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## Semi-Annual Finance and Insolvency Laws Compendium 2025

January – June 2025

## Introduction

This Compendium consolidates the key developments pertaining to the banking, finance and insolvency laws in India which were circulated as a part of the JSA Prisms and Newsletters during the calendar period from January 2025 till June 2025.

The developments pertain to regulatory updates from the Reserve Bank of India ("**RBI**"), the Securities and Exchange Board of India ("**SEBI**"), International Financial Services Authority ("**IFSCA**"), the Ministry of Finance ("**MoF**"), the Ministry of Commerce and Industry ("**MoCI**"), the Ministry of Micro, Small, and Medium Enterprises (**"MSME Ministry"**), the Department for Promotion of Industry and Internal Trade ("**DPIIT**") and the Insolvency and Bankruptcy Board of India ("**IBBI**"). It also consolidates the key decisions passed by the Hon'ble Supreme Court of India ("**Supreme Court**"), domestic and international High Courts and the National Company Law Appellate Tribunal ("**NCLAT**").

## Regulatory updates

### Foreign Exchange Management Act, 1999

#### Simplifying fund transfers for Non-Residents with business interests in India

RBI, *vide* notification dated January 14, 2025, has issued the Foreign Exchange Management (Deposit) (Fifth Amendment) Regulations, 2025, amending the Foreign Exchange Management (Deposit) Regulations, 2016 ("**FEMA Deposit Regulations**"). Some of the key provisions are as follows:

1. the transfer of funds, for all bona fide transactions, between repatriable Rupee accounts maintained in accordance the FEMA Deposit Regulations is permitted; and
2. amendments made to Special Non-Resident Rupee Accounts ("**SNRR**") accounts:
   a) a person resident outside India, with business interests in India, can open SNRR accounts with authorised dealers in India or their overseas branches for the purpose of putting through permissible current and capital account transactions with a person resident in India in accordance with the rules and regulations framed under the Foreign Exchange Management Act, 1999 ("**FEMA**"), and for putting through any transaction with a person resident outside India;
   b) units in International Financial Services Centres ("**IFSCs**") can open SNRR accounts with an authorised dealer in India (outside IFSC) for their business-related transactions outside IFSC; and
   c) the tenure of the SNRR account must be concurrent to the tenure of the contract/period of operation/the business of the account holder.

## Flexibility provided to exporters in managing their foreign currency account

RBI, *vide* notification dated January 14, 2025, has issued the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Fifth Amendment) Regulations, 2025, amending the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015. A person resident in India, being an exporter, is now allowed to open, hold and maintain a foreign currency account with a bank outside India, for realisation of full export value and advance remittance received by the exporter towards export of goods or services. Further, the funds in this account can be utilised by the exporter for paying for its imports into India or repatriated into India within a period not exceeding the end of the next month from the date of receipt of the funds after adjusting for forward commitments, provided that the realisation and repatriation requirements under the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 are met.

## Steps to encourage cross border transactions in Indian Rupees

RBI, *vide* press release dated January 16, 2025, promotes settlement of cross border transactions in Indian Rupees ("**INR**") and local/national currencies. The following changes are made in the extant FEMA regulations:

1. overseas branches of authorised dealer banks will be able to open INR accounts for a person resident outside India for settlement of all permissible current account and capital account transactions with a person resident in India;
2. persons resident outside India will be able to settle bona fide transactions with other persons resident outside India using the balances in their repatriable INR accounts such as SNRR account and special rupee vostro account;
3. persons resident outside India will be able to use their balances held in repatriable INR accounts for foreign investment, including Foreign Direct Investment ("**FDI**"), in non-debt instruments; and
4. Indian exporters will be able to open accounts in any foreign currency overseas for settlement of trade transactions, including receiving export proceeds and using these proceeds to pay for imports.

## Revision in the payment rules for cross border transactions

RBI, *vide* notification dated February 10, 2025, has issued the Foreign Exchange Management (Manner of Receipt and Payment) (Amendment) Regulations, 2025, amending the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023. Pursuant to the amendment, payments from a resident in the territory of one participant country to a resident in the territory of another participant of the member countries of Asian Clearing Union ("**ACU**") (other than Nepal and Bhutan), has been mandated to be through ACU mechanism, or as per the directions issued by RBI to authorised dealers from time to time. For all other transactions, receipt and payment can be made in INR or in any foreign currency.

## Press Note 2 (2025 series) clarifies on the issuance of bonus shares by Indian companies engaged in sectors prohibited for FDI

DPIIT, *vide* Press Note 2 (2025 series) ("**PN2**") dated April 7, 2025, has issued a clarification concerning the issuance of bonus shares by Indian companies operating in sectors where FDI is prohibited.

As per Schedule I of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ("**NDI Rules**"), FDI is prohibited in lottery business, gambling and betting, chit funds, Nidhi companies, trading in transferable development rights (TDRs), real estate business or construction of farmhouses, manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes, and

activities/sectors not open to private sector investment ("**Sectors Prohibited for FDI**").

There was ambiguity on whether Indian companies engaged in Sectors Prohibited for FDI could issue bonus shares to its shareholders (which, by implication would have included extending the bonus offer to Non-Resident ("**NR**") shareholders) under the 'automatic' route. Pursuant to the PN2, the Government clarified the position that such companies (i.e., Indian companies engaged in Sectors Prohibited for FDI) are allowed to issue bonus shares to NR shareholders. The PN2 provides clarity for the Indian companies operating in sectors where FDI was originally permitted but is now prohibited. For example, it was through Press Note 2, dated May 10, 2010, that FDI was prohibited in the manufacturing of cigarettes.

## What has the Government clarified?

The Government has clarified that issuance of bonus shares by Indian companies engaged in Sectors Prohibited for FDI to its existing NR shareholders is permitted provided the Indian company fulfils the following conditions in connection with such issuance:

1. the shareholding pattern of the pre-existing NR shareholders will not change pursuant to the issuance of the bonus shares; and
2. the issuance of bonus shares must comply with all other applicable rules, laws, regulations, and guidelines.

Thus, issuance of bonus shares will need to be in accordance with the Companies Act, 2013 ("**Companies Act**") and rules thereunder and the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**SEBI ICDR Regulations**") (in case of listed companies).

The implication of this clarification is that such companies can proceed to issue bonus shares without having to obtain a prior Government approval provided the aforesaid conditions are fulfilled by the Indian company.

## Does PN2 have a retrospective application?

One of the interesting questions is whether this clarification can be applied retrospectively. Can previous issuances of bonus shares by such companies be grandfathered under this clarification? The language of PN2 reads "*following clarification is inserted*", which is quite unlike previous Press Notes (including the famous Press Note 3) which amended the position of the law. Given the PN2 'clarification', one could possibly argue that the position of law was always that such bonus issuance to NR shareholders was permitted under the extant FDI framework, and the current clarification merely puts the matter beyond doubt. While one could rely on certain judicial precedents to argue that a clarificatory amendment has retrospective application, it may be a slightly risky argument to advance in the context of FDI which is a highly regulated activity.[1] Accordingly, a cautious approach is suggested.

## Impact of PN 2 *vis-à-vis FDI* from land-bordering countries (i.e., Press Note No. 3 (2020 Series)

Press Note No. 3 (2020 Series) ("**PN3**"), which was issued against the backdrop of the Covid pandemic, mandated that where an investing entity is situated in a country sharing land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, FDI will be permitted only with prior Government approval.

The basis of the clarification provided in PN2 seems to be the fact that a bonus issuance does not entail any inflows of funds nor would it under ordinary circumstance (unless there is a selective bonus issuance) alter the existing shareholding pattern of the Indian company. Given the rationale behind the clarification that resulted in the issuance of PN2, one could argue that a similar logic could also extend to the issue of bonus shares that could otherwise get caught within the restriction of PN3. Therefore, a similar clarification from the Government in relation to PN3 would help.

[1] *Bengaluru Development Authority vs. Sudhakar Hegde and Ors.* (2020) 15 SCC 63; *State Bank of India vs. V. Ramakrishnan* (2018) 17 SCC 394; *CIT vs. Vatika Township* (2015) 1 SCC 1

## Conclusion

While the PN2 'clarification' sheds light on the regulator's thought process, PN2 states that the clarification will be only effective from the date of issuance of the applicable notifications issued under FEMA. The FEMA notification in this regard is still awaited and hence, on a literal interpretation, the PN2 is not effective as on date of this article.

From the date of the anticipated FEMA notification, the PN2 clarification will allow the Indian companies in Sectors Prohibited for FDI an additional avenue to effectively capitalise their existing reserves and such companies could explore bonus issuances as a means for cash distribution to their existing shareholders, including for Indian shareholders. Previously due to the restriction on issue of the bonus shares to NR shareholders, Indian companies in Sectors Prohibited for FDI largely shied away from undertaking issuance of bonus shares considering the commercial and governance related challenges especially those in relation to the dilution of the NR shareholder(s). The move is expected to ensure parity in shareholder rights and make exploring bonus issuances easier for Indian companies operating in the Sectors Prohibited for FDI.

## Compounding of contraventions under FEMA

RBI, *vide* circulars dated April 22, 2025 and April 24, 2025, has amended the circular for compounding of contraventions under FEMA. Some of the key provisions are as follows:

1. deletion of Paragraph 5.4.II.v of the circular, with respect to the sum for which contravention is compounded (i.e., compounding amount) payable to earlier compounding order. The applicant will be deemed to have made a fresh application, and the compounding amount payable must not be linked to the earlier compounding order;
2. updation of application format, which will require the applicant to provide additional details such as mobile number of the applicant/authorised representative, RBI office to which application fee amount has been paid, and mode of submission of the application concerned, in their application; and
3. introduction of a discretionary cap of INR 2,00,000 (Indian Rupees two lakh) for the compounding amount per rule or regulation contravened in relation to 'other non-reporting violations' under row 5 of the computation matrix provided in the Master Directions – Compounding of Contraventions under FEMA. The relevant violations include contraventions in the nature of receiving investment from ineligible foreign investors, violating end-use restrictions for foreign exchange, making payments to NRs without required approvals.

## Issuance of bonus shares to NR investors by companies engaged in Sectors Prohibited for FDI

Bonus shares are issued under Section 63 of the Companies Act and the Companies (Share Capital and Debentures) Rules, 2014. This process involves the issuance of additional shares in a pre-determined ratio to existing shareholders resulting in an increase in the total number of shares and a corresponding proportional decrease in the stock price. The issuance of bonus shares must be undertaken in compliance with the provisions of the Companies Act, rules thereunder, and applicable foreign exchange laws including the NDI Rules. In the case of listed entities, it is also necessary to comply with the applicable regulations issued by SEBI, including the SEBI ICDR Regulations.

## Amendment to NDI Rules

On June 11, 2025, MoF has introduced amendments to Rule 7 of the NDI Rules ("**Amendment Notification**").

The Amendment Notification allows resident companies (operating in Sectors Prohibited for FDI or undertaking activities prohibited from receiving FDI) to issue bonus shares to existing NR shareholders with the condition that such NR shareholders' shareholding does not increase pursuant to such issuance. The

Amendment Notification came into effect from June 11, 2025. The Amendment Notification is also retrospective in nature and applies to bonus issuance undertaken during the subsistence of the erstwhile Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 or the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017.

### Related clarifications

Prior to the Amendment Notification, DPIIT, *vide* PN 2, had issued a clarification concerning the issuance of bonus shares by Indian companies operating in Sectors Prohibited for FDI. The clarification however did not include provisions relating to retrospective applicability of the clarification.

In addition to including the provision as substantive law, it may be noted that the deeming language under the Amendment Notification provides clarity relating to the fact that these relaxations are available retrospectively including relating to actions undertaken under the erstwhile Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 or the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017.

### Conclusion

The Amendment Notification eases the restrictions on companies while undertaking future issuance of bonus shares. This is particularly beneficial to foreign shareholders whose investments were 'grandfathered' (i.e. new rules restricting investments do not apply retroactively to existing investments) pursuant to any change in law which restricted their holding by means of a prohibition on foreign investment. Such shareholders may now be able to freely receive bonus shares without increasing their total shareholding percentage. Further, given that the Amendment Notification provides retrospective validation to bonus shares already issued, the Amendment Notification will provide relief to several companies who may now be able to regularise outstanding non-compliance issues in this regard. The Amendment Notification is accordingly a welcome move for existing foreign investors in companies operating in Sectors Prohibited for FDI and reduces legal complexity and uncertainty.


## RBI relaxes norms pertaining to advance remittance for import of shipping vessels

RBI, *vide* notification dated June 13, 2025, has announced a relaxation for the Indian shipping sector, with a view to facilitate and promote maritime trade and capital investments.

Importers of shipping vessels in India are now permitted to make advance payments of up to USD 50,000,000 (US Dollars fifty million) to exporters of such shipping vessels, without the requirement of a bank guarantee or unconditional and irrevocable standby letter of credit.

This relaxation remains subject to the other conditions stipulated under Paragraph C.1.3.3 of the Master Direction on Import of Goods and Services dated January 1, 2016. These conditions *inter alia,* include the following:

1. authorised dealer bank is required to be satisfied about the genuineness of the transaction;
2. verification of credentials (i.e. Know Your Customer ("**KYC**")) and due diligence to be undertaken by authorised dealer banks on the Indian importer and overseas exporter;
3. payment is required to be made directly to the account of the overseas exporter, as per the terms of the sale contract; and
4. import is required to be made within the permitted 6 (six) months from the date of remittance of the advance amount (except for capital goods).

### Conclusion

This relaxation is aimed at easing operational difficulties in high-value imports in the shipping sector, while maintaining the regulatory discipline. In essence, it will reduce financial burden on Indian shipping companies, as they will not be required to avail non-fund based facilities in form of bank guarantees or standby letters of credit from overseas banks / authorised dealer banks, if their advance remittance falls within the aforementioned limit of USD 50,000,000 (US Dollars fifty million). This will enable Indian shipping companies to acquire shipping vessels in a timely manner. With a greater number of vessels available with the Indian shipping companies, India's foreign trade is also expected to rise.

## Non-banking Financial Companies

### Guidelines on settlement of dues of borrowers by Asset Reconstruction Companies

RBI, *vide* circular dated January 20, 2025, has prescribed guidelines on settlement of dues payable by the borrowers of Asset Reconstruction Companies ("**ARCs**"). The Master Direction – RBI (ARCs) Directions, 2024 dated April 24, 2024, stands amended accordingly. Some of the key provisions are as follows:

1. all ARCs are mandated to frame a board-approved policy for settlement of dues which are payable by the borrowers. The board-approved policy must, *inter alia*, cover aspects such as cut-off date for one-time settlement eligibility, permissible sacrifice for various categories of exposures while arriving at the settlement amount, methodology for arriving at the realisable value of the security;
2. settlement with the borrowers should be done only after all possible ways to recover the dues have been examined and settlement is considered as the best option available;
3. the Net Present Value ("**NPV**") of the settlement amount should generally not be less than the realisable value of securities. However, if there is a significant variation between the valuation of the securities recorded at the time of acquisition of financial assets and realisable value of the securities at the time of entering into a settlement, reason thereof must be duly recorded;
4. the settlement amount should preferably be paid in lump sum. However, if borrowers cannot pay the entire amount agreed upon in one instalment, the settlement proposal should be in line with and supported by an acceptable business plan (where applicable), projected earnings and cash flows of the borrower;
5. settlement of accounts pertaining to a borrower having aggregate value of more than INR 1,00,00,000 (Indian Rupees one crore) in terms of outstanding principal in the books of transferor/s at the time of acquisition by the ARC must be done as per board-approved policy, subject to the following conditions:
    a) settlement of dues must be done only after the settlement proposal has been reviewed by an Independent Advisory Committee ("**IAC**"), consisting of professionals with technical, finance and legal backgrounds. The IAC after assessing the borrower's financial position, recovery timeline and projected earnings and cashflows and other relevant aspects must give its recommendations to the ARC regarding settlement of dues with the borrower; and
    b) the board of directors, including at least 2 (two) independent directors or a committee of the board meeting the prescribed criteria, considers the IAC's recommendations and other options available for recovery of dues before deciding whether the settlement of dues is the best option available under existing circumstances. This decision, along with the reasoning behind it, must be formally recorded;
6. for settlement of accounts pertaining to a borrower having aggregate value of INR 1,00,00,000 (Indian Rupees one crore) or below in terms of principal outstanding in the books of the transferor at the time of acquisition by the ARC, ARCs must follow the criteria prescribed by the authority set in their board-approved policy subject to the following:

a) any official who was part of the acquisition (as an individual or part of a committee) of the concerned financial asset must not be part of processing/approving the proposal for settlement of the same financial asset, in any capacity; and

b) a quarterly report on such resolution of accounts/settlements will be submitted to the board/committee of the board meeting the prescribed criteria. The board is required to establish a reporting format that covers, at minimum; the trend in accounts and amounts subjected to compromise settlement (quarter on quarter and year on year basis); separate breakdown of accounts classified as fraud or wilful default declared by banks and Non-banking Financial Companies ("**NBFCs**"); amount-wise, acquisition authority-wise; business segment/asset class wise grouping of such accounts; and the extent and timelines of recovery in such accounts;

7. settlement of dues payable by the borrowers classified as frauds/wilful defaulters the guidelines as set out in para 6 above will be applicable, regardless of the amount involved, and ARCs can proceed with such settlements without affecting ongoing criminal proceedings against such borrowers; and

8. ARCs pursuing recovery proceedings under a judicial forum must obtain a consent decree from the relevant judicial authorities before any settlement with the borrower is made.

## Private placement of non-convertible debentures with maturity period of more than 1 (one) year by Housing Finance Companies

RBI, *vide* circular dated January 29, 2025, has modified the Master Direction – NBFC – House Finance Company ("**HFC**") (Reserve Bank) Directions, 2021 ("**Master Direction – HFC**") with respect to raising money through private placement of Non-convertible Debentures ("**NCDs**") (with a maturity of more than 1 (one) year). In case of such issuances, the guidelines for raising money through private placement of NCDs (with maturity of more than 1 (one) year) which are applicable to NBFCs as contained under Master Direction – RBI (NBFC – Scale Based Regulation) Directions, 2023 ("**NBFC Directions**") will *mutatis mutandis* apply to HFCs. Accordingly, the existing guidelines under Chapter XI of the Master Direction – HFC stand repealed. The revised guidelines are applicable to all fresh private placements of NCDs (with maturity more than 1 (one) year) by HFCs from January 29, 2025.

## Revised risk weights on microfinance loans and exposures

RBI, *vide* circular dated February 25, 2025, has revised the risk weights on microfinance loans and exposures of Scheduled Commercial Banks ("**SCBs**") (excluding payments banks). Microfinance loans in the nature of consumer credit have been excluded from the purview of higher risk weights specified in the circular on 'Regulatory measures towards consumer credit and bank credit to Non-Banking Financial Companies' dated November 16, 2023, and accordingly, are subject to a risk weight of 100% instead of earlier risk weight of 125%. All microfinance loans extended by regional rural banks and local area banks will attract risk weight of 100%. The revised risk weight provisions apply to both outstanding and new loans, effective immediately from the issuance of the circular.

On November 2023, RBI had increased the risk weights on exposures of SCBs to NBFCs (with external credit ratings), excluding Core Investment Companies ("**CICs**"), by 25 percentage points (over and above the risk weight associated with the given external rating) in all cases where the extant risk weight as per external rating of NBFCs is below 100%. Now, by its notification dated February 25, 2025, RBI has restored the previous risk weights applicable to such exposures which are specified in the Master Circular – Basel III Capital Regulations dated April 1, 2024. These instructions have come into effect from April 1, 2025.

## Qualified buyers under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

SEBI, *vide* notification dated February 28, 2025, has specified that all NBFCs, including HFCs, regulated by RBI, are classified as qualified buyers for the purposes of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 subject to the following conditions:

1. they must ensure that the defaulting promoters or their related parties do not directly or indirectly gain access to secured assets through Security Receipts ("**SRs**"); and
2. they must comply with such other conditions as RBI may specify from time to time.

## Amendments to NBFC Directions

RBI, *vide* notification dated May 5, 2025, has updated the NBFC Directions. The NBFC Directions has been amended such that a Right-of-Use ("**ROU**") asset is not required to be deducted from owned funds and common equity tier-1 capital, provided the underlying asset being taken on lease is a tangible asset. An ROU asset indicates the value of a leased asset that a company has the right to use during the lease term. By increasing the ambit of 'owned funds' to include ROU assets, the amendment will allow NBFCs to meet the requirement of maintaining a minimum value of owned funds.

Another change introduced is the requirement of compliance with Government Debt Relief Schemes ("**DRS**") in accordance with the Government DRS circular dated December 31, 2024.

## Amendments to Master Direction on CICs

RBI, *vide* notification dated May 5, 2025, has updated the Master Direction - CICs (Reserve Bank) Directions, 2016. The amendment enlarges the applicability of the directions to CICs that are NBFCs carrying out the business of acquisition of shares and securities in Infrastructure Investment Trusts ("**InvITs**").

The amendment adds that CICs will not be required to deduct ROU assets from owned funds, provided the underlying asset being taken on lease is a tangible asset. Further, the amendment also provides that the investments in CICs from Financial Action Task Force ("**FATF**") non-compliant jurisdictions be treated the same as investments from FATF compliant jurisdictions - investors from the former will not be allowed to garner any 'significant influence' in the CIC. The amendment also calls for CICs to implement Indian accounting standards in the preparation of their financial statements.

Additionally, CICs are required to take prior approval of RBI before investing in joint venture/subsidiary/representative offices overseas in the financial sector and are required to be registered with RBI, as well as comply with the applicable regulations governing CICs. Unregistered CICs must obtain registration and comply with the regulatory requirements applicable to registered CICs if they wish to invest overseas in the financial sector.

CICs do not need RBI registration or prior approval of RBI to invest overseas in the non-financial sector. However, CICs will report such investments to the regional office of the Department of Supervision of the RBI within 30 (thirty) days of such investment in the stipulated format.

## Review of qualifying assets criteria for NBFCs - Microfinance Institutions

RBI, *vide* circular dated June 6, 2025, has made amendments to the Master Direction – Regulatory Framework for Microfinance Loans, 2022. Previously, NBFC- Microfinance Institutions ("**NBFC-MFIs**") were required to ensure that a certain percentage of their total assets qualified as 'microfinance loans'. With this amendment, Paragraph 8.1 has been updated to align the definition of 'qualifying assets' with the broader definition of 'microfinance loans' provided in

Paragraph 3 of the Master Direction. This significant policy update is expected to provide greater operational flexibility and promote diversified lending portfolios within the microfinance sector.

Qualifying assets of NBFC-MFIs will constitute a minimum of 60% of the total assets (netted off by intangible assets), on an ongoing basis (previously NBFC-MFIs were required to have minimum 85% of its net assets as 'qualifying assets' and 75% of the total assets). If an NBFC-MFI fails to maintain the qualifying assets for 4 (four) consecutive quarters, it will approach RBI with a remediation plan.


## Debt Securities

### Format of due diligence certificate to be given by the debenture trustees

Pursuant to the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**NCS Regulations**"), SEBI, *vide* circular dated January 28, 2025 ("**SEBI Circular**"), has outlined the due diligence certificate format for Debenture Trustees ("**DTs**") in case of unsecured debt securities as follows:

1. at the time of filing the draft offer document with the recognised Stock Exchange ("**Stock Exchanges**") , the issuer must submit to the Stock Exchange, a due diligence certificate obtained from the DT as per the format specified in Annex–A of the SEBI Circular; and
2. at the time of filing of the listing application, the issuer must submit to the Stock Exchange, a due diligence certificate obtained from the DT as per the format specified in Annex–B of the SEBI Circular.

### SEBI amends issue and listing of Securitised Debt Instruments and SRs Regulations

SEBI, *vide* circular dated May 5, 2025, has issued the SEBI (Issue and Listing of Securitised Debt Instruments ("**SDI**") and SRs) (Amendment) Regulations. 2025 amending the SEBIs (Issue and Listing of Securitised Debt Instruments and SRs) Regulations, 2008 ("**SDI Regulations**")). These amendments are aligned with the existing RBI guidelines on securitisation and aims to improve the efficiency of securitisation market.

