, 2014 which states regarding the individual whose name has been removed from databank can apply for restoration of his/her name on payment of requisite fees and upon fulfillment of twin conditions as mentioned in the Rule 6(5) of Companies (Appointment and Qualification of Directors) Rules, 2022. The said rule reads as follows,

“(5) Any individual whose name has been removed from the databank under sub-rule (4), may apply for restoration of his name on payment of fees of one thousand rupees and the institute shall allow such restoration subject to the following conditions, namely: -

- (i) his name shall be shown in a separate restored category for a period of one year from the date of restoration within which, he shall be required to pass the online proficiency self-assessment test and thereafter his name shall be included in the databank, only, if he passes the said online proficiency self-assessment test and in such case, the fees paid by him at the time of initial registration shall continue to be valid for the period for which the same was initially paid; and*
- (ii) in case he fails to pass the online proficiency self-assessment test within one year from the date of restoration, his name shall be removed from the data bank and he shall be required to apply afresh under sub-rule (1) for inclusion of his name in the databank.”*



CASE SUMMARY

Case Name	In the matter of Ahluwalia Contracts (India) Private Limited Vs. Logix Infratech Private Limited (Company Petition-IB No. 882/ND/2022)
Court Name	National Company Law Tribunal- New Delhi Bench
Order Dated	June 03, 2022

FACTS OF THE CASE:

1. **The Petitioner/Applicant** i.e. Ahluwalia Contracts (India) Private Limited filed the present Petition under Section 9 of Insolvency and Bankruptcy Code, 2016 ("**IBC, 2016**") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 ("**IBC RULES**").
2. The Petitioner entered into a Memorandum of Understanding/ Settlement Agreement ("**Settlement Agreement**") with Logix Infratech Private Limited ("**Respondent**") on September 30, 2019. Despite several reminders sent by the Petitioner to the Respondent for payment the instalments, the Respondent failed to make timely payments of instalments as agreed under the Settlement Agreement.
3. Therefore, the Petitioner filed a company petition seeking to initiate the Corporate Insolvency Resolution Process ("**CIRP**") against the Respondent for a resolution of debt of Rs. 7,72,00,000/- (Rupees Seven Crore Seventy-Two Lakhs Only) and violation of terms and conditions of the Settlement Agreement arrived between the parties in the Delhi bench of National Company Law Tribunal ("**Tribunal**").

ISSUE BEFORE THE HON'BLE TRIBUNAL:

Whether the terms and conditions of the Settlement Agreement falls within the purview of operational debt or not?

HELD BY THE HON'BLE TRIBUNAL:

1. The Hon'ble Tribunal on June 03, 2022 in light of the submissions made by the parties and definition of the operational debt the Hon'ble Tribunal



held that a claim in respect of provision of goods or services including employment. However, in the present case the Hon'ble Tribunal held that the claim of the Applicant does not fall under the category of supply of goods and services rendered by the Respondent. The Hon'ble Tribunal further stated that the claim of the Applicant is based on the breach of terms and conditions of the Settlement Agreement on the basis of which the Applicant has claimed that there is default in payment of the amount as referred to in the application and the second part of the operational debt says that a debt in respect of payment dues arising under any law for the time being enforce. Therefore, the claim of the Petitioner does not fall under the purview of definition of operational debt.

2. The Hon'ble Tribunal also referred to the decision of NCLT, Allahabad in *Delhi Control Devices Private Limited v. Fedders Electric and Engineering Limited*. wherein the bench held as follows,

“unpaid instalment as per the agreement cannot be treated as operational debt a per Section 5(21) of IBC. The failure or Breach of settlement agreement can't be a ground to trigger CIRP against corporate debtor under the provision of IBC 2016 and remedy may lie elsewhere not necessarily before the Adjudicating Authority”.

3. The Hon'ble Tribunal by applying the same principle held that the case of the Applicant is also covered with the aforesaid decision and the default of payment of Settlement Agreement do not fall under the definition of operational debt.
4. Therefore, the prayer to initiate CIRP against the Respondent was rejected and the application was dismissed.

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Warm Regards,

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