Some of the key amendments in the SDI Regulations are discussed below:

1. **Definition of 'debt' or 'receivables'**: The definition of 'debt' or 'receivables' has been amended to include all financial assets originated by an entity regulated by RBI. The SDI Regulations now include restrictions on originators such as re-securitisation exposures and synthetic securitisation. Specific items have been inserted including equipment leasing receivables; listed debt securities; trade receivables; and rental receivables. All such debts or receivables must originate from written contractual obligations or written contracts. No other debt or receivables are permitted as an underlying asset for securitisation under the SDI Regulations.
2. **Registration of trustee**: Trustees who are already registered under the SEBI (DT) Regulations, 1993, will no longer be required to obtain registration under the SDI Regulations. Further, the removal of the trustee no longer requires approval from SEBI.
3. **Liquidity facilities**: The SDI Regulations outline the detailed provisions of liquidity facilities (including conditions such as the nature, fees, tenure, maximum amount, requirement of legal opinion and documentation). It has been clarified that liquidity facilities are different from credit enhancement and must not be used for credit enhancement. However, if the specified conditions are not met then such liquidity facility will be classified as 'credit enhancement'.
4. The SDI Regulations also clarify that the facility cannot be used for covering the issuer's losses, acting as permanent revolving facility or covering losses in the underlying assets prior to a drawdown.

5. **Conditions governing securitisation under the SDI Regulations**:

   a) No single obligor can constitute more than 25% of the asset pool, unless relaxed by SEBI.

   b) The SDI must be fully paid up upfront.

   c) The assets comprising the securitisation pool should be homogeneous, i.e., the underlying debt/receivables must be of the same or similar risk or return profile.

   d) Originators and obligors not regulated by RBI should have a track record of operations of 3 (three) financial years which resulted in the creation of the underlying asset.

   e) Any offer of SDIs made to fifty or more persons in a financial year will always be deemed to have been made to the public. Further, transfer of SDIs will be restricted by the mechanism set out by the issuer and the depository.

6. **Public offer of SDIs**:

   a) A minimum ticket size (i.e., investment by a single investor) of INR 1,00,00,000 (Indian Rupees one crore) has been mandated for issuance of SDIs to the public. Further, for transfer of such SDIs, the minimum ticket size must be INR 1,00,00,000 (Indian Rupees one crore) for originators not regulated by RBI, where the underlying is listed securities, the minimum ticket size will be the face value of such listed securities, provided SDIs with amortisation structures issued to the public are permitted to trade at the amortised value if the ticket size falls below INR 1,00,00,000 (Indian Rupees one crore).

   b) The minimum retention requirement stipulates that originators will retain a minimum of 10% of the securitised pool (or 5% where the scheduled maturity of any of the cash flows is within 24 (twenty-four) months). In case of residential mortgage-backed securities, a mandatory minimum of 5% of the securitised pool is prescribed irrespective of maturity.

   c) The minimum holding period requirement is of 3 (three) months in case of loans with tenor of up to 2 (two) years; and 6 (six) months in case of loans with tenor of more than 2 (two) years.

   d) The public offers for SDIs must remain open for a minimum of 2 (two) working days and a maximum of 10 (ten) working days (earlier this was allowed until 30 (thirty) working days).

   e) The SDIs offered to the public should be issued and transferred exclusively in demat form.

   f) The special purpose distinct entity or trustee is required to offer each scheme of securitised debt instruments to the public for subscription through advertisements (in the prescribed manner), on or before the issue opening date. Such advertisement should contain, among other things, amongst other things, the disclosures specified in Schedule VII of the SDI Regulations.

   g) There is no longer a requirement for every special purpose distinct entity which has previously entered into agreements with a recognised Stock Exchange to list securitised debt instruments to execute a fresh listing agreement with such Stock Exchange within 6 (six) months of the date of notification of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**").

   h) There is no longer a requirement for a security deposit to be made by the issuer with the Stock Exchange(s).

## Conclusion

The definition of debt or receivables have been widened to specifically include certain kind of assets. This will boost the market confidence in investing in papers representing lease, trade or rental receivables. While the minimum risk retention and the minimum holding period requirements will improve the quality of the underlying asset, the requirement of a 3 (three)-track record for obligors and originators coupled with the requirement of having at least 4 (four) obligors for the asset pool may exclude a significant pool of securitisation transactions from listing. Lastly, clarity in the registration and roles of trustee function is a welcome change from a transaction management perspective.

## Review of provisions pertaining to Electronic Book Provider platform to increase its efficacy and utility

SEBI, *vide* circular dated May 16, 2025 ("**Circular**"), has revised and clarified several provisions relating to the Electronic Book Provider ("**EBP**") platform under Chapter VI and VII of the Master Circular for issue and listing of Non-Convertible Securities, SDI, SRs, Municipal Debt Securities and Commercial Paper dated May 22, 2024 ("**NCS Master Circular**"). The amendments aim to increase the efficacy and utility of the EBP platform in the context of primary issuance of securities through private placement.

Some of the key provisions are as follows:

1. the issues of municipal debt securities must be made through the EBP platform if it meets certain criteria as set out in the Circular;
2. an issuer may choose to access EBP platform for private placement of SDIs or SRs or commercial papers or certificates of deposit, and issuers constituted Real Estate Investment Trusts ("**REITs**"), Small and Medium REITs ("**SM REITs**") and InvITs may also access the EBP platform for private placement of units of REITs, SM REITs and InvITs;
3. issuers of debt securities, non-convertible redeemable preference shares and municipal debt securities on private placement basis of issue size less than INR 20,00,00,000 (Indian rupees twenty crore) (previously INR 50,00,00,000 (Indian rupees fifty crore)) may also choose to access the EBP platform for such issuances; and
4. the issuer issuing the securities for the first time through EBP platform must provide the placement memorandum and term sheet at least 3 (three) working days (earlier this was 5 (five) working days) prior to the issue to the opening date.

## Framework for Environmental, Social, and Governance securities (other than Green Debt Securities) under SEBI

The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015 provides for 17 (seventeen) Sustainable Development Goals ("**SDGs**"). The SDGs emphasise the close links among the Environmental, Social, and Governance ("**ESG**") aspects of sustainable development. A substantial amount of funding is necessary to accomplish the SDGs. In alignment with this objective, SEBI introduced the concept of Green Debt Securities ("**GDS**") through a circular issued in 2017. This concept was subsequently incorporated into the NCS Regulations to incentivise the financing of projects/asset class related to environmental sustainability.

SEBI, through its circular dated June 5, 2025 ("**ESG Circular**"), has laid down a broad framework for issuance of social bonds, sustainability bonds and sustainability-linked bonds, i.e., ESG debt securities (other than GDS).

The framework has been issued pursuant to Regulation 12 A of the NCS Regulations. It supplements the existing requirements under both the NCS Regulations and LODR Regulations.

### ESG debt securities (excluding GDS) can be issued only with effect from June 5, 2025

Regulation 12A of the NCS Regulations mandates that issuers of ESG debt securities must adhere to conditions specified by SEBI. Conditions to be complied with for issuance of only GDS were set out under the NCS Master Circular. Now under the ESG Circular the conditions to be complied with for issuance of social bonds, sustainability bonds and sustainability-linked bonds have been set out. The ESG Circular has come into force for issuance of ESG debt securities with effect from the date of the ESG Circular i.e., June 5, 2025.

### Meaning of ESG debt securities

ESG debt securities have been defined under the NCS Regulations as:

1. GDS;

2. social bonds;
3. sustainability bonds;
4. sustainability-linked bonds; and
5. any other securities by whatever name called, that are issued in accordance with such international frameworks as adapted or adjusted to suit Indian requirements that are specified by SEBI from time to time, and any other securities as specified by SEBI.

GDS is governed separately by the provisions specified in chapter IX of the NCS Master Circular.

## Alignment with recognised standards

Debt securities may be designated as 'social bonds' or 'sustainability bonds' or 'sustainability-linked bonds' only if the proceeds raised through their issuance are proposed to be utilised for financing or refinancing projects and/or assets aligned with any of the following recognised standards or fall under the definitions of the respective debt securities:

1. International Capital Market Association (ICMA) principles/guidelines;
2. Climate Bonds Standard;
3. ASEAN Standards;
4. European Union Standards; and
5. any framework or methodology specified by any financial sector regulator in India.

## Classification of a debt security

1. The power to classify a debt security as a GDS, social bond or sustainability bond lies with the issuer. Such classification should be determined by the issuer based on its primary objectives for the underlying projects and also subject to the conditions as may be specified by the SEBI from time.
2. 'Social bonds' means debts security for raising funds to be utilised for social project(s) that directly aim to address or mitigate a specific social issue and/or seek to achieve positive social outcomes especially but not exclusively for a target population under the following categories:
    a) affordable basic infrastructure (e.g. clean drinking water, sewers, sanitation);
    b) access to essential services like health, education, vocation training, healthcare;
    c) affordable housing;
    d) employment generation;
    e) climate transition projects;
    f) food security and sustainable food systems; and
    g) socio economic empowerment, etc, in addition to projects for environmental sustainability.
3. 'Sustainability bonds' means a debt security issued for raising funds to be utilised for finance or refinance of eligible green project(s) and social project(s) as specified in the definition of green bonds and social bonds.
4. 'Sustainability-linked bonds' means a debt security which has its financial and/or structural characteristics linked to predefined sustainability objectives, subject to the condition being measured through predefined sustainability Key Performance Indicators ("**KPIs**") and assessed against predefined Sustainability Performance Targets ("**SPTs**").

## Disclosure requirements

The ESG Circular lists out initial disclosures and continuous disclosures as the 2 (two) types of disclosures which must be made by the issuer of social bonds and sustainability-linked bonds. Initial disclosures should be made in the offer document for public issues/private placements, which include the rationale for issuance, taxonomies, standards or certifications both Indian and global, details of definition, calculation methodology and benchmarks for KPIs and SPTs and timelines, system/procedures for tracking the achievement of the targets, etc. Continuous disclosures should be made in the annual report and financial results. However, the issuer of sustainability bonds must comply with the provisions specified for GDS as specified in chapter IX of the NCS Master Circular as well as the standards specified for social bonds as specified in the ESG Circular.

### Requirement for independent third-party reviewer/certifier

Every issuer is required to appoint an independent third-party reviewer/certifier, to ascertain that the ESG labelled debt securities are in alignment with purposes mentioned in the recognised international standards and/or fall within the purview of definitions of such debt security as provided in the ESG Circular.

The following criteria are required to be satisfied in order to be appointed. The reviewer must:

1. be independent of the issuer, its directors, senior management and key managerial personnel;
2. be remunerated in a way that prevents any conflicts of interest; and
3. have expertise in assessing ESG debt securities.

An ESG rating provider registered with SEBI will also be eligible to be appointed by the issuer to act as a third-party reviewer. ESG rating provider must also comply with the aforementioned conditions. The scope of the review(s) conducted by the independent third-party reviewer/certifier must be specified in the offer document.

### Measures to mitigate the risk of purpose - washing and not being 'True to Label'

The ESG Circular has listed several measures to be followed by an issuer of social bonds/ sustainability bonds to avoid occurrence of purpose-washing including the following:

1. while raising funds for social objects/sustainability objects, the issuer is required to continuously monitor to check whether the form of operations undertaken is resulting in reduction of the adverse social impact/sustainable impact, as envisaged in the offer document;
2. in the event the funds raised through social bonds/sustainability bonds are used for purposes not mentioned in their respective definitions and/or the recognised standards, the issuer must disclose the same to the investors and, if required, by majority of debenture holders, undertake early redemption of such debt securities;
3. the issuer should not use misleading labels, hide trade-offs or cherry pick data;
4. the issuer must quantify the negative externalities associated with utilisation of the funds raised through social bonds/sustainability bonds; and
5. it will not make untrue claims giving false impression of certification by a third-party entity.

### Conclusion

The introduction of the ESG Circular is likely to benefit issuers and investors alike and bolster credibility, transparency, and global alignment in India's fast-evolving sustainable finance ecosystem. Given the 'reliance based' approach of the ESG Circular on international standards, it is likely to attract more foreign investors especially multilateral agencies by positioning the Indian debt market as a jurisdiction which is aligned to the global practices and taxonomy in sustainable finance. Issuers, especially in the infrastructure sectors can now tap into the bond market for affordable housing and other essential services such as public health and gender equity on globally established parameters.

Having said that, the larger challenge lies in the need for more sophistication of domestic issuers and their ability to create robust KPIs which can withstand the test of 'purpose washing' especially in projects which are of a long term nature. The landscape around third party verification in India is still in a nascent stage and needs more developments and players in this ecosystem.

The new framework on ESG debt securities introduced by the ESG Circular is a well-intended initiative that has plugged the regulatory gap since 2017, making sustainable finance a core investment principle for the economy which is not just limited to green finance.

## Government Securities

### Amendment related to Government Securities and gold related securities

By way of gazette notification dated February 13, 2025, RBI has amended the notification dated January 8, 2010, under Securities Contracts (Regulation) Act, 1956 ("**SCRA**"), regarding contracts for the sale or purchase of Government Securities ("**G-Sec**"), gold-related securities and money market instruments. In 2010, RBI had prohibited all forms of the sale and purchase contracts in G-Sec, gold related securities and money market securities other than spot delivery contracts; and contracts traded on recognised Stock Exchanges. RBI has now clarified that, in addition to the spot delivery contracts and contracts traded in Stock Exchange previously permitted, RBI will, from time to time, permit other forms of contracts which will be considered permissible sale and purchase contracts in G-Sec, gold related securities and money market securities.

### RBI (Forward Contracts in G-Sec) Directions, 2025

In furtherance to the power granted to RBI under the gazette notification dated February 13, 2025, on February 21, 2025, RBI has notified the RBI (Forward Contracts in G-Sec) Directions, 2025 ("**FC Directions**"). The FC Directions lays down the framework for forward contracts in G-Sec ("**Bond Forward**") to be undertaken in the over-the-counter market in India. The provisions of the FC Directions came into effect from May 2, 2025. Some of the key provisions are as follows:

1. **Eligibility**: A resident is permitted to undertake bond forward transactions to the extent permitted under the FC Directions. Any NR authorised to invest in G-Sec under the Foreign Exchange Management (Debt Instruments) Regulations, 2019, are also permitted to engage in Bond Forward transactions, to the extent permitted under the FC Directions.
2. **Market makers**: The following entities are eligible to undertake Bond Forward tractions as market makers:
    a) SCBs (except a Small Finance Bank ("**SFB**"), a payment bank, a local area bank and a regional rural bank); and
    b) a standalone primary dealer.
3. **Users**: Any entity, eligible to be classified as a non-retail user in terms of the Rupee Interest Rate Derivatives (Reserve Bank) Directions, 2019, is eligible to undertake transactions in Bond Forwards as a user. An eligible user (resident and NR) may undertake covered short positions in Bond Forwards only for the purpose of hedging.
4. **Settlement and payment**: A Bond Forward transaction may be physically settled or cash settled in the manner prescribed there.

Provisions are also made for market participant to exit its position through unwinding or novation under specified conditions. The FC Directions further outline mandatory reporting requirements, prudential norms, margining guidelines and compliance with applicable accounting standards. Finally, RBI reserves the right to call for information, impose penalties, or suspend trading in Bond Forwards for non-compliance of the FC Directions.

### G-Sec transactions in negotiated dealing system – order matching

Currently, the transactions between a between a Primary Member ("**PM**") and its own Gilt Account Holder ("**GAH**") or between two GAHs of the same PM are not permitted to be matched on Negotiated Dealing System – Order Matching ("**NDS-OM**") and are also not cleared and settled through Clearing Corporation of India Limited ("**CCIL**"). Basis review and stakeholder feedback, RBI, *vide* circular dated February 17, 2025, has decided to:

1. permit matching of transactions between a PM and its own GAH or between two GAHs of the same PM on both the anonymous Order Matching segment and the request for quote (RFQ) segment of NDS-OM. Transactions matched on NDS-OM will be cleared and settled through CCIL; and
2. extend the facility of clearing and settlement through CCIL for transactions between a PM and its own GAH or between 2 (two) GAHs of the same PM which are bilaterally negotiated and reported to NDS-OM, on an optional basis.

## Alternative Investment Funds

### Relaxation in timelines for holding Alternative Investment Fund's investments in dematerialised form

SEBI, *vide* circular dated February 14, 2025, has modified the timelines with respect to Alternative Investment Funds ("**AIFs**") holding their investments in dematerialised form. Some of the relaxations are as follows:

1. any investment made by an AIF on or after July 1, 2025, will be held in dematerialised form only;
2. the investments made by an AIF prior to July 1, 2025, are exempted from the requirement of being held in dematerialised form, except in the prescribed cases (and in such prescribed cases the investments must be held in dematerialised form on or before October 31, 2025); and
3. the requirement of holding investments in dematerialised form will not be applicable to:
    a) scheme of an AIF whose tenure (not including permissible extension of tenure) ends on or before October 31, 2025; and
    b) scheme of an AIF which is in extended tenure as on February 14, 2025.

### AIFs will be considered as investments in unlisted securities

At its board meeting on March 24, 2025, SEBI has resolved to amend Regulation 17(a) of the SEBI (AIF) Regulations, 2012 ("**AIF Regulations**").

#### Background

Regulation 17(a) under 'Conditions for Category II AIFs, of the AIF Regulations, states that "Category II AIFs will invest in investee companies or in the units of Category I or other Category II AIFs as may be disclosed in the placement memorandum;

Explanation – Category II AIFs will invest primarily in unlisted companies directly or through investment in units of other AIFs."

The SEBI Master Circular for AIFs dated May 7, 2024, clarified that "with respect to Regulation 17(a) of the AIF Regulations, the term 'primarily' is indicative of where the main thrust of Category II AIFs ought to be. The investment portfolio of a Category II AIF ought to be more in unlisted securities as against the aggregate of other investments." Accordingly, Category II AIFs are required to invest more than 50% of the investible fund in unlisted securities.

At this juncture, it may be noted that amendments made to the LODR Regulations in September 2023 introduced Regulation 62A which *inter alia* required all listed entities that already have outstanding listed Non-Convertible Debt Securities ("**NCDS**") or proposes to list NCDS on or after January 1, 2024, to necessarily list all other NCDS on the Stock Exchange(s) issued on or after January 1, 2024.

Given this, the availability of investment opportunities in unlisted securities may possibly reduce in the future for AIFs for making fresh investments. In order to address this issue, SEBI floated a consultation paper on February 7, 2025, to review Regulation 17(a) of AIF Regulations, with the objective of ease of doing business. Subsequently, SEBI at its board meeting held on March 24, 2025, clarified that investments made by Category II AIFs in listed debt securities rated 'A' or below will be treated as akin to investments in unlisted securities for the purpose of their compliance with minimum investment conditions in unlisted securities.

#### Conclusion

SEBI's proposed amendment to Regulation 17(a) of the AIF Regulations aims to provide flexibility for Category II AIFs in meeting their investment requirements by allowing investments in listed debt securities rated 'A' or below to count as unlisted securities i.e. be construed to be in compliance with the explanation to Regulation 17(a) of the AIF Regulations. This change is part of SEBI's ongoing efforts to streamline processes and promote ease of doing business in the investment sector.

Consequently, SEBI, *vide* notification dated May 21, 2025, has amended the AIF Regulations, by modifying the explanation under Regulations 17 (2) (conditions for Category II AIFs) to state that a Category II AIF must invest primarily in unlisted securities and/or listed debt securities (including securitised debt instruments) which are rated 'A' or below by a credit rating agency registered with SEBI, directly or through investment in units of other AIFs, in the manner as may be specified by SEBI.


## Mutual Funds

### SEBI (Mutual Funds) (Amendment) Regulations, 2025

SEBI, *vide* notification dated February 14, 2025, has amended the SEBI (Mutual Funds ("**MFs**")) Regulations, 1996 ("**MF Regulations**"). Some of the key amendments are as follows:

1. the Asset Management Company ("**AMC**") must invest a percentage of the remuneration of such employees as specified by SEBI in units of MF schemes based on the designation or roles of the designated employees in the manner as may be specified by SEBI;
2. the AMC must conduct stress testing for such schemes as specified by SEBI and disclose the results of the stress testing in the form and manner, as may be specified by SEBI; and
3. the AMC must pay charges or commission, or fees related to distribution of MF schemes, and in the manner as may be specified by SEBI from time to time.

These provisions have come into force from April 1, 2025.

### Relaxation in the 'skin in the game requirements' for MFs

SEBI, *vide* circular dated March 21, 2025, has modified the Master Circular for MFs, dated June 27, 2024 ("**MF Master Circular**"), for aligning with the amendments to the MF Regulations which were carried out *vide* notifications dated February 14, 2025, and March 4, 2025. These amendments relaxed the regulatory framework relating to alignment of interest of the designated employees of the AMC, with the interest of the unitholders (also known as the 'skin in the game requirements'). Some of the key changes under the said MF Master Circular are as follows:

1. minimum slab wise percentage of the gross annual cost to company, net of income tax and any statutory contributions under the said MF Master Circular of the designated employees of the AMCs must be mandatorily invested in units of MF schemes in which they have a role/oversight, in the prescribed manner;
2. for designated employees managing liquid fund schemes and associate with other schemes in addition to the liquid fund scheme, up to 75% of the minimum investment amount required to be invested in liquid fund schemes may be invested in schemes, managed by the AMC, with higher risk as compared to liquid fund schemes. The risk value based on the risk-o-meter of the preceding month will be considered;
3. in case of retirement on attaining the superannuation age, the units must be released from the lock-in and the designated employee will be free to redeem the units, except for the units in close ended schemes where the units will remain locked in till the tenure of the scheme is over;
4. on resignation or retirement of the designated employee from the AMC before attaining the age of superannuation, the lock-in period, for the investments made will be reduced to 1 (one) year from the end of the employment or completion date of 3 (three) year lock-in period, whichever is earlier, except for the units in close ended schemes where the units will remain locked in till the tenure of the scheme is over;
5. in case of violation of the Code of Conduct under the MF Master Circular for fraud or gross negligence by the designated employees, the nomination and remuneration committee of AMC

will undertake the preliminary examination and provide recommendations to SEBI for consideration, after approval of the trustees; and

6. every scheme will disclose the 'compensation in aggregate, mandatorily invested in units for the Designated Employees', under the provisions of the MF Master Circular on the website of the relevant Stock Exchanges. The disclosure will be at quarterly aggregate level showing the total investment across all relevant employees and will be within 15 (fifteen) calendar days from the end of each quarter.

### Specialized Investment Funds

SEBI, *vide* circular dated April 9, 2025, has clarified that the provisions under Paragraph 12.27.2.4 of the MF Master Circular, regarding maturity of securities in interval schemes, will not be applicable to Interval Investment Strategies under Specialized Investment Funds ("**SIFs**"). Consequently, the MF Master Circular is amended.

Further, on April 11, 2025, SEBI has introduced a standardised format for applications by MFs intending to establish a SIF. Additionally, a detailed format of 'Investment Strategy Information Document' has been provided at Annexure II to the circular.


## Banking regulations

### Amendment to the prudential regulations for All India Financial Institutions

RBI, *vide* circular dated February 17, 2025, has issued an amendment to the RBI (Prudential Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation, and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions ("**AIFIs**")) Directions, 2023 applicable AIFIs regulated by RBI including EXIM Bank, NABARD, NaBFID, NHB and SIDBI. This amendment, effective April 1, 2025, provides that all investments made by AIFIs, as per their statutory mandates, in long-term bonds and debentures (i.e., having minimum residual maturity of 3 (three) years at the time of investment) issued by non-financial entities will not be accounted for the purpose of the ceiling of 25% applicable to investments included under 'Held to Maturity' category, specified under the said Directions.

### Revised norms for Government guaranteed SRs

RBI, *vide* circular dated March 29, 2025, has revised the prudential treatment of Government-guaranteed SRs under the Master Direction on Transfer of Loan Exposures, 2021, by introducing a differentiated approach to valuing SRs. Some of the key revisions are as follows:

1. if a loan is transferred to an ARC for a value higher than its net book value, the excess provision can be reversed to the profit and loss account in the year of transfer if the sale consideration comprises only of cash and SRs guaranteed by the Government of India. However, the non-cash component in SRs must be deducted from Common Equity Tier 1 capital, and no dividends will be paid out of this component;
2. any SRs outstanding after the final settlement of the government guarantee or the expiry of the guarantee period, whichever is earlier, will be valued at INR 1 (Indian Rupees one);
3. in the event of the SRs being converted to any other form of instruments as part of resolution, then the valuation and provisioning thereof, for such instruments will be governed by the provisions as laid down under the Prudential Framework for Resolution of Stressed Assets dated June 7, 2019; and
4. periodic valuation of these SRs will be based on the net asset value declared by ARCs, based on recovery ratings received for such instruments.

## Banking Laws (Amendment) Act, 2025

The Banking Laws (Amendment) Act, 2025 ("**Amendment Act**"), has received the assent of the President on April 15, 2025. The Amendment Act amends the RBI Act, 1934 ("**RBI Act**"), the Banking Regulation Act, 1949 ("**BR Act**"), the State Bank of India Act, 1955, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. Under the RBI Act, the definition of fortnight' is revised and the reporting timelines is adjusted from alternate Fridays to the last day of each fortnight. The amendment to the BR Act includes enhanced monetary thresholds for capital requirements, extended tenure for cooperative banks' directors, and revised procedures for statutory returns and reserve maintenance. The Amendment Act also introduces provisions for multiple and simultaneous nominations for deposits and lockers, with specific conditions and rules for validity and succession.

## Review of haircuts on high quality liquid assets and review of composition and run-off rates on certain categories of deposits

Pursuant to the guidelines under the Basel III Framework on Liquidity Standards – Liquidity Coverage Ratio ("**LCR**"), Liquidity Risk Monitoring Tools, and LCR Disclosure Standards, and the draft circular dated July 25, 2024, RBI, *vide* circular dated April 21, 2025, has issued the final guidelines. Some of the key aspects are as follows:

1. a bank must assign an additional 2.5% run-off factor for retail deposits which are enabled with Internet and Mobile Banking Facilities ("**IMB**") i.e., stable retail deposits enabled with IMB must have 7.5% run-off factor and less stable deposits enabled with IMB must have 12.5% run-off factor (as against 5 and 10% respectively, prescribed currently);
2. unsecured wholesale funding provided by non-financial Small Business Customers ("**SBCs**") must be treated in accordance with the treatment of retail deposits as at Point 1 above;
3. in case a deposit, hitherto excluded from LCR computation (for instance, a non-callable fixed deposit), is contractually pledged as collateral to secure a credit facility or loan, such deposit must be treated as callable for LCR purposes; and
4. it has now been decided that the 'other legal entities' category must consist of all deposits and other funding from banks/insurance companies & financial institutions and entities in the 'business of financial services'. Thus, funding from non-financial entities such as trusts (educational/religious/ charitable), association of persons, partnerships, proprietorships, limited liability partnerships and other incorporated entities, must be categorised as funding from 'non-financial corporates' and attract a run-off rate of 40% (as against 100% currently prescribed), unless the above entities are treated as SBCs under LCR framework.

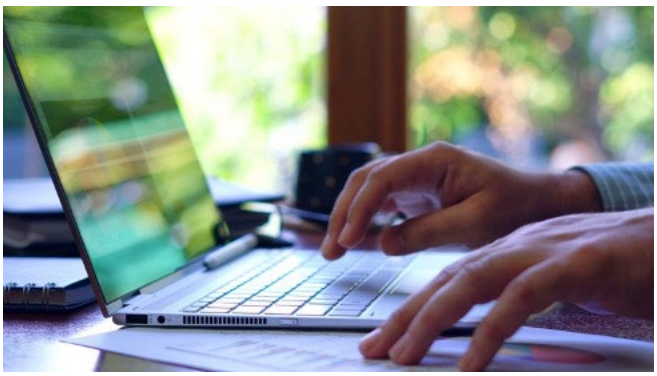
These amendments will come into force with effect from April 1, 2026, and will be applicable to all SCBs (excluding payments banks, regional rural banks and local area banks).

## Review of Priority Sector Lending norms for SFBs

RBI, *vide* circular dated June 16, 2025, has revised the Priority Sector Lending ("**PSL**") norms for SFBs, effective from the financial year 2025-26, aimed to enhance lending flexibility while retaining focus on core priority sectors. Previously, SFBs were allocating 75% of the ANBC or CEOBE to priority sectors. This included a mandatory 40% to specific PSL sub-sectors and a flexible 35% to sub-sectors where the bank had a competitive advantage.

Pursuant to the revision, the additional component (35%) of PSL will be reduced to 20%, thereby making the overall PSL target as 60% of ANBC or CEOBE, whichever is higher. The SFB must continue to allocate 40% of its ANBC or CEOBE, whichever is higher, to

different sub-sectors under PSL as per the extant PSL prescriptions, while the balance 20% will be allocated to any 1 (one) or more sub-sectors under the PSL where the bank has competitive advantage.



## Master Direction – RBI (Electronic Trading Platforms) Directions, 2025

RBI, *vide* circular dated June 16, 2025, has issued the Master Direction – RBI (Electronic Trading Platforms ("**ETPs**")) Directions, 2025 ("**ETP Directions**"), to consolidate, update and strengthen the regulatory framework for ETPs. The ETP Directions supersede the ETPs (Reserve Bank) Directions, 2018 dated October 5, 2018. Some of the key provisions of the ETP Directions are as follows:

1. it applies to all RBI-regulated ETP operators handling eligible instruments such as securities, money-market assets, forex, and derivatives, excluding platforms run by banks or standalone primary dealers acting as sole quotes/providers;
2. any entity seeking to operate an ETP must be a company incorporated in India and must obtain prior authorisation from RBI. The applicant must have a minimum net worth of INR 5,00,00,000 (Indian Rupees five crore) and demonstrate adequate operational capabilities, including experienced personnel and robust technology infrastructure;
3. the ETP Directions outline operational, governance, and compliance standards, including fair access and transparent fee policies, real-time transaction records maintenance, business continuity and cybersecurity plans, and systems for monitoring algorithmic trading and preventing market abuse; and
4. ETPs are required to submit periodic reports to RBI, including quarterly filings on trade volumes, outages, use of algorithms, and compliance with prescribed norms. Operators must retain relevant records for a minimum period of 10 (ten) years and are obligated to notify RBI of any material incident or disruption affecting the platform's functioning.

## RBI notifies new directions for project finance

RBI, *vide* notification dated June 19, 2025, has issued the RBI (Project Finance) Directions, 2025 ("**PF Directions**"). The PF Directions provide a harmonised framework for regulating financing of projects in infrastructure and non-infrastructure (including Commercial Real Estate ("**CRE**") and CRE - Residential Housing ("**CRE-RH**")) sectors by REs (as defined below) and also lay down the revised regulatory treatment upon change in the Date of Commencement of Commercial Operations ("**DCCO**") of such projects in infrastructure and non-infrastructure (including CRE and CRE - RH) sectors. The PF Directions will come into effect from October 1, 2025 ("**Effective Date**").

The key features introduced under the PF Directions are specified below:

1. **Standardised framework**: Currently, there are different frameworks for project loans, depending upon the type of lender. The PF Directions are a shift from this position and are uniformly applicable to all Regulated Entities (including SFBs but excluding payment banks, local area banks and regional rural banks), NBFCs (including HFCs), Primary Urban Co-operative Banks and AIFIs) ("**REs**").
2. **Applicability to ongoing projects**: The PF Directions are not applicable to those projects which have reached Financial Closure[2] as on the Effective Date ("**Ongoing Projects**"). However, any resolution of a fresh credit event and/or change in material terms and conditions in the loan contract in the Ongoing Projects, subsequent to the Effective Date, will be as per the guidelines contained in these PF Directions.

[2] Financial Closure is defined as the date on which the capital structure of the project, including equity, debt, grant (if any), accounting for minimum 90% of total project cost, becomes legally binding on all stakeholders. In the case of CRE-RH projects, lenders may reckon contingent sales receivables (if any) as part of promoters' contribution to the project.

3. **Project finance**: The PF Directions define 'project finance' as a method of funding of project in which revenues to be generated by such project serve as the primary security and repayment source for such loan. The definition further differentiates between a greenfield project and a brownfield project. This is a further deviation from the existing framework, which defines project finance as any term loan which has been extended for the purpose of setting up of an economic venture.

   Furthermore, the PF Directions clarify that an exposure will qualify as a project finance exposure only if the following conditions are satisfied:

   a) the pre-dominant source of repayment as envisaged at the time of Financial Closure (i.e., at least 51%) must be from cash flows arising from the project which is being financed; and

   b) all the lenders have a common agreement with the debtor. It clarifies that a common agreement may have different loan terms (except the DCCO) for each of the lender provided the same has been agreed upon by the debtor and all the Lender(s) to the project.

4. **Credit event**: The PF Directions define 'credit event', in relation to a project loan, as occurrence of any of the following:

   a) default[3] with a lender; or

   b) determination by a lender for a need to extend the original/extended DCCO of the project; or

   c) expiry of the original/extended DCCO; or

   d) determination by a lender of a need to infuse additional debt into the borrower; or

   e) the project is under a financial difficulty. Occurrence of a credit event during the construction phase of a project will trigger a collective resolution in accordance with the RBI's Prudential Framework for Resolution of Stressed Assets dated June 7, 2019 ("**Stressed Asset Framework**").

5. **Phases of project**: The PF Directions categorise projects into 3 (three) phases:

   a) The design phase: The planning stage of the project (including obtaining all approvals and clearances), ending on the Financial Closure.

   b) The construction phase: After the Financial Closure, until the day before the actual DCCO).

   c) The operation phase: After commencement of commercial operations, ending on the repayment of the project loan.

6. **Prudential conditions**: Lenders are required to ensure that their credit policies incorporate suitable clauses for sanction of project finance exposures, taking into account *inter alia* the provisions under these PF Directions. For all projects financed by a lender, it is required to be ensured that:

   a) Financial Closure has been achieved and original DCCO is clearly spelt out and documented prior to disbursement of funds;

   b) the project specific disbursement schedule *vis-à-vis* stage of completion of the project is included in the loan agreement; and

   c) the post DCCO repayment schedule has been realistically designed to factor in the initial cash flows.

   Provided that, the original or revised repayment tenor, including the moratorium period, if any, will not exceed 85% of the economic life of a project.

   It is also required to be ensured that for a given project, original/extended/actual DCCO (as the case may be) is same across all lenders to the project.

7. **Minimum exposure limit**: The PF Directions prescribe for a minimum exposure limit for lenders as under:

   a) if the aggregate project loan is less than INR 1,500 crore (Indian Rupees one thousand five hundred crore), the minimum exposure limit for each lender will be 10%; and

   b) if the aggregate project loan is more than INR 1,500 crore (Indian Rupees one thousand five hundred crore only), the minimum exposure limit for each lender will be the higher of 5%,

[3] Default is defined as 'non-payment of debt (as defined in Insolvency and Bankruptcy Code, 2016) when whole or any part or instalment of the debt has become due and payable and is not paid by the debtor'.

and INR 150,00,00,000 (Indian Rupees one hundred and fifty crore only).

The above minimum exposure requirements will not apply post-actual DCCO. Prior to actual DCCO, lenders may acquire from or sell exposures to other lenders under a syndication arrangement, provided the share of individual lenders is in adherence to the above limits.

8. **Clearances/approvals**: The PF Directions require REs to ensure that all applicable approvals/clearances for the project are obtained by the borrower as a condition precedent to the Financial Closure of the project loan. However, the PF Directions also clarify that approvals/clearances which are contingent upon achievement of certain milestones in terms of project completion would be deemed to be applicable only when such milestones are achieved. Accordingly, such milestones will not be treated as pre-requisite for the Financial Closure.

9. **Disbursement requirement**: The PF Directions intend to ensure that the borrower has full readiness to develop the project. For implementing this intention, the PF Directions require REs to ensure that the borrower has obtained sufficient land or right of way for the project (50% for infrastructure projects in Public-Private Partnership ("**PPP**") models, 75% in other infrastructure projects and non-infrastructure projects (including CRE and CRE-RH projects), and as per the RE's decision for transmission line projects), prior to disbursing their commitments in the project loan. In case of infrastructure projects under PPP model, disbursement of funds will begin only after declaration of the appointed date or its equivalent, for the project. However, in cases where non-fund based credit facilities may be mandated by the concession granting authority as a pre-requisite for declaration of appointed date, a lender may sanction such credit facilities, in adherence with the extant regulatory instructions on non-fund based facilities.

10. **Extension of DCCO**: The PF Directions allow deferment/extension of DCCO by up to 3 (three) years for infrastructure projects and 2 (two) years for non-infrastructure projects (including CRE and CRE-RH projects) along with consequential shift in the repayment schedule, without downgrading the loan account. This is a deviation from the existing frameworks, which permitted the deferment/extension of DCCO for a period up to 4 (four) years (i.e., 2 (two) years initially and additional 2 (two) years subject to certain conditions) for infrastructure projects and 2 (two) years (i.e., 1 (one) year initially and additional 1 (one) year subject to certain conditions) for non-infrastructure projects, without downgrading the loan account.

11. **Cost overrun**: A lender is permitted to finance, as part of a resolution plan, cost overrun associated with permitted DCCO deferment in compliance with Paragraph 26(a) of the PF Directions, and classify the account as 'Standard', as under:

    a) cost overrun up to a maximum of 10% of the original project cost, in addition to interest during construction;

    b) cost overrun is financed through SBCF[4] specifically sanctioned by the lender at the time of Financial Closure and renewed continuously without gap;

    c) for infrastructure projects, in cases where SBCF was not sanctioned at the time of Financial Closure, or was sanctioned but not renewed subsequently, such additional funding will be priced at a premium to what would have been applicable on a pre-sanctioned SBCF. Lenders must ensure that the loan-contracts *ab-initio* specify the additional risk premium to be charged on such SBCF, which may be revised upwards based on actual risk assessment at the time of sanction of such facilities; and

    d) the financial parameters like D/E ratio, external credit rating (if any) etc. remain unchanged or are enhanced in favour of the lender post such cost overrun funding.

12. **Change in scope or size**: A project finance account where DCCO extension is necessitated by an increase in the project outlay on account of increase in scope and size of the project, may be classified as 'Standard', only once during the life of

[4] SBCF is defined as a contingent credit line sanctioned for the project at the time of financial closure to fund any cost overrun during the construction phase of the project.

the project, subject to complying with the following conditions:

a) the rise in project cost excluding any cost-overrun in respect of the original project is 25% or more of the original outlay as the case may be;

b) a lender re-assesses the viability of the project before approving the enhancement of scope and fixing a fresh DCCO; and

c) On re-rating (if already rated), the new external credit rating is not below the previous external credit rating by more than one notch. If the project debt was unrated at the time of increase in scope or size, then it should be externally rated investment grade upon such increase in scope or size in case of projects where aggregate exposure of all lenders is equal to or greater than INR 100,00,00,000 (Indian Rupees one hundred crore only).

13. **Timeline for implementation of resolution plan**: In line with the Stressed Asset Framework, the PF Directions require REs to execute all necessary agreements, create requisite security and implement new capital structure in the books of the borrower within a period of 180 (one hundred and eighty) days from the end of review period, for successful implementation of a resolution plan. Any deviation from the above timelines will render the borrower's account classified as a Non-Performing Asset ("**NPA**").

14. **Provisioning norms**: A lender may recognise income on accrual basis in respect of project finance exposures which are classified as 'Standard'. For NPAs, income recognition will be as per extant instructions contained in Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated April 1, 2025, as updated from time to time or the relevant instructions as applicable to specific category of lenders. Unlike the existing frameworks, the PF Directions provide for a uniform provisioning norms for all REs. For standard loans with no deferment of DCCO, REs will be required to maintain a provision of 1% for infrastructure project loans and CRE-RH project loans, and 1.25% for CRE project loans, during the construction phase. During the operational phase, the provisioning requirements stand reduced to 0.40% for infrastructure project loans and CRE-RH project loans, and 1% for CRE project loans. For standard loans with deferment of DCCO, REs will be required to maintain an additional provision of 0.375% for each quarter of deferment for infrastructure project loans, and 0.5625% for each quarter of deferment for non-infrastructure loans. The aforesaid provisions will not be applicable for Ongoing Projects which will continue to be guided by the existing prudential guidelines for the purpose of provisioning. However, in case of any resolution of a fresh credit event and/or change in material terms and conditions in the loan contract in the Ongoing Projects, subsequent to the Effective Date, these provisions will apply.

## Conclusion

### Impact of the PF Directions

1. The standardised project loan framework for all REs has crystallised the legal framework for REs and borrowers.

2. RBI has provided certain relaxations from the draft Guidelines. Firstly, the provisioning requirements have been revised from a flat 5% for under construction and 2.50% (capable of being reduced to 1% subject to compliance of conditions) for operational to the limits mentioned above in Point 14 (provisioning norms) above which are significantly lower. The PF Directions recognise the requirements of different provisioning for different sectors.

3. The requirements of NPV mentioned in the draft guidelines have been done away with. For instance, the definition of credit event is now linked to financial difficulty instead of NPV diminution.

4. The entire segregation of exogenous risks, endogenous risks and litigation has been done

away with and a standard outer timeline for DCCO extension has been provided as mentioned in Point 10 (extension of DCCO) above.

5. Understanding the nature of the sector, the PF Directions provide the lenders funding transmission projects flexibility in terms of land acquisition.
6. The floor of 1% as additional risk premium for cost overrun funding has been done away.
7. A tail period of around 15% of the project's economic life cycle has been mandated. This is not the industry standard for many hybrid annuity model projects, which have a relatively shorter operating period, and may increase for projects with a longer gestation period.

### Key points for industry players

1. For a debt to qualify as project finance, in addition to other criteria there is a requirement of a common agreement amongst the lenders. Lenders are required to consider treatment of multiple banking arrangements in the context of this specification.
2. Cost Overrun can be funded only if an SBCF is provided at the time of original sanction save and except as mentioned in Point 12 (Change in scope or size) above. Hence, it is prudent for lenders to consider providing this facility upfront.
3. Lenders are required to ensure that their credit policies incorporate suitable clauses for sanction of project finance exposures, taking into account inter alia the provisions under these PF Directions. For all projects financed by a lender, it will be ensured that:
4. Financial Closure has been achieved and original DCCO is clearly spelt out and documented prior to disbursement of funds;
    a) the project specific disbursement schedule *vis-à-vis* stage of completion of the project is included in the loan agreement; and
    b) the post DCCO repayment schedule has been realistically designed to factor in the initial cash flows.
5. Transfer and novation of facilities will be restricted subject to minimum hold/exposure requirements as mentioned in Point 7 (minimum exposure limit) above.
6. The PF Directions provide for obtaining all applicable clearances depending on the stage of development of a project prior to Financial Closure. This would limit the ability of lenders to commercially agree to defer certain clearances which are possible to obtain upfront. Additionally, the documents are required to have conditions precedent around minimum land requirements as per the PF Directions, which may impact the timing of Financial Closure for projects. These requirements re-emphasise the regulatory mandate for a lender to conduct a thorough diligence on the project, prior to its financing.

## Key updates for equity capital markets under the SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025

On March 3, 2025, SEBI has approved amendments to the SEBI ICDR Regulations. These amendments were published in the official gazette on March 8, 2025, as the SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2025 ("**Amendment**"). The Amendment will take effect from the specified date except for regulations related to the rights issue by a listed issuer which will come into force on the 31st day of their publication in the official gazette and apply to rights issues approved by the board of the issuer post this Amendment. The Amendment introduces certain significant structural changes affecting capital raising, disclosure norms, compliance obligations, and regulatory oversight.

The Amendment also takes care of some of the recurring SEBI observations on the draft offer documents filed by companies eyeing for an Initial Public Offering ("**IPO**"). It standardises some of the definitions and provisions under the SEBI ICDR Regulations and LODR Regulations and resonates with the views taken by expert committees through their consultation papers in relation certain conceptual ambiguity existing under various capital markets regulations in the past.


## Key amendments in the equity capital markets space

### Stock Appreciation Rights

1. Regulation 5(2) of the SEBI ICDR Regulations has been amended to introduce Stock Appreciation Rights ("**SARs**"), as valid dilutive instruments, which are fully exercised prior to filing of the Red Herring Prospectus ("**RHP**"), in addition to Employee Stock Option Plan ("**ESOPs**") and compulsorily convertible securities which will convert prior to filing of the RHP for entities eligible to make an IPO. As per the Amendment, relevant disclosure pertaining to SARs should be accordingly made in the draft offer document and offer documents. This Amendment is in line with the evolving corporate incentive structures.

   The Amendment also harmonises the existing provisions under the SEBI (Share-Based Employee Benefits and Sweat Equity) Regulations, 2021 which allows and regulates such stock-based benefits and LODR Regulations. It also speaks with the consultation paper dated June 26, 2024, released by the expert committee for facilitating ease of doing business and harmonisation of the provisions of SEBI ICDR Regulations and LODR Regulations.

Finalised position in relation to employee benefits schemes in relation to IPO:

a) ESOPs settled for equity shares – Permitted;
b) ESOPs settled for cash (fully or partly) – Not permitted. Only cashless exercise is permitted in terms of SEBI (Share Based Employee Benefits) Regulations, 2014;
c) SARs settled for equity shares – Permitted now, subject to full exercise of rights prior to RHP filing. Further, SEBI advisory dated February 27, 2023, will stand modified and be read in conjunction with aforementioned amendment;
d) SARs settled for cash – Not permitted; and
e) any other employee benefit scheme settled for cash – Not permitted.

Accordingly, SARs are to be considered for lock-in calculation of Minimum Promoters' Contribution ("**MPC**") and the exemption from lock-in requirements available in respect of ESOPs will also be extended to any equity shares allotted pursuant to a bonus issue against equity shares allotted pursuant to SARs scheme.

### Changes in public announcement norms

1. Public announcements post filing of the IPO draft offer document within 2 (two) days have been amended to 2 (two) working days. Further, the requirement to keep the draft offer document available for public comments for 21 (twenty-one) days from the date of its filing has been amended to 21 (twenty-one) days from the date of publication of the public announcement on filing of the draft offer document.
2. The pre-issue advertisement and the price band advertisement have been merged into 1 (one) advertisement, which will be made at least 2 (two) working days prior to the opening of the issue. The format of the pre-issue and price band advertisement has also been provided in the Amendment.

### Promoter lock-in

Under the pre-Amendment regime, if the majority of the fresh issue proceeds are proposed to be utilised for capital expenditure, the MPC lock-in period will be 3 (three) years from the date of allotment in the IPO, otherwise, the MPC will be locked in for 18 (eighteen) months. Similarly, promoters holding in excess of MPC will be locked in for a 6 (six) month period. However, if the majority of the fresh issue proceeds is proposed to be utilised for capital expenditure, the lock in will be for 1 (one) year.

The Amendment also formalises the repayment of existing loans that may have been taken for the purpose of such capital expenditure to be considered for the fresh issue proceeds being utilised for capital expenditure. This has been a recurring SEBI observation and has now been introduced as an amendment for SEBI ICDR Regulations.

### Faster approvals, revised compliance timelines and changes in renunciation provisions for rights issue

1. Reduced timelines and faster approval process for rights issue by a listed issuer has been introduced**.** The rights issue amendments are in line with the consultation paper released for faster rights issue with flexibility of allotment to selective investors on August 20, 2024. Post the Amendment, the draft letter of offer is not required to be filed with SEBI; instead, it can be directly filed with Stock Exchanges.
2. Public announcement of draft letter of offer on issuer's website for public comments has been omitted.
3. The threshold for applicability of the SEBI ICDR Regulation for rights issue by a listed issuer wherein the aggregate value of the issue is INR 50,00,00,000 (Indian Rupees fifty crore) or more under Regulation 3 and Regulation 60 of the SEBI ICDR Regulation has now been omitted. Therefore, the SEBI ICDR Regulations is now uniformly applicable for all rights issue regardless of the issue size.
4. Regulation 69 of the SEBI ICDR Regulation has been amended to eliminate the obligation for issuers to appoint a merchant banker for rights issue. Instead, the responsibilities have been redistributed amongst the issuer, the registrar and the Stock Exchanges. Accordingly, the requirement of submission of due diligence certificate by the lead managers under Regulation 71 of the SEBI ICDR Regulation and provisions relating to due diligence being conducted by the merchant bankers and the mandatory issue agreement to be entered between the issuer and merchant bankers have also been deleted. However, given the Stock Exchange approval process, issuers may still require to appoint advisors for the purpose of ensuring compliance under SEBI ICDR Regulations.
5. An additional eligibility criterion has been added wherein in case the equity shares of the issuer are suspended from trading as a disciplinary measure as on the reference date, the issuer will not be eligible to make the rights issue. This will deter companies under trading suspensions from using rights issues as a means to resolve their liquidity issues.
6. The Amendment also allows the promoters/promoter group to renounce their rights entitlements in favour of specific investors. Regulation 77 B has been introduced *vide* this Amendment which defines the specific investor as any investor who is eligible to participate in rights issue and whose name has been disclosed by the issuer in terms of Regulation 84 in the issue related advertisements. Further, the issuers are also allowed to allocate any unsubscribed portions to specific investors basis the terms captured in the Amendment. As per the Amendment, the letter of offer should specifically disclose the intention of issuer to allot the under-subscribed portion of the rights issue to specific investors.

Post the Amendment, SEBI has also issued a circular no. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2025/31 dated March 11, 2025. It notifies the revised timelines for completion of the rights issue process within 23 (twenty-three) working days from the date on which the board of the issuer approves the rights issue.

### Reporting of pre-IPO transaction

Disclosure of pre-IPO transactions are mandatorily required to be reported to Stock Exchanges within 24 (twenty-four) hours of such pre-IPO transactions (in

part or in entirety). This is aligned with the earlier advisories issued by SEBI in relation to the public announcement and price band advertisement regarding proposed/undertaken pre-IPO placement and should be read in conjunction with the July 4, 2023, SEBI advisory.

## Objects related amendments

The Amendment clarifies that for loan repayment object, a certificate on utilisation of loan for the purpose it was availed may be obtained from the chartered accountant, holding a valid peer review certificate instead of the statutory auditor for the periods *not* audited by the current statutory auditor; or the loan which is proposed to be repaid was availed by a subsidiary and the issuer's current statutory auditor is *not* the statutory auditor of the subsidiary.

Disclosure pertaining to the object of utilisation of long-term working capital to be included basis audited standalone financials. Such standalone financial statements will be restated if there are any restatements/adjustments in the restated consolidated financial statements which may have impact on the audited standalone financial statements.

## Disclosure of material agreements in the IPO offer document

The Amendment requires the disclosure of agreements impacting the management or control of the issuer or imposing any restriction or creating any liability upon the issuer (as prescribed under Clause 5A, Paragraph A of part A (Schedule III) of the LODR Regulations) in the IPO offer document.

## Litigation related disclosure in the IPO offer document

In line with the LODR Regulations, regarding disclosures relating to outstanding civil litigation in the IPO offer documents, the Amendment mandates to follow the lower of the monetary thresholds prescribed therein. Under the pre-Amendment regime, the issuer was required to disclose material civil litigation in its IPO offer documents based on the materiality policy adopted by its board.

All criminal proceedings involving key managerial personnel and senior management of the issuer and also the actions by regulatory authorities and statutory authorities against such key managerial personnel and senior management of the issuer are required to be disclosed.

## Disclosure of voluntary proforma financials

Basis the Amendment, the issuer may voluntarily disclose proforma financial statements of acquisitions/divestments even when such acquisitions/divestments are below the materiality threshold specified in the SEBI ICDR Regulations or if the acquisitions/divestments have been completed prior to the latest period for which financial information is disclosed in the IPO offer document. The issuer may also include financial statements of a business or subsidiary acquired/divested, provided such financial statements are certified by the auditor of the business or subsidiary acquired/divested, or chartered accountants holding a valid peer review certificate.

## Amendments pertaining to confidential filings

1. Basis the Amendment, the issuer is required to make a public announcement of the confidential filing within 2 (two) working days of filing of the draft offer document and updated draft RHP – I. Further, SARs which are fully exercised for equity shares prior to the filing of the RHP are now exempted for confidential filings.
2. Other important amendments:
    a) compliance officer must be a qualified company secretary. This is in line with the existing obligations of a compliance officer under LODR Regulations;
    b) the Amendment also clarifies that the calculation of price per share for determining ineligible securities for MPC, to be done after adjusting the same for corporate actions such as share split, bonus issue, etc. undertaken by the issuer;
    c) in relation to Regulation 6(2) offerings, under the pre-Amendment regime, if the shares

offered by a shareholder (individually or persons acting in concert) were more than 20% of the pre-issue shareholding of the issuer, the shareholder cannot offer more than 50% of their pre-issue shareholding. In a situation wherein the pre-issue shareholding is less than 20%, the shareholder cannot offer more than 10% of the pre-issue shareholding of the issuer. The Amendment provides the clarity that the shareholding to be calculated as on the date of the IPO draft offer document and the threshold limit will apply cumulatively to the total number of shares offered for sale to the public as well as any secondary sale transactions prior to the IPO; and

d) additional disclosures in the IPO offer documents.

3. In offer document summary, the details pertaining to the pre-issue and post-issue shareholding as at allotment in the prescribed format must be included for the promoter(s), promoter group and additional top 10 (ten) shareholders of the issuer.

4. In relation to disclosure under basis for offer price chapter, in relation to disclosure of EPS, P/E ratio, RoNW and net asset value, a new format has been introduced. A statement to be added that the lead managers have exercised due diligence and satisfied themselves before assigning weights with respect to EPS and RoNW.


## LODR Regulations

### SEBI modifies the formats for disclosure of holding of specified securities and shareholding pattern in dematerialised form

SEBI, *vide* circular dated March 20, 2025, has modified the formats for disclosure of holding specified securities and shareholding pattern under the Master Circular for Compliance with the provisions of LODR Regulations by Listed Entities dated November 11, 2024. Some of the key amendments are as follows:

1. Table I to Table IV showing the shareholding pattern has been amended wherein the details of Non-Disposal Undertaking ("**NDU**"), other encumbrances, if any, and total number of shares pledged or otherwise encumbered including NDU must be disclosed by the listed entities. It is further clarified that the underlying outstanding convertible securities also includes ESOP i.e. the existing header of column X as "No. of Shares Underlying Outstanding convertible securities (including warrants, ESOPs, etc.)". One additional column is added in the existing shareholding pattern format to capture the details of total number of shares on fully diluted basis (including warrants, ESOP, convertible securities etc.); and

2. Table II of the shareholding pattern has been amended to include a footnote providing the details of promoter and promoter group with shareholding 'NIL'.

This circular has come into force from June 30, 2025.

### SEBI redefines High Value Debt Listed Companies

SEBI, *vide* notification dated March 27, 2025, has amended the LODR Regulations pursuant to the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2025 ("**LODR Amendment**"). The LODR Amendment has come into effect on March 27, 2025.

The LODR Amendment redefines High Value Debt Listed Companies ("**HVDLE**s") to mean entity which has outstanding listed NCDS of INR 1,000 crore (Indian Rupees one thousand crore) and above ("**HVDLE Threshold**") as on March 31, 2025, and also prescribes the corporate governance for HVDLEs.

#### Key changes

#### Applicability

1. Any entity with an outstanding listed NCDS of the HVDLE Threshold as on March 31, 2025, will be a HVDLE. This threshold has been increased from

INR 500 crore (Indian Rupees five hundred crore) as existing previously.

2. If any entity meets the HVDLE Threshold, then such entity will be required to comply with the regulatory and disclosure requirements within 6 (six) months from the date of such trigger. The disclosure of such compliance will be required to be made in the corporate governance compliance report on and from the date of the third quarter following the date of such a trigger.

3. An entity which becomes a HVDLE must continue to comply with the requirements applicable to a HVDLE till the value of the outstanding listed debt securities as on March 31 in a year, reduces and remains below the HVDLE Threshold for a period of 3 (three) consecutive financial years. Previously, the relevant corporate governance requirements would continue to remain applicable until all the listed debentures were redeemed regardless of whether a listed entity's outstanding listed debt securities fell below the prescribed threshold.

4. REITS and InvITs are not required to comply with these corporate governance requirements and continue to be governed by the SEBI regulations specifically applicable to them.

5. The corporate governance provisions proposed pursuant to the LODR Amendments are in addition to the requirements set out in the Companies Act.

## Additional corporate governance requirements under the LODR Amendments

1. **DT consent for material related party transactions**:

   a) HVDLEs are required to obtain consent from the DT ("**DT Consent**") for all material related party transactions[5]. The DT consent should be provided after the DT has obtained approval from the debenture holders who are not related to the issuer and hold at least 50% of the debentures in value. HVDLE can proceed to obtain the approval of the shareholders only upon the receipt of the DT Consents.

   b) This requirement is only applicable to debt securities which are issued after April 1, 2025, and does not apply to debt securities which have been issued until March 31, 2025.

   c) Further, the requirement of DT Consent does not apply in the following cases:

      i) transactions entered into between 2 (two) government companies (as defined under the Companies Act);

      ii) transactions entered into between a holding company and its Wholly Owned Subsidiary ("**WOS**") whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval; and

      iii) transaction entered into between 2 (two) WOSs of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

   d) This is a major departure from the existing regime where no such consent from DTs were required.

2. **Introduction of a separate regime for HVDLEs which do not have any specified securities listed**:

   a) The LODR Amendment introduces a new Chapter VA which sets out the corporate governance requirements applicable to HVDLEs, which do not have any specified securities (i.e. equity shares' and 'convertible securities' as defined under Clause 33 (eee) of Sub-regulation (1) of Regulation 2 of the SEBI ICDR Regulations) listed on any Stock Exchange. HVDLEs which have any specified securities listed on any Stock Exchange, continue to be governed by the requirements set out under Regulations 15 to 27 of the LODR.

   b) The corporate governance requirements prescribed under Chapter VA as introduced by the LODR Amendment remain substantially similar to what is provided under Regulations

[5] A material related party transaction is defined in the LODR Regulations as transaction with a related party is considered material if the transaction to be entered into individually or taken together with previous transactions during a financial year, exceeds INR 1,000 crore (Indian Rupees one thousand crore) or 10%. of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.

15 to 27 of the LODR. These include board composition and corporate governance requirements such as appointment of woman directors, independent directors, constitution of audit committee, nomination and remuneration committee and audit committee

c) HVDLEs which are governed by Chapter VA as introduced by the LODR Amendment have the flexibility to constitute the nomination and remuneration committee, the stakeholder relationship committee and the risk management committee or discharge their functions through the board of directors. This will ease the burden of constituting various committees by such HVDLEs.

## Conclusion

The introduction of the LODR Amendment is primarily aimed at simplifying and streamlining the corporate governance norms of HVDLEs. The changes introduced pursuant to the LODR Amendment are largely in alignment with the consultation paper introduced by the SEBI in October 2024 to address issues concerning listed entities with a significant exposure in the debt capital markets.

The increase in the threshold of applicability has rightly been revised to INR 1,000 crore (Indian Rupees one thousand crore) to ensure ease of doing business, especially for companies which are in a nascent stage in accessing the debt markets generally and does not apply to entities which do not have major exposure to the debt capital markets.

Having said that, the additional requirement of procuring debenture holder consent for material related party transaction may prove to be burdensome. Usually, the requirement of consent of the debenture holders for related party transactions is commercially driven and may not be the norm. NBFCs with multiple debt issuances and a large exposure to debt markets may struggle to obtain such consent which was not commercially sought for by the debenture holders. This will also affect covenant-lite perpetual or subordinated debt instruments which usually do not have these consent items in their contracts. Delay or failure to obtain such consent from debenture holders (especially, retail participants where the debentures are widely held) may stall any strategic sale or other forms of corporate restructuring by the issuers which may be time sensitive in nature and was not contractually permitted. In light of the above, it will be interesting to see how some of the HVDLEs navigate through this new framework especially since the regulators have been trying to deepen the bond market in the recent past.

## SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2025

SEBI, *vide* notification dated April 29, 2025, has amended the LODR Regulations. The amendments include disclosures on the outstanding litigations and material developments in relation to the originator or servicer or any other party to the transaction which could be prejudicial to the interests of the investors and disclosures about defaults in connection with servicing obligations undertaken by servicer. These must be disclosed by special purpose distinct entity or its trustee to the Stock Exchange on an annual basis. For grievance redressal related to securitised debt instruments, the SCORES registration may be obtained at the trustee level, covering all special purpose distinct entities for which they act as trustee.

## Amendments to the LODR Regulations

SEBI, *vide* circular dated May 1, 2025, amended the LODR Regulations providing clarity with respect to the process of registration for the Special Purpose Distinct Entities ("**SPDE**") issuing securitised debt instruments. The amendment has allowed the trustee of an SPDE to register on the SCORES platform to address investor complaints.

The amendment also added 2 (two) additional disclosures that SPDEs need to make to Stock Exchanges annually as material disclosures, namely:

1. disclosure of any outstanding litigations and material developments in relation to the originator

or servicer or any other party to the transaction which could be prejudicial to the interests of the investors; and

2. disclosure about defaults in connection with servicing obligations undertaken by servicer.

### Limited relaxation for entities with listed non-convertible securities from compliance with requirements to provide hard copy of certain documents

SEBI, *vide* circular dated June 5, 2025, had extended the relaxation on applicability of Regulation 58(1)(b) of the LODR Regulations until September 30, 2025. The said Regulation mandates a listed entity to send a hard copy of the statement containing the salient features of all the documents, as specified in Section 136 of Companies Act and rules made thereunder to those holders of non-convertible securities, who have not registered their email address(es) either with the listed entity or with any depository.

The relaxation was initially accorded until September 30, 2024, under the SEBI circular dated October 6, 2024, and the same was notified pursuant to relaxation provided by Ministry of Corporate Affairs ("**MCA**"), *vide* circular[6] dated September 25, 2023. Subsequently, MCA *vide* circular[7] dated September 19, 2024, has extended the relaxation from sending physical copies of financial statements (including board's report, auditor's report or other documents required to be attached therewith) to the shareholders, for the annual general meetings conducted till September 30, 2025 (from September 30, 2024).

[6] General Circular no. 09/2023

## Micro, small or medium enterprises

### Revised criteria for micro, small or medium enterprise classification of enterprises

The MSME Ministry, *vide* notification dated March 21, 2025 ("**MSME Notification**"), has further modified the monetary thresholds for classification of an enterprise as micro, small or medium. An enterprise will be classified as a micro, small or medium enterprise based on the following criteria:

1. **Micro enterprise**: Where the investment in plant and machinery or equipment does not exceed INR 2,50,00,000 (Indian Rupees two crore and fifty lakh) (previously it was INR 1,00,00,000 (Indian Rupees one crore)) and turnover does not exceed INR 10,00,00,000 (Indian Rupees ten crore) (previously it was INR 5,00,00,000 (Indian Rupees five crore);

2. **Small enterprise**: Where the investment in plant and machinery or equipment does not exceed INR INR 25,00,00,000 (Indian Rupees twenty-five crore) (previously it was INR 10,00,00,000 (Indian Rupees ten crore)) and turnover does not exceed INR 100,00,00,000 (Indian Rupees one hundred crore) (previously it was INR 50,00,00,000 (Indian Rupees fifty crore)); and

3. **Medium enterprise**: where the investment in plant and machinery or equipment does not exceed INR 125,00,00,000 (Indian Rupees one hundred and twenty-five crore) (previously it was INR 50,00,00,000 (Indian Rupees fifty crore)) and turnover does not exceed INR 500,00,00,000 (Indian Rupees five hundred crore) (previously it was INR 250,00,00,000 (Indian Rupees two hundred and fifty crore).

The notification has come into force from April 1, 2025.

### Revision in criteria for Industrial Entrepreneur Memorandum acknowledgement

DPIIT, *vide* Press Note 1 (2025 series) dated April 1, 2025 ("**Press Note**"), has revised the criteria for Industrial Entrepreneur Memorandum ("**IEM**") acknowledgement raising investment and turnover thresholds to encourage industrial growth. This change

[7] General Circular No.09/2024

follows the MSME Notification, which updated the classification norms for Micro, Small and Medium Enterprise ("**MSME**").

Prior to the Press Note, all the industrial undertakings that were exempt from the compulsory licensing requirement under the Industries (Development and Regulation) Act, 1951 and had investment in the plant and machinery/equipment above INR 50,00,00,000 (Indian Rupees fifty crore) or annual turnover above INR 250,00,00,000 (Indian Rupees two hundred and fifty crore) were required to file information relating to setting up of industries in Form IEM. Confirmation for receipt of this information, issued by DPIIT, is known as the IEM acknowledgment.

Under the MSME Notification, the MSME Ministry increased the upper threshold for an enterprise to be classified as a MSME. Now, an enterprise will be classified as a medium enterprise if its investment in the plant and machinery/equipment does not exceed INR 125,00,00,000 (Indian Rupees one hundred and twenty-five crore) or annual turnover does not exceed INR 500,00,00,000 (Indian Rupees five hundred crore).

Accordingly, to maintain congruity between both the eligibility criteria, DPIIT has also revised the thresholds and now enterprises will be required to obtain IEM acknowledgment if they have an investment in plant and machinery or equipment exceeding INR 125,00,00,000 (Indian Rupees one hundred and twenty-five crore) or an annual turnover exceeding INR 500,00,00,000 (Indian Rupees five hundred crore).

All the eligible industrial undertakings may file for IEM acknowledgement through G2B Portal under the new criteria.

## Conclusion

With this revision, DPIIT aims to provide relaxation to MSMEs from an additional compliance burden, foster industrial growth, encourage higher investments and position India as a global manufacturing hub. The Press Note will definitely be a step towards promoting ease of doing business in India.

## Stock brokers

### Governance of technical glitches in stock broker's electronic trading systems – moving towards a more balanced framework

The summary below reviews the regulatory framework surrounding Technical Glitches (defined below) in light of the recent circular dated March 28, 2025, issued by Stock Exchanges (as described below).

### SEBI circular dated November 25, 2022

On November 25, 2022[8], SEBI issued a circular ("**SEBI Circular 2022**") introducing a framework to govern technical glitches in stock brokers trading systems. The intent behind the issuance of the circular was to tackle issues related to glitches and risks to avoid disruption of investors' opportunity to trade.

Thus, SEBI recognised that the consequential effect of Technical Glitches could include financial loss as well as diminish investor confidence in a trading platform's reliability, and as such, a resilient trading infrastructure was warranted to ensure seamless market operations and maintain investor confidence and participation. With this background, a working group was constituted to recommend suitable measures to address the issue as stated aforesaid, resulting in the release of the SEBI Circular 2022.

To simplify, a 'Technical Glitch' in the context of stock brokers broadly refers to any malfunction in the stock broker's trading infrastructure (viz. hardware, software, networks, process etc.) that disrupt normal trading operations and impact trading operations and

[8] SEBI circular no.: SEBI/HO/MIRSD/TPD-1/P/CIR/2022/160 (SEBI | Framework to address the 'technical glitches' in Stock Brokers' Electronic Trading Systems)

investor access for a contiguous period of 5 (five) minutes or more ("**Technical Glitch**"). Failure/ delays in order execution, data synchronisation issues, display of incorrect or delayed trading data are certain examples of Technical Glitches.

The SEBI Circular 2022 proceeds to introduce mechanisms and guidelines to deal with Technical Glitches occurring in the trading systems of stock brokers including in terms of reporting and monitoring of Technical Glitch. Briefly, in terms of reporting requirements, a single Technical Glitch requires 3 (three) separate reports viz. an intimation report - within an hour of the incident ("**1st Report**"); a preliminary report - within the next day ("**2nd Report**"); and a Root Cause Analysis Report - within 14 (fourteen) days from date of incident ("**3rd Report**"). Further, the SEBI Circular 2022 also mandated continuity planning in the event of natural disasters, change of management and software testing, and review of infrastructure in terms of accommodating client scalability. Towards the aforesaid, the SEBI Circular 2022 directed Stock Exchanges (viz. National Stock Exchange of India, BSE Limited, Metropolitan Stock Exchange of India, Multi Commodity Exchange of India Limited and National Commodity and Derivatives Exchange Limited) to build systems for implementing these provisions and establish a financial disincentives framework for both, non-compliance of the provisions and the occurrence/non-reporting of Technical Glitches.

## Exchange Framework

In December 2022, pursuant to the SEBI Circular 2022, the Stock Exchanges introduced a framework in this regard ("**Framework 2022**")[9].

Essentially, the Framework 2022 outlined parameters and provided more detailed guidelines on the aspects raised in the SEBI Circular 2022 including in terms of reporting process and formats for each of the 3 (three) reporting obligations; manner of testing and periodic reviews for continuity planning; criteria for applicability of additional requirements for specified members (i.e. stock brokers as will be notified by the Stock Exchanges ("**Specified Members**")); and enforcement action/penalty structure ("**Penalising Structure**").

In terms of the Penalising Structure envisaged, a few essential elements are listed below:

1. **Applicability:** The Penalising Structure is applicable only to Technical Glitches which were continuing for more than 15 (fifteen) minutes.
2. **Differentiated enforcement:** Additionally, the Penalising Structure is segregated between those applicable to Specified Members and other stock brokers, with stricter sanctions applicable to Specified Members.
3. **Progressive penalties:** The number of Technical Glitches in a given financial year determines the severity of the enforcement action, which ranges from issuing an observation letter/administrative warnings to imposition of monetary penalty. The calculation of the monetary penalty increases with each instance of Technical Glitches without any upper limit. Further, Stock Exchanges have discretion to impose further disciplinary action basis severity.
4. **Client restrictions:** With respect to Specified Members, on the occurrence of more than 5 (five) Technical Glitches in the financial year, in addition to monetary penalty, restraint on on-boarding new clients will be imposed for a period.
5. **Other penalties:** Separate monetary penalties in case of non-reporting of Technical Glitches (with additional penalty for each additional day of non-reporting without an upper limit) and other events in terms of disaster recovery.

To summarise, the Penalising Structure for a Technical Glitch can be grouped as follows:

| Time duration of the Technical Glitch | Reportable | Whether subject to Penalising Structure |
|---|---|---|
| 0-5 mins | No | No |
| 5-15 mins | Yes | No |
| More than 15 mins | Yes | Yes |

[9] National Stock Exchange of India: circular ref. no. 93/2022; BSE Limited: circular ref. no. 20221216-52; Metropolitan Stock Exchange of India: circular ref. no. MSE/IT/12759/2022; Multi Commodity Exchange of India Limited: circular ref. no. MCX/TECH/726/2022; National Commodity & Derivatives Exchange Limited: circular ref. no. NCDEX/RISK-010/2022.

However, the broad definition of Technical Glitch appears to encompass all instances of glitches, regardless of their direct impact on trading operations or investor experience and may be beyond the objective set out in the SEBI Circular 2022 which was limited to those Technical Glitches that "...impact on the investors' opportunity to trade….". This coupled with a progressive penalty structure without an upper limit, gives rise to the possibility of penalties accumulating indefinitely. Not to mention the increased compliance burden of reporting arguably non-relevant Technical Glitches in a time bound manner. These aspects, amongst others, necessitated greater clarity and a more balanced regulatory approach.

## Circular dated March 28, 2025

Following representations from stock brokers and the Brokers Industry Standard Forum, the Stock Exchanges released respective circulars dated March 28, 2025[10] ("**SE Circular**"), *inter alia* containing a set of Frequently Asked Questions ("**SE FAQs**"), a revised Penalising Structure and reporting formats.

The SE Circular and SE FAQs clarify certain ambiguities, refining the practical implementation of the Framework 2022. The key clarifications and resolutions provided are tabulated below.

| Sr.No. | Clarification provided in brief | Specific inclusions (if any) in terms of the clarification |
|---|---|---|
| **Definition of Technical Glitch** | | |
| 1. | 1. The SE FAQs clarify that any glitch incident which may lead to either stoppage, slowing down or variance in normal functions/ operations/ services of stock broker for a continuous period of 5 minutes or more must be reported as Technical Glitch. This has been elaborated to specifically include certain kinds of Technical Glitches.<br>2. That said, the SE FAQs also provides certain examples of supporting functions (*viz. visibility of technical charts, suggestions or news as well as price update delay provided available on refresh of page*) which will not be considered as a Technical Glitch. | Any glitch will be considered a Technical Glitch irrespective of:<br>a) availability of alternative mode of service;<br>b) the number of clients affected;<br>c) whether the same occurred in trading application or support functions;<br>d) segment where such glitch took place;<br>e) whether the same took place in backend office so long as they affect the trading, settlement or decision making process of the client;<br>f) whether the same took place during trading hours or not;<br>g) whether the same was on account of Market Infrastructure Institutions ("**MII**") or third-party service providers or vendors; and<br>h) whether the same took place in the primary site or disaster recovery site of the stock broker in a live drill. |
| **Penalising Structure** | | |
| 1. | While the scope of Technical Glitch remains broad, the SE FAQs clarify that certain glitches even though fall under the definition of Technical Glitch and thus, reportable, will not be subject to the Penalising Structure. | A Technical Glitch exclusively on account of the following may not attract penal action:<br>a) global issue with cloud service providers; |

[10] National Stock Exchange of India: circular ref. no. 24/2025; BSE Limited: circular ref. no. 20250328-88; Metropolitan Stock Exchange of India: circular ref. no. MSE/INSP/16949/2025; Multi Commodity Exchange of India Limited: circular ref. no. MCX/TECH/161/2025; National Commodity & Derivatives Exchange Limited: circular ref. no. NCDEX/Member Tech Compliance-006/2025.

| | | |
|---|---|---|
| | | b) technology disruption due to issues at MII (glitch reported by MII to SEBI);<br>c) technological issues in processing of a new trading account i.e. KYC process;<br>d) back office/operational issues not impacting trading and settlement of the clients;<br>e) Technical Glitch occurred during non-trading hours and not having any impact on trading activities of clients;<br>f) failure of payment gateway application due to issues at bank or service provider; and<br>g) technical charts not viewable |
| 2. | Further, the SE Circular issued a revised Penalising Structure with certain additional monetary penalties introduced. | a) Penalty for failure to set up disaster recovery site.<br>b) Penalty for failing to obtain ISO-27001 (*i.e.* international standard for information security management systems) certification by Specified Members. |
| 3. | Notably, an upper limit has been added on the imposition of monetary penalty for certain non-compliances.<br>To clarify, the progressive monetary penalty would continue to apply basis the number of occurrences of a Technical Glitch in a given financial year. | The upper limit of monetary penalty has been added for the following non-compliances:<br>a) for non-reporting of Technical Glitches (i.e. up to a maximum of INR 5,00,000 for Specified Members and INR 1,00,000 for other brokers)<br>b) for failure by Specified Members to conduct disaster recovery drills (i.e. up to a maximum of INR 10,00,000 for Specified Members.)<br>c) For failure by Specified Members to obtain ISO certifications within time. (i.e. up to a maximum INR 5,00,000 for Specified Members) |
| 4. | Additionally, while considering imposition of direction of no on-boarding of clients on crossing 6 or more Technical Glitches in a given financial year, only those Technical Glitches will be considered which have affected more than 5% active client (basis certification by the auditor) | - |
| **Reporting requirements** | | |
| 1 | Irrespective of whether the relevant Technical Glitch is subject to the revised Penalising Structure, it is noteworthy that the same will still be reportable and the revised Penalising Structure will still be applicable to such non-compliance. | - |
| | In terms of the formats for the three-fold reporting requirements, while the formats largely remain the same, certain modifications have been made. | Such modifications to the reporting formats include:<br>a) relocating point 6 (*nature of network connectivity issues*) from the 1st Report format to the 2nd Report; and |

| | | |
|---|---|---|
| | | b) streamlining the 3rd Report format to resemble the format shared as part of the annexure to the SEBI Circular 2022. Resultantly, certain information heads from the previous 3rd Report format have now been removed. |

### Conclusion

The SE Circular read with the SE FAQs constitute a reasonable effort towards enhancing regulatory clarity while maintaining oversight; the exemptions of certain Technical Glitches from the revised Penalising Structure and the imposition of upper limits on specific monetary penalties are positive developments that contribute to a more balanced regulatory framework.

Nevertheless, the definition of Technical Glitches remains overly broad, posing compliance challenges and necessitating a more precise delineation to ensure effective enforcement. Furthermore, the reporting obligations continue to apply to all Technical Glitches, irrespective of their materiality and whether the same was on account of a third-party or MII, thereby sustaining the associated compliance burden. Even in case of Technical Glitches caused by the systems of an MII, the SE FAQs suggest that only if the MII reports the glitch, the same would not amount to a glitch on the broker's part and hence would not be subject to the revised Penalising Structure. Thus, the current framework does not fully resolve existing deficiencies.

In this regard, a definition which includes a minimum percentage of impacted clients by such Technical Glitch could be more effective. Further, waiving reporting obligations for Technical Glitches which are immaterial and/or caused by MIIs could ease compliance burdens. Additionally, given that there is a limit to the oversight a stock broker can have over third-party systems, the revised Penalising Structure for a Technical Glitch caused by such third party may require to be further revisited.

That said, the SE Circular read with the SE FAQs provide important clarifications and are a relief to the operations of stock brokers. Further refinements would be a welcome addition towards a more proportionate and practical enforcement framework.

## Facilitation to SEBI registered stock brokers to undertake securities market related activities in Gujarat International Finance Tech-city - IFSCs

SEBI, *vide* circular dated May 2, 2025, has introduced measures to enhance ease of doing business for SEBI-registered stock brokers seeking to undertake securities market-related activities in the Gujarat International Finance Tech-city – IFSCs ("**GIFT-IFSC**"). Previously, SEBI registered stock brokers were required to obtain explicit approval from SEBI for establishing a subsidiary or joint venture to operate in GIFT-IFSC. Pursuant to the amendment, SEBI registered stock brokers proposing to undertake securities market related activities in GIFT-IFSC are permitted to do so under a Separate Business Unit ("**SBU**") of the stock broking entity itself without SEBI approval. These activities can also be carried out if the branch qualifies as an SBU.

Some of the key provisions are as follows:

1. SBUs in GIFT-IFSC must be exclusively engaged in providing securities market related activities as permitted by the IFSCA;
2. stock brokers must prepare and maintain a separate account for the SBU on arms-length basis;
3. the net worth of the SBU must be kept segregated from the net worth of the stock broker in the Indian securities market;
4. SBUs must maintain separate financial accounts and the net worth of the SBU must be independent of the domestic entity and adhere to IFSCA's regulatory requirements; and
5. stock brokers that have already established subsidiaries or joint ventures for GIFT-IFSC operations may opt to dissolve those structures and continue such services through an SBU.

## Infrastructure Investment Trusts and Real Estate Investment Trusts

### Amendment to Master Circular for InvITs and REITs

SEBI, *vide* circulars dated March 28, 2025, has amended the Master Circulars for Infrastructure Investment Trusts and Real Estate Investment Trusts, both dated May 15, 2024. Pursuant to the amendment, 25% (in the case of the InvITs) and 15% (in the case of the REITs) of the units allotted to sponsor(s) and sponsor groups will be locked in for a period of 3 (three) years from the date of trading approval granted for the units. It is further provided that units allotted in excess of 25% (in the case of InvIT) and 15% (in the case of REIT) of the total unit capital of the InvIT/REIT will be locked in for 1 (one) year from the date of trading approval. Inter-se transfer is permitted among the sponsor groups subject to the condition that the lock-in period will continue for the remaining period with the transferee.

Guidelines are provided for follow-on offers by publicly offered InvITs/REITs including application processes, public unitholding requirements and filing procedures.

### SEBI (InvITs) (Amendment) Regulations, 2025

SEBI, *vide* circular dated April 1, 2025, has amended the SEBI (InvITs) Regulations, 2014 ("**InvIT Regulations**"). Some of the key changes are as follows:

1. a new proviso to Regulation 4 (2)(e) (v) of the InvIT Regulations is inserted, stating that if, due to a vacancy in the office of an independent director of the investment manager, the investment manager becomes non-compliant with the requirement of having an independent director, such vacancy must be filled by the manager as follows:
   a) if such vacancy arises due to expiry of the term of office of the independent director, then the resulting vacancy must be filled not later than the date such office is vacated; or
   b) if such vacancy arises due to any other reason, then the resulting vacancy must be filled at the earliest and not later than 3 (three) months from the date of such vacancy;
2. a new Sub-regulation is inserted that imposes additional responsibilities on the trustee, including conducting due diligence on investments, maintaining high governance standards, acting impartially in a fiduciary capacity, and prioritising the unit holders' interests. These changes are outlined in Schedule X of the InvIT Regulations. This amendment will come into effect 180 (one hundred and eighty) days from April 1, 2025, i.e., September 28, 2025;
3. the amendment to InvIT Regulations now allows sponsors and/or their group entities to transfer locked-in units within the same sponsor group, subject to such units continuing to remain locked-in for the balance lock-in period. Further, in the event there is a change in the sponsor, the locked-in units may be transferred to the incoming sponsor group, subject to the minimum unit-holding requirement being maintained;
4. InvITs can invest in additional instruments as part of the 20% investment bucket, subject to certain conditions. These include investing in unlisted equity shares of companies providing project management and incidental services related to infrastructure development; and investing in units of liquid MF schemes with a credit risk value of at least 12 (twelve) and falling under class A-I in the potential risk class matrix. Additionally, InvITs can now invest in interest rate derivatives, including interest rate futures, forward rate agreements, and interest rate swaps. InvITs that raised funds through public issues can now invest in unlisted equity shares of the exclusive project manager or service provider for the infrastructure project, subject to the InvIT holding the entire shareholding in the company, either directly or indirectly. The InvIT Regulations previously allowed InvITs to make investments in companies

derived at least 80% of their operating income from the infrastructure sector; and

5. the mandatory disclosures for the board of directors of the investment manager are revised. The minimum information must include quarterly results of the InvIT and its operating divisions or business segments, enhancing board-level visibility into underlying InvIT assets. Additionally, a new clause has been introduced under Regulation 18(6), clarifying net distributable cash flows calculation.

## SEBI (InvITs) (Second Amendment) Regulations, 2025

SEBI, *vide* circular dated April 28, 2025, has now permitted InvITs to invest the unutilised funds in unlisted equity shares, units of liquid MF schemes (provided that the credit risk value is at least 12 (twelve), and the scheme falls under class A-I in the potential risk class matrix, as specified by SEBI) and interest rate derivatives as part of the 20% investment bucket, subject to fulfilment of prescribed conditions.

## SEBI (REITs) (Amendment) Regulations, 2025

SEBI, *vide* circular dated April 22, 2025, has amended the SEBI (REITs) Regulations, 2014 through the SEBI (REITs) (Amendment) Regulations, 2025.

Some of the key changes are as follows:

1. the definition of 'common infrastructure' is inserted to include facilities or amenities such as power plants, district or retail heating and cooling systems, water treatment or processing plants, waste treatment or processing plants and any facilities or amenities incidental to real estate business which exclusively supply or cater to, or are exclusively consumed by the REIT, its holding companies or special purpose vehicles, irrespective of whether such facilities or amenities are co-located within any project of REIT or not. Further, excessive production or capacity from common infrastructure (if not used by the REIT, its holding companies, or special purpose vehicles) can be sold to the grid or utility as per applicable laws, subject to adequate disclosures by the manager in the annual report;
2. a new proviso is inserted stating that if by a vacancy in the office of an independent director of the manager, the manager becomes non-compliant with the requirement of having an independent director, such vacancy must be filled by the manager as follows:
   a) if such vacancy arises due to expiry of the term of office of the independent director, then the resulting vacancy must be filled not later than the date such office is vacated; or
   b) if such vacancy arises due to any other reason, then the resulting vacancy must be filled at the earliest and not later than 3 (three) months from the date of such vacancy;
3. the trustee must comply with the core principles defining its roles and responsibilities which must encompass transparency, accountability, due diligence and compliance with these regulations; and act impartially in their fiduciary capacity, prioritise protection of the interests of unitholders, ensure effective management oversight over the manager and the REIT and maintain high standards of governance of the manager and the REIT; and
4. REITs can invest in additional instruments as part of the 20% investment bucket, subject to certain conditions. These include investing in unlisted equity shares of companies providing property management or property maintenance and other incidental services exclusively to the REIT, its holding companies and special purpose vehicles; and where the entire shareholding or interest in such company is held by REIT either directly or through its holding companies/special purpose vehicles.

## Review of disclosure requirements by InvITs and REITs

SEBI, *vide* circulars dated May 7, 2025, has revised Chapters 3 and 4 of the Master Circulars for InvITs and

REITs dated May 15, 2024, dealing with disclosure of information in the offer document and post listing of units. Some of the key revisions are as follows:

1. the offer document/placement memorandum must contain audited financial statements for a period of 3 (three) financial years (earlier audited financial statements were not mandatory). Further, if the latest audited financials are older than 6 (six) months from the date of filing, additional stub period financials must be provided;
2. if general-purpose financial statements are unavailable, combined or carved-out financial statements must be prepared and audited by the seller's auditor. If the REIT/InvIT has been in existence for less than 3 (three) completed financial years, disclosures should be provided for the years the REIT/InvIT has been operational, including any applicable stub periods;
3. in case of a follow-on offer, if the InvIT/REIT has been in existence for a period lesser than the last 3 (three) completed financial years, then financial statements of the InvIT/REIT must be disclosed for such financial years for which the InvIT/REIT has been in existence and for the stub period (if applicable); and
4. additional disclosures are specified which will be included as a part of the audited financial information and will be audited accordingly. These include project-wise operating cash flows, contingent liabilities and commitments as of the date of the latest financials.

## Investor charters for InvITs and REITs

SEBI, *vide* circulars dated June 12, 2025, has introduced investor charters for InvITs and REITs, to enhance financial consumer protection alongside enhanced financial inclusion and financial literacy.

1. Some of the key aspects of the investor charters are as follows:
    a) the charter for InvITs aims to develop the Indian InvIT Industry and provide investors with transparent, efficient, and reliable investment opportunities in infrastructure assets by ensuring fair and robust regulatory mechanisms and enhance confidence among investors by protecting and promoting the interests of unitholders; and
    b) the charter for REITs aims to commit to advancing the growth and development of REITs sector in India, with a focus on the growth of CRE assets including other assets portfolio management. To advocate for both business and investor interests while adhering to regulations. To develop integrity and excellence, and foster industry best practices that are benchmarked to leading global REIT standards.
2. Some of the key rights of investors under the charter for InvITs are as follows:
    a) right to receive timely distributions as per the declared schedule made by the InvIT and SEBI mandates at least half-yearly for publicly listed InvITs and at least annually for privately listed InvITs;
    b) right to vote on significant matters, including the acquisition of new assets, borrowing, related party transactions, appointment or change of the investment manager, and induction or exit of a sponsor (with an exit option for dissenting voters) and such other matters which requires unitholders consent as per Regulation 22 of the InvIT Regulations;
    c) right to access a full valuation report of all InvIT assets at least annually for both publicly and privately listed InvITs;
    d) right to receive annual and half-yearly report of the InvIT including financial information, auditors report and valuation report;
    e) right to be informed of any disclosures that may materially impact investments in the InvIT; and
    f) right to participate in meetings and vote on matters affecting the InvIT.
3. Some of the key rights of investors under the charter for REITs are as follows:
    a) right to receive information and details about the REIT including about its investment philosophy, and such other information as may be required under SEBI regulations to enable investors to make an informed decision about investing in a REIT, prior to making any such investment;

b) right to timely receipt of distribution advices/interest/proceeds/refunds and evidencing a transaction as specified in the SEBI (REITs) Regulations, 2014, or to receive such statements on request;

c) right to receive annual report/half yearly report and valuation reports; and

d) right to be informed about such disclosures which may have a material bearing on their investments in REIT.

## Investment Advisers and Research Analysts

### Relaxation of provision of advance fee restrictions in case of Investment Advisers and Research Analysts

SEBI, *vide* circular dated April 2, 2025, has relaxed the restrictions on advance fees for Investment Advisers ("**IAs**") and Research Analysts ("**RAs**"). IAs and RAs must ensure compliance with the following fee related provisions:

1. IAs and RAs may charge fees in advance, if agreed by the client, not exceeding fees for a period of 1 (one) year;
2. the fee-related provisions such as fee limits, modes of payment of fees, refund of fees, advance fee, and breakage fees will only be applicable in case of their individual and Hindu Undivided Family clients, subject to certain conditions; and
3. in case of non-individual clients, accredited investors, and institutional investors seeking recommendation of proxy adviser, fee related terms and conditions must be governed through bilaterally negotiated contractual terms.

### Investor charters for IAs and RAs

SEBI, *vide* notifications dated June 2, 2025, has updated the investor charters for IAs and RAs. The revised charters are designed to enhance financial consumer protection alongside enhanced financial inclusion and financial literacy.

RAs/IAs must bring the investor charter to the notice of their clients through their respective websites and mobile applications (if any), making them available at prominent places in the office, provide a copy of investor charter as a part of client on-boarding process, through e-mails/letters. All RAs/IAs must continue to disclose on their respective websites and mobile applications (if any), the data on complaints received against them or against issues dealt by them and redressal thereof, latest by 7th of succeeding month, as per the format prescribed in the circular.

## Foreign Portfolio Investors

### Limits for investment in debt and sale of credit default swaps by Foreign Portfolio Investors

RBI, *vide* circular dated April 3, 2025, has introduced investment limits for Foreign Portfolio Investors ("**FPIs**") in debt instruments. These investment limits for FPIs are as follows:

1. the limits for FPI investment in G-Sec, State Government Securities ("**SGSs**"), and corporate bonds will remain unchanged at 6%, 2%, and 15%, respectively, of the outstanding stocks of securities for 2025-26;
2. all investments by eligible investors in the specified securities will be reckoned under the fully accessible route;
3. the incremental G-Sec limit has been evenly split between the general and long-term sub-categories;
4. all additional limits for SGSs have been allocated to the general sub-category;
5. the revised investment limits for FPIs in G-Sec general, G-Sec long term, SGS general, SGS long term and corporate bonds, will be implemented in 2 (two) phases, i.e., April to September 2025 and October 2025 to March 2026, with gradual increases across all categories; and
6. the aggregate limit of the notional amount of credit default swaps sold by FPIs will be 5% of the outstanding stock of corporate bonds. Accordingly, an additional limit of INR 2,93,612 crore (Indian

Rupees two lakh ninety-three thousand six hundred and twelve crore) is set out for 2025-26.

## Amendment to the Master Circular for FPIs, Designated Depository Participants and Eligible Foreign Investors

The Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors dated May 30, 2024, mandated additional disclosures for FPIs that individually, or along with their investor group, hold more than INR 25,000 crore (Indian Rupees twenty five thousand crore) of equity asset under management in the Indian markets. SEBI, *vide* circular dated April 9, 2025, has increased this threshold from INR 25,000 crore (Indian Rupees twenty-five thousand crore) to INR 50,000 crore (Indian Rupees fifty thousand crore).

## RBI eases norms for short-term investments by FPIs under the general route

RBI, *vide* notification dated May 8, 2025 ("**Notification**"), has provided significant relaxations relating to investments by FPIs in corporate debt securities under the general route.

Under the Notification, RBI has immediately withdrawn the short-term investment limit and concentration limit applicable on investments made by FPIs in corporate debt securities under the general route. Earlier, FPIs were permitted to invest only up to 30% of their total investments in short-term corporate debt securities (i.e., corporate debt securities with a residual maturity of up to 1 (one) year); and 15% of the prevailing investment limit for corporate debt securities for long-term FPIs (i.e., Sovereign Wealth Funds, Multilateral Agencies, Pension/Insurance/Endowment Funds and foreign Central Banks), and 10% of the prevailing investment limit for corporate debt securities for other FPIs.

RBI has also revised the Master Direction – RBI (NR Investment in Debt Instruments) Directions, 2025 to incorporate this revision.

## Conclusion

The relaxations provided by RBI simplifies the regulatory framework and provides FPIs with a greater flexibility to structure their investments. This change is also expected to promote foreign inflows in the Indian corporate debt security market.

## SEBI (Credit Rating Agencies) (Second Amendment) Regulations, 2025

SEBI, *vide* circular dated April 22, 2025, has amended the SEBI (Credit Rating Agencies) Regulations, 1999. Some of the key changes are as follows:

1. the term 'subscriber-pays business mode' is inserted to mean a business model where the ESG rating provider derives its revenues from ESG ratings from subscribers including banks, insurance companies, pension funds, or the rated entity itself;
2. a proviso is inserted to Regulation 28H stating that nothing contained in the principal regulations will preclude an ESG rating provider from carrying out ESG rating of products or issuers under the respective guidelines of a financial sector regulator or any authority as may be specified by SEBI;
3. newly inserted regulation 28KA requires that an ESG rating provider operating under a subscriber-pays model must:
    a) base its ESG rating solely on publicly available information; and
    b) where the rated entity, its group company, or associate is a subscriber:
        i) charge the lowest fee payable among all subscribers; and
        ii) restrict subscription only to group companies or associates whose core

business requires such ESG ratings and who are regulated by financial sector regulators; and

4. an ESG rating provider operating under a subscriber-pays model must simultaneously share the ESG rating report with both its subscribers and the rated entity or issuer, allowing the latter 2 (two) working days to provide comments. Any feedback received must be included in an addendum to the report, and if the rated entity disagrees with the data or assumptions, the provider must consider revising the report or issuing an explanatory addendum. The provider must also publicly disclose its policy on sharing reports and offer a facility for rated entities to seek clarifications, including on methodology or assumptions.

## SEBI (Depositories and Participants) (Second Amendment) Regulations, 2025

SEBI, *vide* notification dated April 30, 2025, has amended the SEBI (Depositories and Participants) Regulations, 2018, which has come into effect on July 29, 2025. Some of the key changes are as follows:

1. a proviso is inserted in Regulation 25 (1) stating that the non-independent director on the governing board of the depository may be appointed in a recognised Stock Exchange or a recognised clearing corporation or another depository with the prior approval of SEBI, only after a cooling-off period as may be specified by the governing board of such depository; and
2. after a public interest director's term at a depository ends, they can be appointed for a further 3 (three) year term in another depository, Stock Exchange, or clearing corporation with the prior approval of SEBI, only after a specified cooling-off period, and only in cases of appointment as a public interest directory in a competing depository. Further, an explanation is inserted to the proviso of Regulation 25(3) stating that the 'competing depository' will be applicable in case of appointment of a public interest director from one depository to another depository.

## Clarifications to cybersecurity and cyber resilience framework for SEBI REs

SEBI, *vide* circular dated April 30, 2025, has revised the thresholds and categorisation of certain REs. The category of REs must be decided at the beginning of the financial year based on the data of the previous financial year. Once the category of RE is decided, RE must remain in the same category throughout the financial year irrespective of any changes in the parameters during the financial year. The category must be validated by the respective reporting authority at the time of compliance submission. In case an RE is registered under more than one category of REs, then the provision of highest category under which such an RE falls will be applicable to that RE.

## Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Third Amendment) Regulations, 2025

SEBI, *vide* notification dated April 30, 2025, has amended provisions relating to conditions of appointment of directors under the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 pertaining to appointment/reappointment of non-independent directors and public interest directors at recognised Stock Exchanges and recognised clearing corporations. Some of the key amendments are as follows:

1. the non-independent director on the governing board of a recognised Stock Exchange or a recognised clearing corporation may be appointed in another recognised Stock Exchange or a recognised clearing corporation or a depository with the prior approval of SEBI, only after a cooling-off period as may be specified by the

governing board of such recognised Stock Exchange or recognised clearing corporation;

2. upon the expiry of the term(s) at the recognised Stock Exchange or the recognised clearing corporation, a public interest director may be appointed with the prior approval of the Board for a further term of 3 (three) years in another recognised Stock Exchange or a recognised clearing corporation or a depository, only after a cooling-off period as may be specified by the governing board of such recognised Stock Exchange or recognised clearing corporation. The cooling-off period would be applicable only in case of appointment as a public interest director in a competing recognised Stock Exchange or a recognised clearing corporation; and
3. explanations are inserted to the proviso of Regulation 24(3) stating that the expression 'competing recognised Stock Exchange or recognised clearing corporation' will be applicable in case of appointment of a public interest director from one recognised Stock Exchange to another recognised Stock Exchange, or one recognised clearing corporation to another recognised clearing corporation, and where the recognised clearing corporation is a subsidiary of a recognised Stock Exchange, both the entities will be treated as a single entity.

## Guarantee provided against credit instruments extended by member institutions to finance eligible startups

The 'Credit Guarantee Scheme for Startups (CGSS)' dated October 6, 2022 was introduced for the purpose of providing credit guarantees up to a specified limit against credit instruments extended to startups by SCBs, AIFIs, NBFCs, and SEBI registered AIFs. Thereafter, the MoCI, *vide* notification dated May 8, 2025, has issued the Credit Guarantee Scheme for Startups ("**CGSS**"), making some key changes to the October 6, 2022, scheme. Some of the key changes of the May 8, 2025 notification are as follows:

1. the ceiling on guarantee cover per borrower under the CGSS has increased from INR 10,00,00,000 (Indian Rupees ten crore) to INR 20,00,00,000 (Indian Rupees twenty crore); and
2. the extent of the guarantee cover provided has been increased to 85% of the amount in default for loan amounts up to INR 10,00,00,000 (Indian Rupees ten crore) and 75% of the amount in default for loan amounts exceeding INR 10,00,00,000 (Indian Rupees ten crore).

## Amendments to investor charter for registered Registrars to an Issue and Share Transfer Agents

SEBI, *vide* circular dated May 14, 2025, has updated the investor charter for registered Registrars to an Issue and Share Transfer Agents ("**RTAs**"). It introduces a more detailed and structured framework for investor services, building upon previous guidelines to ensure higher standards of transparency, efficiency and accountability in the securities market.

Some of the key changes in the investor charter are as follows:

1. it aims to improve investor protection and financial inclusion, particularly with the introduction of the ODR platform and SCORES 2.0; and
2. all the registered RTAs must continue to disclose on their respective websites, the data on complaints received against them or against issues dealt by them and redressal thereof, latest by 7th of succeeding month.

## Payments Regulatory Board responsible for regulating and supervising all payment and settlement systems

RBI, *vide* notification dated May 20, 2025, has notified the Payments Regulatory Board ("**PRB**") Regulations, 2025 to establish a new regulatory framework for payment systems in India. The PRB, replacing the previous Board for Regulation and Supervision of

Payment and Settlement Systems, will be responsible for regulating and supervising all payment and settlement systems. This shift aims to enhance independence and accountability in regulatory decision-making. PRB will now be a central authority responsible for regulating India's digital payment landscape, ensuring a well-structured framework backed by expert governance.

The PRB will be assisted by the Department of Payment and Settlement Systems which will report to the PRB. It will consist of 6 (six) members, including the RBI governor as chairman, a deputy governor in charge of payment systems, one other RBI-nominated officer, and 3 (three) members nominated by the Central Government.


## Know You Customer

### Accessibility and inclusiveness of digital KYC for persons with disabilities

SEBI, *vide* circular dated May 23, 2025, and pursuant to the judgment of the Supreme Court dated April 30, 2025[11] (where the apex court directed financial institutions to adopt alternative verification mechanisms emphasising the need for equal access to financial services, including KYC processes for persons with disabilities), has revised the frequently asked questions on 'Account opening by Persons with Disabilities' to make the process of digital KYC more inclusive.

SEBI has also directed intermediaries to extend their services to all persons with disabilities on the digital platforms guided by the above mentioned frequently asked questions.

### Revised instructions on inoperative accounts/unclaimed deposits in banks

RBI, *vide* circular dated June 12, 2025, has amended the instructions dated January 1, 2024, regarding inoperative accounts and unclaimed deposits in banks. Earlier, banks were required to transfer the credit balance in deposit accounts that have remained inoperative or unclaimed for 10 (ten) years or more to the Depositor Education and Awareness Fund and Business Correspondents ("**BCs**") had to facilitate updation of KYC. Pursuant to the amendment, a bank is now required to offer KYC updation services at all branches, including non-home branches, including the utilisation of the Video-Customer Identification Process. Further, the services of an authorised BCs of the bank may be utilised for activation of inoperative accounts as prescribed in Paragraph 38(a)(iia) of the Master Direction - KYC Direction, 2016 ("**KYC Directions**").

### RBI (KYC) (Amendment) Directions, 2025

RBI, *vide* circular dated June 12, 2025, has issued the RBI (KYC) (Amendment) Directions, 2025, modifying the KYC Directions to enhance consumer protection and service. The amendment aims to simplify compliance for low-risk customers and strengthen monitoring mechanisms, enhancing both user-convenience and regulatory oversight. Some of the key amendments are as follows:

1. a clause has been added to Paragraph 38 of the KYC Directions, requiring that for individual customers categorised as low risk, the RE must allow all transactions and ensure that the KYC is updated within 1 (one) year from the date it becomes due or by June 30, 2026, whichever is later. The RE must also regularly monitor the accounts of such customers. This requirement applies even if the KYC update was already due before this amendment came into effect;
2. banks may obtain self-declarations from low-risk customers, if there is no change in KYC details or only a change in address, through authorised BCs. These declarations and supporting documents must be captured electronically by the BC after

[11] *Pragya Prasun and Ors. vs. Union of India and Ors.*, W.P. (C) No. 289 of 2024

biometric e-KYC authentication. Until this is enabled, physical submission is permitted. Banks must update the KYC records and inform the customer once the update is complete, as per Paragraph 38(c) of the KYC Directions. The bank remains ultimately responsible for ensuring periodic KYC updation; and

3. REs must intimate their customers in advance to update their respective KYC information. Prior to the due date to update KYC, REs must give at least 3 (three) advance intimations, including at least 1 (one) intimation in writing, to their customers. Even after the due date, REs must give at least 3 (three) reminders, including at least 1 (one) reminder in writing, to such customers if they have still not complied. These communications must clearly outline instructions, escalation mechanisms, and potential consequences. REs must comply with this requirement by January 1, 2026.

## Standardisation of expiry day for equity derivative contracts by SEBI

SEBI, *vide* circular dated May 26, 2025, has standardised the final settlement day or expiry day for equity derivative contracts. Previously, the expiry day was determined by Stock Exchanges but SEBI has, in order to prevent expiry day hyperactivity and market instability, made such changes to protect investors and allow for sustainable growth of derivatives.

Some of the changes brought in by SEBI are:

1. expiries of all equity derivatives contracts of an exchange will be uniformly limited to either Tuesday or Thursday;
2. every exchange will continue to be allowed 1 (one) weekly benchmark index options contract on their chosen day (Tuesday or Thursday);
3. besides benchmark index options contracts, all other equity derivatives contracts, viz., all benchmark index futures contracts, non-benchmark index futures/options contracts, and all single stock futures/options contracts will be offered with a minimum tenor of 1 (one) month, and the expiry will be in the last week of every month on their chosen day (that is last Tuesday or last Thursday of the month); and
4. exchanges will now seek prior approval of SEBI for modifying the settlement day of their derivatives contracts from the one which has been existing.

## Process for appointment, re-appointment, termination or acceptance of resignation of specific Key Management Personnel of MIIs

SEBI, *vide* circular dated May 26, 2025, has prescribed a framework for the appointment, re-appointment, termination or acceptance of resignation of specific Key Management Personnel ("**KMPs**") of Vertical 1 (compliance and risk management) and Vertical 2 (technology and information security) of MIIs, including Stock Exchanges, clearing corporations, and depositories. The provisions of this circular have come into force from August 24, 2025.

Some of the key provisions are as follows:

1. the MII must engage an external agency to recommend suitable candidates for positions such as compliance officer, chief risk officer, chief technology officer and chief information security officer. The agency's recommendations will be submitted to the nomination and remuneration committee, which will then evaluate the recommendations and present them to the Governing Board. The Governing Board will then make the final decision on re-appointment, termination, or resignation of these KMPs, with terminations only allowed if they have been given a reasonable opportunity to be heard;
2. the cooling-off period for KMPs shifting to a competing MII will now be determined by the Governing Board of the MII; and
3. in case the existing public interest director after completion of his first term is not considered for re-appointment by the Governing Board of the MII,

the rationale for the same must be recorded and informed to SEBI.

## Notification under SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007

SEBI, *vide* notification dated June 25, 2025, has notified the following relating to the certification to be obtained by associated persons under the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007:

1. at least 1 (one) key personnel, amongst the associated persons functioning in the key investment team of the manager of Category I AIF or Category II AIF or Category I and II AIF, must obtain certification from National Institute of Securities Markets ("**NISM**") by passing either the NISM Series-XIX-C;
2. at least 1 (one) key personnel, amongst the associated persons functioning in the key investment team of the manager of Category III AIF, must obtain certification from NISM by passing either the NISM Series-XIX-C; and
3. AIFs, existing as on June 25, 2025, must obtain requisite certification on or before July 31, 2025.

## International Financial Services Centres

### IFSCA (Fund Management) Regulations, 2025

IFSCA, *vide* notification dated February 10, 2025, has notified a new IFSCA (Fund Management) Regulations, 2025 which has replaced the earlier IFSCA (Fund Management) Regulations, 2022. The new regulations will continue to govern the Fund Management Entities ("**FMEs**") operating in IFSCs and have incorporated few changes in the regulations including but not limited to:

1. revision of minimum corpus for retail and non-retail schemes;
2. allowing FMEs and its associates to hold up to 100% in the non-retail venture capital funds provided the investors and Ultimate Beneficial Owners (UBOs) are persons residents outside Indian and such fund has not invested more than 1/3rd of the corpus in a investee company;
3. revision of time period for validity of private placement memorandum of venture capital funds from 6 months to 12 months, IFSCA (Fund Management) Regulations, 2025; and
4. Appointment of KMP of FMEs will not require prior approval of IFSCA and the manner of appointment of the KMP will have to be in the manner specified by IFSCA.

### Appointment and change of KMP by an FME

IFSCA, *vide* circular dated February 20, 2025, has specified the manner and procedure to be followed by an FME for effecting the appointment of or change to the KMPs subsequent to the grant of registration by IFSCA to the FME. This circular aligns with Regulation 7 of the IFSCA (Fund Management) Regulations, 2025, which mandates that FMEs appoint KMPs based in IFSCs who meet specific eligibility criteria, including educational qualifications and work experience. Some of the key provisions of the circular are as follows:

1. **Intimation to IFSCA**: FMEs must notify the IFSCA about proposed appointments of or changes to KMPs using the prescribed format, accompanied by the applicable fee. Pending applications as of the circular's date should be refiled as prescribed under this circular, providing proof of any fees already paid.
2. **Regulatory review process**: Upon receiving the intimation, the IFSCA will review and communicate any observations within 7 (seven) working days. FMEs are expected to consider these comments before proceeding with the appointment or change.
3. **Compliance responsibility**: FMEs and their controlling persons will be responsible for

ensuring that KMPs meet the eligibility criteria prescribed by the IFSCA, including being based out of an IFSC.

4. **Succession planning and timelines**: FMEs should have a structured succession plan to maintain operational continuity. A vacant KMP position will be filled within 3 (three) months of its occurrence, and such position cannot remain vacant for more than 6 (six) months.

## Amendment to the framework for aircraft lease for person(s) resident in India

IFSCA, *vide* circular dated February 26, 2025, issued an amendment to the framework for aircraft lease regarding transactions with person(s) resident in India. To enable purchase of assets covered by the aircraft lease framework by a lessor in IFSCs from the manufacturers of such assets in India, the following key amendments are made in the aircraft lease framework:

1. lessor is prohibited to purchase, lease or otherwise acquire any asset(s) covered under this framework, where post-acquisition, the asset will be operated or used solely by person(s) resident in India or provide services to person(s) resident in India; and
2. the abovementioned restriction will not apply if the acquisition is made from such a person(s) who is not a 'Group Entity' of the lessor or; the acquisition by a lessor is a part of sale and leaseback arrangement of such assets which are being imported into India for the first time, or; such asset(s) is acquired by the lessor from a manufacturer of such asset(s) in India.

This has replaced the earlier restrictions and conditionalities placed on Indian residents to sell, transfer, lease or otherwise dispose-off the assets to a finance company undertaking aircraft leasing activities in IFSC.

## Remote Trading Participants on the Stock Exchanges in IFSCs

In April 2024, IFSCA had permitted foreign entities not having a physical presence in IFSCs, to trade directly on the Stock Exchanges in the IFSC, on a proprietary basis, as Remote Trading Participants ("**RTP**"). On February 11, 2025, IFSCA issued a circular revising the eligibility criteria of RTPs. Now, foreign entities regulated by their home jurisdiction's securities market regulator are required to fulfil the below mentioned conditions (("**Regulated RTP Conditions**"), which were earlier required to be complied by all RTPs):

1. their country is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding or a signatory to the bilateral Memorandum of Understanding ("**MoU**") with IFSCA or has a bilateral MoU with IFSCA;
2. entities from countries flagged by the FATF for anti-money laundering concerns are excluded;
3. RTPs are permitted to trade only on proprietary basis (and not permitted to onboard clients) and such trading must only be transacted in cash-settled derivatives; and
4. RTPs are required to partner with an IFSCA-registered clearing member for clearing and settlement of transactions executed on the Stock Exchanges.

If a foreign entity is not regulated their home jurisdiction's securities market regulator, then in addition to the Regulated RTP Conditions, such RTP will have to be a member of any of the Stock Exchanges mentioned in the said circular.

This circular allows flexibility to a foreign entity regulated by its securities market regulator in its home jurisdiction to be a RTP without being a member of the notified Stock Exchanges.

It may be noted that the other conditions as mentioned under the circular of IFSCA in April 2024 for onboarding a RPT will continue to apply. These include:

1. an entity incorporated in India will not qualify to be onboarded by the Stock Exchanges as an RTP;
2. the RTP must be onboarded by the Stock Exchange in accordance with the IFSCA (Anti Money

Laundering, Counter Terrorist-Financing and Know Your Customer) Guidelines, 2022;

3. the Stock Exchanges will be responsible for specifying the terms and conditions for onboarding a RTP, *inter alia* including the risk management measures and code of conduct in relation to the RTP; and
4. the Stock Exchanges will have the operational flexibility to specify the net- worth criteria, security deposit, application fee, annual fee and any other additional conditions for onboarding an RTP.

## Insolvency Laws

### Mandatory use of eBKray auction platform for liquidation processes

To streamline the liquidation process and improve transparency in the liquidation process, IBBI, *vide* circular dated January 10, 2025, has directed all Insolvency Professionals ("**IPs**") handling liquidation processes to exclusively use the eBKray auction platform for conducting auctions for sale of assets during the liquidation process with effect from April 1, 2025. It has further directed that listing of unsold assets in all ongoing liquidation cases must be completed by March 31, 2025.

### IBBI amends liquidation process regulations

IBBI, *vide* notification dated January 28, 2025, has notified the IBBI (Liquidation Process) (Amendment) Regulations, 2025 amending the IBBI (Liquidation Process) Regulations, 2016. Some of the key amendments are as follows:

1. in addition to cases where the corporate debtor is sold as a going concern, the liquidator must submit an application along with the final report and the compliance certificate in Form H to the adjudicating authority for closure of the liquidation process of the corporate debtor even in cases where a compromise or arrangement has been sanctioned under Section 230 of the Companies Act;
2. IBBI must maintain and operate an account to be called the corporate liquidation account with a scheduled bank (earlier it had to be maintained with Public Accounts of India);
3. a new Regulation 47B dealing with filing of forms by the liquidator has been inserted; and
4. within 3 (three) days of declaring the highest bidder upon close of an auction (in case of sale of an asset to be sold through auction), the liquidator must conduct due diligence and verify the eligibility of the highest bidder.


## Insolvency laws

### IBBI amends the voluntary liquidation process regulations

IBBI, *vide* notification dated January 28, 2025, has notified the IBBI (Voluntary Liquidation Process) (Amendment) Regulations, 2025, which amends the IBBI (Voluntary Liquidation Process) Regulations, 2017 ("**Voluntary Liquidation Process Regulations**"). Some of the key amendments to the Voluntary Liquidation Process Regulations are as follows:

1. IBBI must maintain and operate an account to be called the corporate voluntary liquidation account with a scheduled bank (earlier it had to be maintained with Public Accounts of India);
2. a new Regulation 41A dealing with filing of forms by the liquidator has been inserted; and
3. Table B (Details of stakeholders entitled to unclaimed dividends or undistributed proceeds) of Form G (Deposit of Unclaimed Dividends and/or Undistributed Proceeds) is substituted.

## IBBI amends provision relating to grievance and complaint filing time period

IBBI, vide notification dated January 28, 2025, has notified the IBBI (Grievance and Complaint Handling Procedure) (Amendment) Regulations, 2025 which amends the IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017. In relation to filing of a grievance or a complaint under Regulation 3 of the said regulations, it was earlier provided that a grievance or a complaint can be filed after the prescribed period of 45 (forty-five) days, if there are sufficient reasons justifying the delay, but such period must not exceed 30 (thirty) days. It has now been clarified that this period of 30 (thirty) days is from the date of closure of all proceedings related to the process under the Insolvency and Bankruptcy Code, 2016 ("**IBC**") before the adjudicating authority, the appellate authority, the High Court, or the Supreme Court, as the case may be.

## Corporate Insolvency Resolution Process

### Amendments to the insolvency resolution process for corporate persons regulations

To streamline the Corporate Insolvency Resolution Process ("**CIRP**") relating to real estate projects, IBBI, *vide* notification dated February 3, 2025, has amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**"). By way of this amendment, the following new provisions were added:

1. the Resolution Professional ("**RP**"), after obtaining the approval of the Committee of Creditors ("**CoC**"), with not less than 66% of total votes, can hand over the possession of the plot, apartment, or building or any instruments agreed to be transferred under the real estate project and facilitate registration, where the allottee has requested for the same and has performed his part under the agreement;
2. in cases where a creditor class exceeds 1,000 (one thousand) members, the CoC may direct the RP or the Interim Resolution Professional ("**IRP**") to appoint a facilitator for sub-classes within that group subject to certain conditions. The facilitators, who must be IPs other than the RP or IRP or authorised representative, are responsible for facilitating communication and providing information about the insolvency process to creditors;
3. where the corporate debtor has any real estate project, the RP is required to prepare a report detailing the status of development rights and permissions required for development of such project ("**Development Report**"); submit the report to the CoC for its comments; and submit to the Adjudicating Authority, the Development Report along with the said comments of the CoC, on or before the 60th day from the insolvency commencement date;
4. where the corporate debtor has any real estate project, the CoC, for an association or group of allottees in such real estate project, representing not less than 10% or 100 (one hundred) creditors out of the total number of creditors in a class, whichever is lower, may relax the following conditions:
   a) eligibility criteria for submission of expression of interest as provided under Regulation 36A (4) (a) of the CIRP Regulations; and
   b) conditions regarding the refundable deposit; and
5. where the corporate debtor has any real estate project, the CoC may relax the requirement to provide for performance security (which is required to be provided for approval of the resolution plan) for an association or group of allotees in such real estate project, representing not less than 10% or 100 (one hundred) creditors out of the total number of creditors in a class, whichever is lower.

### Recent amendments to CIRP Regulations: Streamlining processes and enhancing outcomes

IBBI, *vide* notification dated May 19, 2025, notified the IBBI (Insolvency Resolution Process for Corporate

Persons) (Third Amendment) Regulations, 2025 and the IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2025 dated May 26, 2025 (collectively referred as "**Amendment Regulations**"), amending certain key provisions under the CIRP Regulations. The Amendment Regulations also include certain proposals that were presented for stakeholders' feedback.

## Key changes

1. **Form filings for CIRP:** IBBI has revamped the existing forms framework for monitoring the CIRP. The new framework consolidates the existing 9 (nine) forms (i.e. Form IP-1 and CIRP Forms 1-8) into 5 (five) forms (CP-1 to CP-5), making it a more simplified and streamlined framework, which aims at reducing time and effort spent by RPs on achieving these compliances.

2. **Monitoring by Interim Finance Providers:** The CIRP Regulations have been amended to empower the CoC to invite Interim Finance Providers ("**IFPs**") to attend CoC meetings as observers without voting rights. This amendment encourages funding by the IFPs, by enabling them to oversee the CIRP of the corporate debtor .

3. In other jurisdictions with developed insolvency framework, importance of rescue financing is recognised underscoring the global recognition of protection of IFPs in corporate restructuring. In Singapore, while interim financiers may not have a formal role in creditor deliberations, the Insolvency, Restructuring and Dissolution Act, 2018, facilitates super-priority rescue financing and promotes collaboration among stakeholders. The United Kingdom, through the Corporate Insolvency and Governance Act, 2020, supports the use of rescue financing during moratorium periods, acknowledging the critical contribution of such funding to successful restructurings. In the United States of America, Debtor-In-Possession ("**DIP**") financing under Chapter 11 of United States Bankruptcy Code plays a pivotal role in enabling distressed companies to continue operations and reorganise effectively. DIP lenders typically negotiate oversight mechanisms and key contractual protections that allow them to monitor the debtor's performance and assess future funding needs. Against this backdrop, the Amendment Regulations enabling IFPs to attend CoC meetings as observers is a timely step toward aligning with international best practices by fostering transparency and informed decision-making.

   Part wise resolution of corporate debtor: As per the framework under the pre amended CIRP Regulations, the RPs could only invite plans for sale of specific assets only if it has not received plans for resolution of the entire corporate debtor. This sequential approach could lead to extended CIRP timelines and deterioration in the value of corporate debtor's assets, particularly in the case of complex businesses where different businesses could attract specific investors possessing relevant expertise and interests. Pursuant to the Amendment Regulations, the RPs, upon CoC's direction, may invite concurrent expression of interest for submission of resolution plan for both the corporate debtor as a whole and for specific businesses or assets of the corporate debtor[12]. This not only provides greater flexibility but also aids in achieving timely resolution and value maximisation for the creditors.

4. **Clarifying the mechanism for priority in payment to dissenting financial creditors:** The CIRP Regulations have been amended to clarify that, in cases where the resolution plan provides for staggered payments, the dissenting financial creditors must be paid at least *pro rata* and in priority to financial creditors who voted in favour of the plan, at each stage[13]. The Amendment Regulations reinforces the principle established in *RBL Bank Limited vs. Sical Logistics Limited*[14], where the tribunal held that treating dissenting financial creditors on the same footing as, or in a less favourable position than, assenting financial creditors in situations involving deferred or staggered payments is contrary to the statutory protection granted to dissenting financial creditors under Section 30(2)(b) of IBC.

   Further, a 3 (three) judge bench of the Supreme Court in the matter of *Jaypee Kensington Boulevard Apartments vs. NBCC India Limited and*

[12] Regulations 36A(1) of the CIRP Regulations.
[13] Regulation 38(b) of the CIRP Regulations.
[14] Company Appeal (AT) (CH) (Ins) No.36/2024, National Company Law Appellate Tribunal, Chennai

*Ors.*[15] emphasised that payments to dissenting creditors must be made in cash, ensuring immediate liquidity and minimising the risks associated with non-cash compensation. By aligning the CIRP Regulations with judicial guidance and practical creditor protection mechanisms, the Amended Regulations represents a progressive step towards promoting equitable treatment of the financial creditors in the resolution process.

5. **Transparency in presentation of resolution plans**: Under the pre amended CIRP Regulations, the RP was obligated to present to the CoC only the resolution plans that complied with the requirements prescribed under the IBC. The Amendment Regulations mandate the RP to present all resolution plans received by the CoC, irrespective of their compliance status, to the CoC along with the details of non-compliant plans. The amendment ensures full transparency in the resolution process and makes the process more efficient and effective by reducing the likelihood of any potential disputes and litigations.

## Conclusion

As of March 2025, 1,194 (one thousand one hundred and ninety-four) CIRPs, which have yielded resolution plans took on an average 597 (five hundred and ninety-seven) days, excluding the time taken by the adjudicating authorities[16]. The intent of the IBC has been to facilitate speedy corporate debt resolutions with minimum deterioration in the asset value, leading to efficient revival of the corporate debtor. The Amendment Regulations are a further step towards effectuating this intent by making the resolution process more efficient, transparent and a step towards minimising protracted litigation.

## Intimation to IBBI on the appointment of IP under various processes under IBC

To streamline the process of appointment of an IP and ensure thorough and proper record-keeping, IBBI, *vide* circular dated February 11, 2025, has refined the assignment module to mandate IPs to add assignments on the IBBI's electronic portal upon their appointment in the prescribed processes and capacities including as IRP under the CIRP, RP under the CIRP, liquidator under the liquidation process. All IPs must adhere to the prescribed timelines for filing of assignment.

## Disclosure of information relating to carry forward of losses in information memorandum

IBBI, *vide* circular dated March 17, 2025, has directed IPs to enhance the disclosure of information related to carry forward of losses, as per the Income-tax Act, 1961, in the information memorandum. This section must prominently highlight, but is not limited to, the following aspects:

1. the quantum of carry forward losses available to the corporate debtor;
2. a breakdown of these losses under specific heads as per the Income Tax Act,1961;
3. the applicable time limits for utilising these losses; and
4. if there are no carry forward of losses available to the corporate debtor, the information memorandum should explicitly specify the fact.

This enhanced disclosure framework is intended to provide potential resolution applicants with a more comprehensive understanding of the corporate debtor's financial position, enabling them to develop more informed and viable resolution plans while considering the benefits of carry forward losses.

[15] Civil Appeal No. 3395 OF 2020

[16] https://ibbi.gov.in/uploads/publication/912e97d4d9f96651386541fb7059203b.pdf

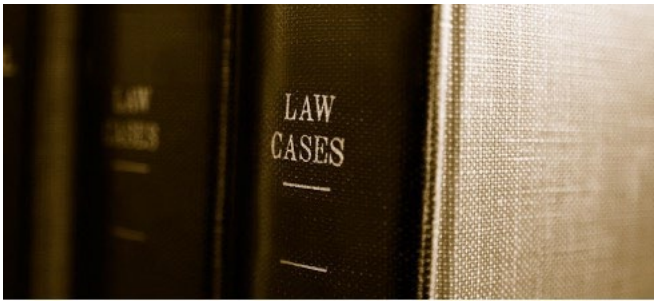
### New regulations requiring resolution professionals to report non-submission of repayment plans by personal guarantors

IBBI, *vide* notification dated May 19, 2025, has introduced a new provision pertaining to non-submission of repayment plan, stating that where no repayment plan has been prepared by the debtor under Section 105 of IBC, the RP must file an application, with the approval of the creditors, before the Adjudicating Authority intimating the non-submission of a repayment plan and seeking appropriate directions. Previously the IBC regulations lacked a defined procedure to deal with cases where the debtor does not submit a repayment plan, potentially stalling proceedings and creating legal uncertainty. By introducing this new provision, the Adjudicating Authority may terminate the insolvency resolution process for the personal guarantor, thereby enabling the debtor or creditor to file an application for bankruptcy.

### Guidelines for the appointment mechanism of IPs

IBBI, on May 27, 2025, introduced the Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2025 ("**Recommendation Guidelines**"). The Recommendation Guidelines have been brought in by the IBBI to increase efficiency in the process of appointment of IPs. The Recommendation Guidelines provide a procedure for preparing a panel IPs to act as IRP, liquidators, resolution professionals and bankruptcy trustees.

The panel of IPs prepared as per the Recommendation Guidelines will be effective from July 1, 2025, to December 31, 2025.




## Case laws

### For resolution plans involving combinations, resolution plan can be tabled for CoCs' approval only after obtaining the requisite approval by the Competition Commission of India

The Supreme Court by a 2:1 majority in ***Independent Sugar Corporation Limited vs. Girish Sriram Juneja and Ors***[17], has held that in case of resolution plans proposing a combination (i.e., a merger or amalgamation of the entities) of a corporate debtor, the Competition Commission of India ("**CCI**") must first grant the necessary approval before such resolution plan is placed before the CoC for its approval under Section 30(4) of IBC.

### Brief facts

1. This judgment arises out of the CIRP of Hindustan National Glass and Industries Limited ("**HGNIL**"/"**Corporate Debtor**"). In April 2022, 2 (two) resolution applicants, viz., AGI Greenpac Limited ("**AGI**") and Independent Sugars Corporation Limited ("**INSCO**") submitted their Resolution Plans for consideration ("**Resolution Plans**").
2. Since the resolution of the Corporate Debtor constituted a combination under the Competition Act, 2002 ("**Competition Act**"), these plans required the requisite CCI approval.
3. The RP of the Corporate Debtor permitted the resolution applicants to obtain the requisite CCI approval after receiving CoC's approval to its resolution plan, but prior to filing of a plan approval application with the National Company Law Tribunal ("**NCLT**").
4. Before the Resolution Plans were placed before CoC, AGI filed a merger notification in Form I on September 27, 2022, for its proposed acquisition of 100% of HNG's shareholding ("**First CCI Notification**"). The First CCI Notification was invalidated by CCI on October 22, 2022, directing AGI to refile the merger notification in Form II (the long form merger notification).

[17] 2025 INSC 124 (decided on January 29, 2025)

5. On August 25, 2022, CoC already approved the Resolution Plan submitted by AGI with 98% votes, whereas INSCO's Resolution Plan received only 88% votes. Accordingly, the RP filed its application seeking NCLT's assent to AGI's Resolution Plan under Section 31 of IBC.

6. In the meantime, AGI refiled the merger notification in Form II with CCI on November 3, 2022 ("**Second CCI Notification**"). Subsequently:

   a) CCI issued 2 (two) requests for information addressing gaps in AGI's Second CCI Notification;

   b) after reviewing the information provided by AGI, on February 9, 2023 (i.e., 98 (ninety-eight) calendar days (subject to clock-stops) after the Second CCI Notification was filed), the CCI formed a prima facie opinion that the transaction proposed under the Resolution Plan of AGI ("**Proposed Transaction**") was likely to cause appreciable adverse effect on competition ("**AAEC**") in certain relevant markets in India and issued a Show Cause Notice on February 10, 2023 ("**CCI SCN**"), directing AGI to demonstrate why a phase II review should not be initiated in respect of the Proposed Transaction;

   c) on March 10, 2023, AGI filed a response to the CCI SCN ("**SCN Response**"). As part of its SCN Response, AGI voluntarily proposed to divest the Rishikesh plant of the Corporate Debtor, as a modification to address the competition concerns raised by the CCI;

   d) on March 15, 2023, after considering all information provided by AGI and assessing the effectiveness of the voluntary modification in addressing potential AAEC, CCI conditionally approved the Proposed Transaction, subject to the modification ("**Approval Order**");

   e) the Approval Order was a reasoned order that included CCI's analysis in relation to the various competitive constraints imposed on AGI and the Corporate Debtor by the market forces. It also addressed the voluntary modification offered by AGI, which involved the divestment of a plant that was used in the manufacture and sale of container glass and was self-contained, such that it incentivises new entry/capacity enhancement and would provide the buyer with an additional market share of approximately 5%. To this end, CCI expressly noted that considering the proposed transaction in light of all relevant factors including the competitive constraints imposed by various market forces and the voluntary modification, the proposed transaction was not likely to cause any AAEC in the relevant market (as delineated in the Approval Order); and

   f) INSCO challenged the Approval Order before the NCLAT.[18]

7. Aggrieved with the developments of the CIRP of the Corporate Debtor, INSCO also filed an application before the NCLT challenging the approval granted by CoC to AGI's resolution plan,[19] given that the pre-condition of obtaining CCI approval for the proposed combination was taken only after CoC's approval.

8. On April 24, 2023, the NCLT rejected INSCO's application. Aggrieved, INSCO challenged the said order before NCLAT.[20]

9. By the order dated July 28, 2023, and September 18, 2023 ("**Impugned Orders**"), the NCLAT upheld CCI's approval to AGI's resolution plan, and observed that while the requirement of approval for a proposed combination by CCI was mandatory in nature, obtaining the same prior to the approval by CoC was only directory.

10. Aggrieved, INSCO proceeded to challenge the Impugned Orders before the Hon'ble Supreme Court.

## Issue

Whether CCI's approval for a proposed combination under a resolution plan must mandatorily precede the approval of the resolution plan by CoC, as envisaged under the proviso to Section 31(4) of IBC?

[18] Competition Appeal (AT) No. 7 of 2023
[19] I.A. No. 1497 of 2022
[20] Company Appeal (AT)(INS.) No. 735 of 2023


## Findings and analysis

The Supreme Court allowed INSCO's appeal and in the judgment, made the following relevant findings on the position of law:

### Interpretation of the proviso to Section 31(4) of IBC

1. The introduction of the proviso to Section 31 (4) of IBC and use of the term 'prior' makes it clear that the intent of the legislature was to create an exception in cases containing combination proposals, where the approval of CCI is to be procured prior to the approval of the CoC.
2. It is held that it is necessary for the courts to interpret the provisions in their natural sense, as it is through the words used in a provision that legislature expresses its intention. When the language is unambiguous, the court must respect its ordinary and natural meaning instead of wandering into the realm of speculation an unintended overreach invoking the so-called 'spirit of law'.
3. The language of the proviso to Section 31(4) of IBC appears to be clear with no ambiguity and in those situations, all words finding place in the provision must be given their due meaning.
4. The use of the word 'prior' in the proviso must be given some meaning as by virtue of the same, the statute requires that the act of obtaining CoC approval for the resolution plan must be done in a particular manner i.e. the necessary approval for the resolution plans containing combination proposals must be obtained prior to such plans, being granted CoC approval.
5. The notes on clauses and memorandum for the said provision also suggest that the approval from CCI for the combination must be procured prior to the approval of the resolution plan by the CoC.

### No fundamental disharmony between timelines under the Competition Act and the IBC

1. The timelines for approval stipulated under the IBC and the Competition Act are not disharmonious, except in rare circumstances involving an extremely high degree of AAEC, which may require a longer review period (i.e., a large part of the 210 (two hundred and ten) days stipulated under the extant merger regime of the Competition Act).
2. In 2022-2023, CCI disposed of combination applications in an average of 21 (twenty-one) working days. It further noted that there has been no recorded instance till date where CCI took more than 120 (one hundred and twenty) days to approve a transaction, and it is extremely rare for a transaction to take more than 120 (one hundred and twenty) days, to receive approval. Therefore, the Hon'ble Supreme Court emphasised that undue importance need not be given to such outlier, rare and extreme examples.
3. In cases of CIRP under the IBC, the trigger event for filing a merger notification need not be limited to the submission of the resolution plan to the resolution professional. Instead, the merger notification can be filed post the execution of *any* agreement, which conveys the decision to acquire control over a target company, allowing sufficient time for CCI clearance within the IBC framework.
4. The timeline under the IBC can be elongated in rare circumstances, where the delay cannot be ascribed to the parties (including in such instances where delay is caused by CCI's assessment of a transaction) (relied on *CoC Essar vs. Satish Kumar Gupta*).

### Relevance of CCI's scrutiny of a proposed combination in the IBC process

1. Any resolution plan must comply with all existing laws, including Section 6 of the Competition Act which holds any combination that leads to an AAEC in the relevant market, void. Therefore, CoC's approval cannot be granted until CCI decides on the legality of a proposed combination.
2. The proposed transaction was *prima facie* found to be in contravention of Section 6 of the Competition Act (given issuance of the SCN) and was only approved after AGI offered the voluntary modification. However, CoC approved the resolution plan prior to CCI's approval (i.e., before the modifications (i.e., divestments)) which ought to have been considered by CoC when approving the resolution plan.

### Procedural lapses under the Competition Act

1. CCI incorrectly issued the CCI SCN under Section 29(1) of the Competition Act only to AGI (i.e., acquirer) and not to the Corporate Debtor (i.e., target).
2. Both the acquirer and target are integral to the assessment of a combination, and not sending the CCI SCN to the target led to a procedural lapse, which undermined the fairness and completeness of the investigative process. The judgment interprets the use of the word 'parties' in plural form to mean that the CCI SCN must be addressed to both the acquirer as well as the target.
3. In cases where CCI forms a prima facie view that a transaction causes AAEC, CCI ought to thoroughly undertake the process prescribed under Section 29 of the Competition Act, which mandates a formal investigation (which is a far-reaching exercise of evidence-gathering and fact-finding) under the aegis of the Director General of CCI.

### Practical challenges posed by conditional approvals of CCI

1. The conditional approvals granted by CCI depends on the parties complying with such remedies in the future, whereas the CIRP process under the IBC is based on finality and decisiveness.
2. In this context, the Hon'ble Supreme Court highlighted certain concerns regarding the conditional approvals granted by CCI:
   a) the Hon'ble Supreme Court noted that the absence of a comprehensive monitoring mechanism creates a lacuna in enforcing conditional approvals;
   b) conditional approvals are not equipped to effectively mitigate risks that may arise during the interim period when such remedies are being implemented. The interim period is a regulatory vacuum which increases the likelihood of anti-competitive conduct;
   c) the risk/lacuna is further exaggerated by the absence of oversight mechanisms as there is no active regulatory check during the execution of CCI imposed remedies; and
   d) a divestiture may fail to achieve its intended purpose if the acquiring party lacks the capacity or intent to compete effectively in the market.
3. The Hon'ble Supreme Court also rejected AGI's objection to INSCO's *locus standi,* and distinguished the cases relied upon by the NCLAT, to finally allow the appeal by INSCO *(*Majority judgment by Hrishikesh Roy, J. and Sudhanashu Dhulia, J.*)*.

### Dissenting judgment (S. V. N. Bhatti. J.)

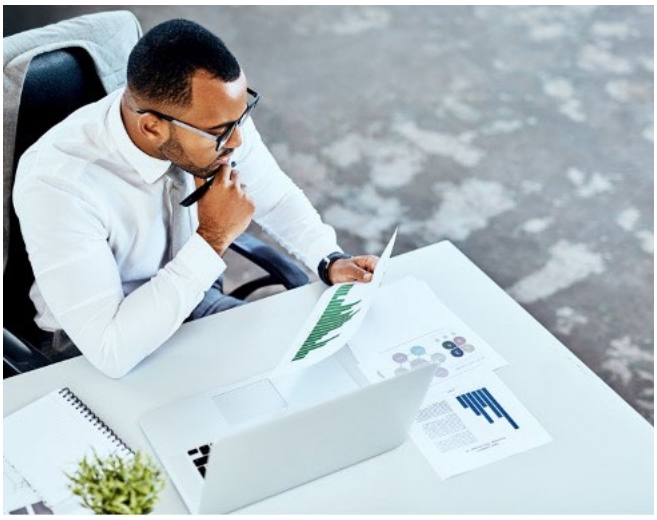
1. The Hon'ble Supreme Court was obliged to interpret the word 'shall' in the proviso to Section 31(4) of IBC as directory in nature so as to preserve the legislative effort and intent of the statute.
2. This conclusion was premised on the principle that the literal rule of interpretation may not necessarily be the tool of first resort merely because plain and simple words are found in the statute. IBC must be purposively interpreted so it does not cause undue hardship, inconsistency, or counteract the purpose of the legislation.
3. The literal interpretation of the proviso in isolation limits the number of eligible resolution applicants, thus defeating the core objects of the IBC, i.e. to maximise value for all stakeholders.
4. Therefore, to deem the proviso to be mandatory and compel prospective resolution applicants to

obtain CCI's approval *before* the stage of CoC approval (as contemplated in Section 30 of IBC), would amount to '*catapulting the proviso to a place not expressed by the parliament*', and cause undue hardship and difficulty to prospective resolution applicants.

## Conclusion

For a resolution plan containing a combination, CCI's approval of the resolution plan must be obtained before and consequently, CoC's examination and approval should be only after CCI's decision.

The statutory provision and legislative intent unequivocally affirm the mandatory nature of the Proviso to Section 31(4) of IBC.



## Observations

1. By requiring approval from CCI before CoC evaluates a resolution plan, the judgment aims to mitigate potential risks of combinations with high market shares which could cause prima facie concerns on market structures resulting from insolvency resolutions. This ruling tries to strike a balance between ensuring efficient debt resolution and maintaining competitive market conditions to ensure finality, ease of doing business while promoting fair competition in the market.
2. The decision underscores the necessity of strictly following procedural norms in insolvency proceedings. It reinforces the principle that statutory compliance, such as securing regulatory clearances is essential to preserving the credibility and effectiveness of the IBC framework.
3. That being said, the judgment also hinges the timelines of the CIRP process on the efficiency and timelines of CCI in granting its approvals. Effectively the 330 (three hundred and thirty) days period prescribed under the IBC may be reduced to the extent of the time taken by the CCI in granting its approval.
4. This judgment assumes the importance of the complimenting interplay between the IBC and the Competition Act, to achieve the collective objectives of the respective legislations in a timely, efficient and effective manner.
5. This judgment tries to provide clarity on the merger control process under the Competition Act and provides direction in terms of involvement of both parties (i.e., the target and acquirer). However, this is not in line with the regulations and 14 (fourteen) years old merger regime practice of target having a limited tole in an acquisition. It is important to note that merger control under the Competition Act is a trust-based process where parties and the combination division of CCI work collaboratively to ensure that combinations do not cause AAEC, while at the same time activity in India by way of mergers and acquisitions is not hindered. To this end, the combination regulations allow the parties to file voluntary remedies and voluntary commitments. This mechanism has been enacted to make competition regulation business friendly to avoid time consuming scrutiny and investigation, while ensuring that the merger control regime meets its intended objective. Therefore, while CCI ought to follow the procedural rigour prescribed under the Competition Act and the accompanying regulations, putting every transaction through the same rigour would have the unintended consequence of slowing down commerce. Further, given merger control is *ex ante* and involves significant disclosure of current and forward looking competitively sensitive data of the parties, CCI has rightly ring-fenced access to such data and to date has not involved the DG in any investigation even post issuance of an SCN.
6. AGI has filed for a review of this judgment. It is to be seen whether the Hon'ble Supreme Court would be willing to reconsider its findings within the narrow scope of its review jurisdiction.

## Interim moratorium under IBC does not bar execution of regulatory penalties against the personal guarantor

The Supreme Court in the case of ***Saranga Anilkumar Aggarwal vs. Bhavesh Dhirajlal Sheth and Ors.***[21], held that the interim moratorium on personal guarantors under Section 96 of IBC does not extend to regulatory penalties (such as those imposed under consumer protection laws). This judgment reaffirms that such penalties remain enforceable despite the ongoing insolvency process.

### Brief facts

Several homebuyers ("**Respondent Nos. 1 and 2**") filed consumer complaints before the National Consumer Disputes Redressal Commission ("**NCDRC**") against East & West Builders (RNA Corp. Group Co.) ("**Appellant**"), a real estate developer. The complaints were arising out of the Appellant's failure to deliver possession of residential units within the agreed timeline. By final judgment and order dated August 10, 2018, the NCDRC imposed 27 (twenty-seven) penalties on the Appellant for deficiency in service and directed the Appellant to complete construction, obtain occupancy certificates, and hand over possession of residential units to the homebuyers.

Respondent Nos. 1 and 2, as decree holders, filed execution applications before the NCDRC, seeking enforcement of the penalty orders, since the Appellant failed to comply with the NCDRC's directions.

Subsequently, an application under Section 95 of IBC was filed against the Appellant, triggering an interim moratorium under Section 96 of IBC.

Accordingly, the Appellant filed an application before the NCDRC seeking a stay of the execution proceedings, on the grounds that the interim moratorium barred further legal actions. By order dated February 7, 2024, the NCDRC rejected the Appellant's application, holding that consumer claims and penalties did not fall within the scope of the moratorium under IBC.

Aggrieved, the Appellant challenged the NCDRC's decision by filing a civil appeal before the Supreme Court.

### Issue

Does the interim moratorium under Section 96 of IBC extend to regulatory penalties imposed by bodies like the NCDRC?

### Findings and analysis

The Supreme Court upheld the NCDRC's order dated February 7, 2024, and dismissed the Civil Appeal. It ruled that the interim moratorium under the IBC does not bar regulatory penalties imposed under the Consumer Protection Act, 2019. The Supreme Court reasoned as follows:

1. **Moratorium under IBC does not preclude the imposition of regulatory penalties**: The Supreme Court distinguished financial liabilities from regulatory penalties, holding that the moratorium provisions under IBC are intended to safeguard the financial viability of the debtors, but do not to exempt them from the legal consequences of statutory violations.

   The Supreme Court clarified that the penalties imposed by the NCDRC do not constitute recovery proceedings for financial debt by a creditor. Instead, these penalties serve as a punitive function to enforce statutory compliance and uphold public interest.

2. **Scope of moratorium under IBC**: The Supreme Court clarified that Section 96 of IBC imposes an interim moratorium only on legal proceedings concerning 'debt' when insolvency proceedings commence against individuals and personal guarantors. It was held that consumer protection penalties fall outside this definition, as they

[21] Civil Appeal No. 4048 of 2024, Supreme Court (decided on March 4, 2025)

function to penalise unfair trade practices rather than enforce financial obligations.

Similarly, the Supreme Court affirmed that the moratorium under Section 14 of IBC, which applies to corporate debtors, does not cover criminal or regulatory penalties aimed at ensuring compliance with statutory mandates.

3. **IBC cannot serve as a shield against consumer protection laws**: The Supreme Court noted that staying regulatory penalties would establish a dangerous precedent, enabling insolvent entities to evade liability for consumer rights violations solely by invoking insolvency proceedings.

   The Supreme Court further clarified that the IBC seeks to only facilitate financial resolution. It does not absolve corporate debtors or individuals of their statutory obligations under consumer protection laws or other regulatory frameworks.

   Lastly, it was held that granting a moratorium on such penalties would undermine the consumer protection laws and diminish the accountability of developers towards homebuyers.

## Conclusion

The Supreme Court ruled that the interim moratorium under Section 96 of IBC does not protect regulatory penalties imposed under consumer protection laws. The Appellant was ordered to comply with the penalties within 8 (eight) weeks, reinforcing the principle that insolvency proceedings cannot be used as a mechanism to avoid statutory duties.

This judgment clarifies the boundaries of the IBC's moratorium provisions, ensuring that entities cannot exploit insolvency proceedings to avoid regulatory penalties. It upholds the integrity of consumer protection laws by affirming that penalties serving public interest are not to be stayed under the IBC moratorium. The decision also highlights the judiciary's commitment to preventing the misuse of legal frameworks, ensuring that insolvency mechanisms are not abused to circumvent statutory duties. Overall, the ruling reinforces the balance between facilitating corporate debt resolution and protecting consumer rights.

## Supreme Court re-affirms the principle of limited judicial interference by the Adjudicating Authority in approved resolution plan

In a landmark ruling, the Supreme Court in ***Piramal Capital and Housing Finance Limited vs. 63 Moons Technologies Limited and Ors.***[22], re-affirmed the limited scope of judicial review available to the Adjudicating Authority under the IBC and further upheld the commercial wisdom of CoC.

### Brief facts

1. Dewan Housing Finance Corporation Limited ("**DHFL**"), a housing finance and Non-Banking Financial Company ("**NBFC**") regulated under the National Housing Bank Act, 1987 ("**NHB Act**") and the RBI Act, was accused of committing financial scams, including *inter alia* loan frauds and money laundering.
2. RBI, having found DHFL's conduct detrimental to the interests of depositors and creditors, superseded its board of directors under Section 45-IE of the RBI Act and appointed an administrator.
3. Subsequently, the RBI filed a petition before the NCLT under Section 227 of IBC for initiating CIRP against DHFL.
4. Thereafter, the administrator, who was also appointed as the Resolution Professional, constituted the CoC. Piramal Capital and Housing Finance Limited ("**Appellant**") submitted its

[22] Civil Appeal Nos. 1632 – 1634 of 2022 (decided on April 1, 2025)

Resolution Plan, which was later approved by the CoC ("**Piramal Resolution Plan**").

5. The Piramal Resolution Plan was submitted for approval before the NCLT under Section 31 of IBC. However, 63 Moons Technologies Limited ("**63 Moons**"), a creditor/ NCD holder of DHFL, challenged the Piramal Resolution Plan before the NCLT on the ground that it provided for the benefits accrued from recoveries under Section 66 of IBC, to go to the Appellant. The NCLT, however, approved the Piramal Resolution Plan and, by a separate order, dismissed the application filed by 63 Moons.

6. Aggrieved by the dismissal, 63 Moons preferred an appeal before NCLAT, which, *vide* its impugned order, directed the CoC to reconsider the Piramal Resolution Plan, specifically the clause on appropriation of Section 66 of IBC recoveries by the Appellant. Similarly, aggrieved by the approval of the Piramal Resolution Plan, other interested parties, such as ex-directors/promoters and Fixed Deposit ("**FD**") holders of DHFL, also filed appeals before the NCLAT which were also decided by the NCLAT.

7. Resultantly, the appeals filed before the Supreme Court, challenging the NCLAT's decisions were divided by the Supreme Court into 3 (three) categories:

   a) statutory limits on recoveries from avoidance transactions;

   b) rights of FD and NCD holders; and

   c) rights of ex-promoters/directors.

## Issues

1. What is the extent and scope of judicial review exercisable by the NCLT under Section 31 of IBC and by the NCLAT under Section 61 of IBC?

2. Whether the Piramal Resolution Plan approved by the CoC and the NCLT was in contravention of any prevailing laws, thereby necessitating the NCLAT to exercise its jurisdiction under Section 61 of IBC?

## Findings and analysis

### Re: Limited scope of judicial review by the Adjudicating Authority

1. The 'Statement of Objects and Reasons' of the IBC emphasises that IBC's primary aim is to ensure a time-bound resolution process, maximise asset value, and balance stakeholder interests.

2. Section 31 of IBC empowers the NCLT to approve a resolution plan if it meets the requirements under Section 30(2) of IBC. As such, the NCLT's role is limited to verifying compliance with Section 30(2) of IBC without assessing the resolution plan's commercial viability.

3. Similarly, Section 61 of IBC restricts NCLAT's appellate jurisdiction to specific grounds, such as legal violations or procedural irregularities, thereby underlining the limited scope of judicial interference.

4. Once the resolution plan is approved by the CoC and is placed before the NCLT for its approval under Section 31 of IBC, the NCLT *has only to see* whether the Resolution Plan as approved by the CoC meets the requirements as referred to in Section 30(2) of IBC. If the resolution plan fails to do so, only then can it be rejected under Section 31(2) of IBC.

5. The Supreme Court held that NCLAT transgressed its jurisdiction under Section 61 of IBC by tinkering with the isolated clauses of the approved Piramal Resolution Plan. It was observed that modifying the approved Piramal Resolution Plan on the ground that the Appellant could not have appropriated such recoveries was *not only ex facie* fallacious and erroneous but also demonstrated utter disregard for the settled legal position followed in a catena of decisions.

### Re: Supremacy of 'Commercial Wisdom' of the CoC

1. The Supreme Court reiterated that it is no more *res integra* that the legislature has given paramount

importance to the '*commercial wisdom*' of CoC and that the scope of the judicial review by the NCLT or NCLAT is narrowly confined and restricted to the extent provided under Section 31 and Section 61 of IBC respectively.

2. The Supreme Court also analysed and relied upon the decisions rendered by it in *K. Sashidhar vs. Indian Overseas Bank*[23], *Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Ors.*[24] and *Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta* [25], and observed that the NCLT cannot substitute its own view for the CoC's commercial decision. Similarly, in *Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Ltd and Anr.*[26], the Supreme Court reinforced that the NCLT is prohibited from second-guessing the commercial wisdom of the CoC or directing unilateral modification of the Resolution Plan.
3. In the present case, the Resolution Plan approved by the CoC was an outcome of the commercial bargain struck between the Appellant and the CoC after several rounds of negotiations and deliberations. Thus, the 'Commercial Wisdom' of the CoC could not have been doubted by the NCLAT.

## Re: Distinction between avoidance transactions and fraudulent trading under the IBC

1. The Supreme Court observed that applications filed in respect of 'Fraudulent and Wrongful trading' carried on by DHFL under Section 66 of IBC could not be termed as 'Avoidance Applications" used for applications filed under Sections 43, 45 and 50 of IBC to avoid or set aside the preferential, undervalued or extortionate transactions, as the case may be.
2. It was noted that there is a clear demarcation of powers of the NCLT to pass orders in the avoidance applications filed under Sections 43, 45 and 50 falling under Chapter III of Part II of IBC and the applications filed regarding fraudulent and wrongful trading, under Section 66 falling under Chapter VI of Part II of IBC.
3. If the Resolution Professional has filed common applications under Sections 43, 45, 50 of IBC and also under Section 66 of IBC, NCLT will have to distinguish the same and decide as to which provision would be attracted to which of the applications and then exercise the powers and pass the orders in terms of the provisions of IBC.

## Re: No violation of rights of NCD and FD holders

1. A provision in the Resolution Plan for the appropriation of recoveries under Section 66 of IBC to the Appellant did not violate the rights of the NCD holders primarily because it was not in contravention of the provisions of the IBC and also because the NCD holders had voted overwhelmingly in favour of the Resolution Plan of the Appellant.
2. The Supreme Court held creditors who fail to raise timely objections and vote in favour of the resolution plan are barred from challenging it at a later stage.
3. The Supreme Court also rejected the contention of FD holders alleging unequal treatment under the Resolution Plan, which provided full repayment only to those with claims of up to INR 2,00,000 (Indian Rupees two lakh), while others were to receive a pro-rata distribution based on liquidation value.
4. The Supreme Court clarified that there is no statutory requirement mandating full repayment of deposits under Section 36A of the NHB Act, Section 45-QA of the RBI Act, or any other relevant provision, as contended by the FD holders.

## Re: Rights of the Ex-promoters/directors to participate in the CIRP

1. Lastly, dismissing the appeals filed by the ex-promoters and directors of DHFL, the Supreme Court observed that while suspended directors under Section 24 of IBC have a right to attend CoC

[23] (2019) 12 SCC 150
[24] (2021) 9 SCC 657
[25] (2020) 8 SCC 531
[26] (2022) 2 SCC 401

meetings without voting, superseded directors lack such entitlement.

2. Supreme Court distinguished between 'supersession' under the RBI Act and 'suspension' under the IBC, noting that the former permanently vacated the directors' offices, unlike the temporary effect of the latter.

## Conclusion

The Supreme Court reinforced the limited scope of judicial review under the IBC and reiterated that the NCLT and NCLAT cannot interfere with the 'Commercial Wisdom' of the CoC, except on specific grounds under Sections 30(2) and 61 of IBC.

The Court emphasised that once the CoC approves a resolution plan with the requisite majority, the NCLT's or NCLAT's role is restricted to checking legal compliance and not evaluating commercial merits. An approved resolution plan attains finality and the same is necessary to give effect to the CIRP of the corporate debtor.

## Supreme Court clarifies non-applicability of moratorium under the IBC to proceedings under the Negotiable Instruments Act, 1881

In a landmark ruling, a 2 (two) judge bench of the Supreme Court in the case of ***Rakesh Bhanot vs. M/s. Gurdas Agro Private Limited***[27] held that proceedings under Section 138 of the Negotiable Instruments Act, 1881 ("**NI Act**") cannot be stayed merely because a personal guarantor initiates insolvency resolution under Section 94 of IBC. The Supreme Court emphasised that the interim moratorium under Section 96 of IBC applies only to civil debt recovery, not criminal liability arising from cheque dishonour.

### Brief facts

1. M/s Gurdas Agro Private Limited ("**Respondent**") filed a complaint under Section 138 of NI Act, against M/s Arjun Mall Retail Holdings Private Limited through its directors, Rakesh Bhanot ("**Appellant**") and others before the Judicial Magistrate First Class, Bathinda, ("**Trial Court**") for dishonour of cheques for insufficiency of funds.
2. During the pendency of the aforesaid proceedings, the Appellant filed an application under Section 94 of IBC before the NCLT, Chandigarh Bench seeking initiation of personal insolvency proceedings.
3. In view of the pending Section 94 application and the operation of interim moratorium under Section 96 of IBC, the Appellant moved an application before the Trial Court seeking adjournment of the Section 138 proceedings *sine die*. The said application was rejected by the Trial Court.
4. Aggrieved by the rejection, the Appellant preferred a criminal petition under Section 482 of the Code of Criminal Procedure, 1973, before the High Court of Punjab and Haryana, which was also dismissed. Challenging the same, the lead criminal appeal was filed by the Appellant before the Supreme Court.
5. Notably, the Appellant contended that the moratorium under Section 96 of IBC should be interpreted broadly to encompass criminal proceedings under Section 138 of the NI Act, as these arise from non-payment of a debt. The Respondent argued that the moratorium was intended only for civil recovery actions and not for penal proceedings, which serve a public interest by upholding the integrity of negotiable instruments.

### Issue

Whether the interim moratorium under Section 96 of IBC automatically stays criminal proceedings under

[27] Criminal Appeal No.1607 of 2025; (2025 INSC 445) (decided on April 4, 2025)

Section 138 read with Section 141 of the NI Act against personal guarantors/directors?

## Findings and analysis

### Re: Moratorium cannot be misconstrued as a means to avoid criminal accountability

1. The Supreme Court examined the statutory language and legislative intent of Sections 94, 96, and 101 of IBC. Briefly, Section 94 of IBC provides for a situation wherein a debtor may approach the Adjudicating Authority for initiation of personal insolvency resolution process. Section 96 of IBC deals with the commencement of interim moratorium from the date of application filed under Section 94 of IBC in relation to all debts, i.e., deemed stay on any legal proceeding pending against the debtor concerning any debt. It held that the interim moratorium under Section 96 is designed to provide debtors with a temporary shield from civil recovery actions during the pendency of insolvency resolution, not to insulate them from criminal liability for statutory offences like dishonour of cheque.
2. The Supreme Court also held that the object of moratorium or the right of a debtor to approach the NCLT under Section 94 of IBC is not to stall criminal prosecution or any proceedings unrelated to the recovery of the debt. The term "*any legal action or proceedings*" does not mean "*every legal action or proceedings*". It must be interpreted to mean only proceedings concerning recovery of debt by invoking the principles of *noscitur a sociis*.

### Re: The statutory liability against the directors under Section 138 of the NI Act continues to bind natural persons irrespective of any moratorium

1. The Supreme Court distinguished between actions for debt recovery (civil in nature) and prosecutions under Section 138 of the NI Act (criminal in nature). It observed that while the former may be stayed during the moratorium under the IBC, the latter are penal proceedings aimed at maintaining commercial discipline and trust in negotiable instruments.
2. The Supreme Court relying on *P. Mohanraj vs. Shah Brothers Ispat Private Limited*[28] and *Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Limited*[29] reaffirmed that the moratorium under the IBC does not extend to criminal prosecutions. The Supreme Court emphasised that the object of the IBC is to facilitate resolution of financial distress, not to provide a refuge from personal criminal liability.
3. The Supreme Court further clarified that even if the underlying debt is extinguished or restructured through insolvency proceedings, the personal criminal liability of signatories or directors under Section 138 of the NI Act persists. The acceptance of a resolution plan under Section 31 of IBC or the operation of a moratorium does not absolve individuals from prosecution for dishonour of cheque.

## Conclusion

1. The Supreme Court's judgment provides much needed clarity on the interplay between insolvency proceedings and prosecutions for dishonour of cheques. The interim moratorium under Section 96 of IBC is limited to civil actions for recovery of debt and does not shield individuals from criminal liability under Section 138 of the NI Act. This ensures that the statutory deterrence against dishonour of cheques remains robust, and the integrity of commercial transactions is preserved.
2. The judgment also comes down heavily on attempts to misuse insolvency mechanisms as a shield against criminal accountability, reinforcing

[28] (2021) 6 SCC 258

[29] (2023) 10 SCC 545

the principle that insolvency is a process for resolution, not a refuge from liability.

3. The Supreme Court emphasised that the object of the IBC is to facilitate the resolution of genuine financial distress and not to provide a refuge for individuals seeking to evade statutory penal consequences. The ruling demonstrates that the phrase "*legal action or proceeding in respect of any debt*" in Section 96 of IBC must be interpreted in the context of civil proceedings for debt recovery and cannot be stretched to include criminal prosecutions which are fundamentally punitive and serve public interest.
4. The Supreme Court has further highlighted that the provisions for moratorium under the IBC are designed to offer a breathing space to enable reorganisation of financial affairs without the immediate threat of creditor actions. The provisions of moratorium flow with the overall scheme of a complete resolution such that the business of the debtor or corporate debtor can be started with a fresh slate or can be liquidated if resolution is not a viable option. Thus, in no way can a moratorium be interpreted to mean that it absolves an individual from criminal liability.
5. The Supreme Court has further clarified that the proceedings under Section 138 of the NI Act are not primarily for recovery of debt but rather for initiating criminal action against issuer of dishonoured cheque.
6. This judgment therefore ensures that creditors retain the ability to pursue both insolvency remedies and criminal prosecutions against defaulting companies and its directors, in turn maintaining the integrity of the financial system. It prevents the misuse of insolvency proceedings as a tool for delaying or avoiding criminal accountability and reinforces the legislative intent behind both the IBC and the NI Act.

## Supreme Court: Arbitral claims extinguished upon approval of resolution plan

The Supreme Court in the case of ***Electrosteel Steel Limited vs. Ispat Carrier Private Limited***[30], held that upon approval of an insolvency resolution plan, all claims related to a pending arbitration proceeding covered under the resolution plan stand extinguished. Consequently, any arbitral award passed after approval of the resolution plan is rendered a nullity.

The Supreme Court allowed an appeal against the order of the High Court of Jharkhand at Ranchi[31] ("**Jharkhand HC**") which had directed Electrosteel Steel Limited ("**ESL**") to comply with the award of West Bengal Micro, Small and Medium Facilitation Council ("**Facilitation Council**").

### Brief facts

1. Ispat Carrier Private Limited ("**ICPL**") had filed claim petitions against Electrosteel Limited ("**ESL**") before the Facilitation Council under the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSME Act**"). Under the MSME Act, the arbitration proceedings were commenced on account of failed conciliation. During the pendency of the arbitration proceedings, ESL was admitted into the CIRP pursuant to an order passed by the NCLT, Kolkata. Consequently, a moratorium was imposed under the IBC, leading to the arbitration proceedings before the Facilitation Council being kept in abeyance.
2. ICPL submitted its claim before the resolution professional, which was partially admitted. Vedanta Limited submitted a resolution plan wherein all claims of operational creditors were settled at nil. This resolution plan was duly approved by both the committee of creditors and the NCLT, resulting in the lifting of the moratorium on ESL. The approved resolution plan was challenged by certain operational creditors before the NCLAT and the Supreme Court; however, those challenges were dismissed. Notably, ICPL did not challenge the approved resolution plan.
3. Upon lifting of the moratorium, the Facilitation Council resumed the arbitration proceedings and

[30] Civil Appeal No. 2896 of 2024 (decided on April 21, 2025)

[31] CMP No. 376 of 2003

passed an award upholding the claims of ICPL. ESL did not challenge the award under the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). Consequently, ICPL filed an execution petition before the Commercial Court, Bokaro ("**Executing Court**"), which was opposed by ESL on the ground that ICPL's claim was already settled at nil under the resolution plan and the award was illegal under law. The Executing Court dismissed the application challenging the execution of the award on the ground that the ESL had not challenged the award under Section 34 of the Arbitration Act. Aggrieved by the above order, ESL filed a petition before the Jharkhand HC.

4. The Jharkhand HC held that a plea of nullity concerning an arbitral award can be raised in an execution proceeding under Section 47 of the Civil Procedure Code, 1908 ("**CPC**") but such a challenge would lie within a very narrow compass and consequently rejected ESL's petition by holding that an objection under Section 47 of CPC can be taken in an execution proceeding only if the award was duly challenged under the Arbitration Act. The Jharkhand HC further held that the Facilitation Council had the jurisdiction to proceed and pronounce the award even after the resolution plan was approved. Aggrieved by the above order, ESL filed an appeal before the Supreme Court.

## Issues

1. In the absence of a challenge to the arbitral award under Section 34 of the Arbitration Act, can an objection under Section 47 of the CPC be maintained by contending that the arbitral award is rendered a nullity and therefore not capable of execution?
2. Is it permissible in the present case to challenge the arbitral award as being a nullity and consequently non-executable, on the grounds that fall within the legally recognised parameters for raising such a plea?
3. Notwithstanding the question of maintainability of an objection under Section 47 of CPC, did the Facilitation Council, on the facts of the case, cease to have jurisdiction to adjudicate and render the arbitral award, owing to the petitioner's insolvency resolution plan having been duly approved under Section 31 of IBC?

## Decision of the Supreme Court

The Supreme Court held that an award being null and void on grounds of jurisdictional infirmity can form part of the subject matter of objection even in an execution proceeding under Section 47 of CPC and such objection is not dependent or contingent upon filing of petition challenging the award under the Arbitration Act.

The Supreme Court further held that the lifting of the moratorium would not revive ICPL's claim, as the claim stood extinguished under the approved resolution plan. Therefore, the Facilitation Council lacked jurisdiction to arbitrate the claim.

## Conclusion

The Supreme Court has reasserted the well settled position that once a resolution plan is approved under the IBC, all claims outside the plan's purview are extinguished and no person can pursue any proceedings regarding the claims not included in the resolution plan. The Supreme Court echoed its ruling in *Essar Steel India Limited, Committee of Creditors vs. Satish Kumar Gupta*[32], wherein it had declared that a successful resolution applicant cannot be confronted with undecided claims after a resolution plan is accepted, as this would lead to uncertainty about the amount payable by the resolution applicant.

[32] (2020) 8 SCC 531

## Supreme Court set aside JSW Steel's Resolution Plan for Bhushan Steel and Power Limited; NCLT directed to initiate liquidation proceedings

The Supreme Court's decision in the case of ***Kalyani Transco vs M/s Bhushan Steel and Power Limited***[33] and connected appeals raises some serious legal issues. From the public domain, it is understood that parties are considering filing review and curative petitions. Without expressing any views on the judgment, set out below is a summary of the key findings and directions of the Supreme Court. While the implications and implementation of this judgment is yet to fully unfold, the findings summarised below can offer a quick check-point for stakeholders participating in any CIRP.

The Supreme Court set aside the judgment of the NCLAT that upheld the Resolution Plan ("**the Plan**") submitted by JSW Steel Limited ("**JSW**") for insolvency resolution of Bhushan Steel and Power Limited ("**BPSL**").

Procedural infirmities led the Supreme Court to direct the NCLT to initiate liquidation proceedings against BPSL; triggering the requirement for JSW to hand- back BPSL and for the creditors to refund the resolution plan recoveries to JSW by CoC.

### Brief facts

CIRP against BPSL commenced on July 26, 2017, based on an application filed by the Punjab National Bank. Resolution plans were submitted by JSW Steel, Tata Steel, and Liberty House. JSW's Plan was approved by the CoC and approved by the NCLT on September 5, 2019, subject to various conditions.

Enforcement Directorate ("**ED**") provisionally attached BPSL's assets under the Prevention of Money Laundering Act, 2002 ("**PMLA**") on October 10, 2019.

Various parties including, JSW (as the Successful Resolution Applicant ("**SRA**")) and some operational creditors appealed against the NCLT approval order. JSW was aggrieved by the conditions imposed by the NCLT while approving the Plan and the operational creditors were aggrieved by the treatment of their claims. JSW also appealed against the attachment of the assets, in light of Section 32A[34] of IBC.

The NCLAT, as an interim relief, had stayed the Plan in so far it related to creditors payment. Eventually, the NCLAT, *vide* its decision dated February 17, 2020 ("**Impugned Judgment**"), allowed JSW's appeal, upheld the Plan with some modifications and dismissed other appeals challenging the Plan.

### Key findings in the Impugned Judgment

1. **Provisional attachment of assets by the ED under the provisions of PMLA**: NCLAT held that ED lacked powers to attach the assets of BPSL after the approval of the Plan since the assets of a corporate debtor are protected under Section 32A of IBC.

   It is pertinent to note that in a separate proceeding before the Supreme Court, arising out of a challenge by the CoC to the provisional attachment of assets of BPSL[35], the Supreme Court directed the ED to hand over the attached assets to BPSL. The said order was passed by the Supreme Court in light of the peculiar fact that ED had attached the

[33] Civil Appeal No. 1808 of 2020 (decided on May 2, 2025)

[34] Inserted in IBC with effect from December 28, 2019; "32A. Liability for prior offences, etc.--(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-- (a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or (b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court...."

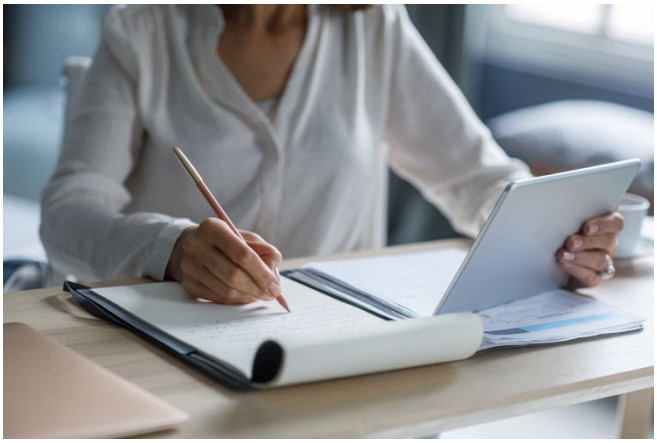
[35] Civil Appeal Nos. 14503-14504 of 2024

assets after the NCLT had approved the Plan. However, the Supreme Court left open the question regarding the interpretation of Section 32A of IBC regarding the powers of the ED to attach the property of a corporate debtor which is undergoing insolvency resolution process.

2. **Statutory dues and waivers**: The NCLT, while approving the Plan, had directed that the statutory concessions had to be separately sought by JSW from competent authorities. The NCLAT modified this direction to clarify that all statutory dues, penalties, and charges would stand settled per the approved Plan.
3. **Earnings before Interest, Tax, Depreciation and Amortisation ("EBITDA")**: The NCLT had directed distribution of EBITDA/profits generated by BPSL during CIRP among the creditors. However, the NCLAT modified this direction and held that the monitoring committee and the RP can make distributions of EBITDA as per the 'Request For Proposal'.
4. **Treatment of the undecided claims**: The NCLT granted the parties, whose claims remained undecided in the Plan, liberty to agitate the same before the appropriate forums. However, the NCLAT, relying on the clean slate theory held that no undecided claims could be raised against the SRA.

Against the Impugned Judgment, multiple appeals were filed before the Supreme Court. These appeals were filed by various operational creditors (M/s Kalyani Transco, Medi Carrier Pvt. Ltd., CJ Darcl Logistics Ltd. and Jaldhi Overseas Pte Limited); Government authorities (Government of Odisha); and Mr Sanjay Singal (erstwhile promoter of BPSL/personal guarantor).

Notably, during the pendency of the civil appeals before the Supreme Court, the Plan continued to be implemented and JSW also made payments as per the terms therein. JSW made part payments to the financial creditors in March 2021 and part payments to operational creditors in March 2022.



## Issue

1. **Appeal maintainability under Section 62 of IBC**: Whether operational creditors, ex-promoters, and government authorities had the *locus standi* to appeal to the Supreme Court under Section 62 of IBC, based on the concept of 'person aggrieved' as clarified in *Glas Trust Company LLC vs. Byju Raveendran and Ors.*[36].
2. **JSW's appeal under Section 61 of IBC**: Whether JSW, as the successful resolution applicant, could challenge NCLT's conditions on its approved plan under Section 61(1) & 61(3) of IBC, considering the limited appeal grounds in IBC and as outlined in *K. Sashidhar vs. Indian Overseas Bank and Ors.*[37]
3. **Plan compliance with IBC**: Whether the Plan met mandatory requirements of Section 30(2) of IBC and Regulation 38(1) of the CIRP Regulations and the CIRP timelines, especially concerning fair treatment and payment priority to operational creditors.
4. **Eligibility verification under Section 29A of IBC**: Whether the RP properly verified JSW's eligibility as per Section 29A of IBC and Regulation 39(4) of the CIRP Regulations, including affidavit and Form H submission.
5. **Jurisdiction over PMLA attachments**: Whether NCLT/NCLAT had jurisdiction to interfere with ED's provisional attachments under PMLA, in light of *Embassy Property Developments Private Limited vs State of Karnataka and Ors.*[38] and Section 60(5)(c) of IBC.
6. **Delay in plan implementation and conduct of SRA/CoC**: Consequences of JSW's delay in

[36] 2024 SCC OnLine SC 3032
[37] (2019) 12 SCC 150
[38] (2020) 13 SCC 308

implementing the resolution plan and CoC's inconsistent conduct with respect to the extension of timelines for implementation of the plan in light of *State Bank of India vs. Consortium of Murari Lal Jalan and Florian Fritsch and Anr.*[39].

7. **Compliance by the Stakeholders**: Whether the RP and COC fulfilled their obligations as stipulated under the provisions of IBC.

## Findings and analysis

1. **Compliance of Section 29A of IBC**: Only a person who does not suffer from the disqualifications set out in Section 29A of IBC is legally eligible to be a successful resolution applicant. IBC mandates the RP to confirm SRA's eligibility under Section 29A of IBC to the Adjudicating Authority.

   In the present case, the Supreme Court held that the prescribed compliance certificate in Form 'H' (Schedule of the CIRP Regulations) was not duly filed. Further, there was no certification that the contents of JSW's eligibility affidavit were in order. There was merely a reference to an annexure to the Plan that only disclosed JSW's identity but did not confirm its eligibility.

   The Supreme Court also noted that JSW failed to disclose its joint venture agreement with BPSL relevant for a related party issue under Section 29A of IBC.

   Without conclusively giving any substantive views on the issue of JSW's eligibility under Section 29A, the Supreme Court found the process followed and filings made by the RP in this regard to be deficient.

2. **NCLAT's jurisdiction over PMLA matters (Section 32A of IBC)**: Section 32A of IBC provides that the liability of a corporate debtor for an offence committed prior to the commencement of the CIRP will cease, and the corporate debtor will not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority.

   In the present case, the ED passed a Provisional Attachment Order ("**PAO**") under PMLA regarding BPSL's assets after the NCLT had approved the Plan. JSW challenged the PAO before the NCLAT. The NCLAT held that the ED lacked the power to attach assets post-plan approval due to Section 32A of IBC and that criminal investigations against BPSL would abate after approval of the Plan.

   The Supreme Court held that the NCLAT acted without any authority of law and without jurisdiction by reviewing the ED's decision under PMLA. Relying on the decision in *Embassy Property Developments Private Limited vs. State of Karnataka and Ors.*[40], the Supreme Court held that decisions of statutory authorities in the realm of public law like PMLA are outside the scope of NCLT/NCLAT's jurisdiction.

   Pertinently, the Plan in the present case was approved on September 5, 2019, and Section 32A came into effect from December 28, 2019. The NCLAT, in the Impugned Judgment, held that Section 32A of IBC will apply to the present case. However, the Supreme Court limited the present issue to 'jurisdiction' and neither analysed the applicability of Section 32A of IBC retrospectively nor discussed merits re: the facts of the case.

3. **Factual grounds to set aside the Plan**: The Supreme Court, thereafter, discussed and analysed various other aspects regarding approval of the Plan by the NCLT and the NCLAT. Some of the important issues which the Court considered to set aside the Plan are as follows:

   a) Compliance with Mandatory Timelines (Section 12): The Supreme Court noted the non-compliance with the mandatory timeline under Section 12 of IBC. The maximum period for completion of the entire CIRP proceedings is 270 (two hundred and seventy) days (including a 90 (ninety) day extension). The CIRP against BPSL commenced on July 26, 2017. The application for approval of the Plan was filed before the NCLT on February 14,

[39] (2024) SCC OnLine 3187

[40] (2020) 13 SCC 308

2019. This was after the expiry of the prescribed timeline of 270 (two hundred and seventy) days. Further, no application was filed seeking necessary extension of the CIRP period under Section 12(2) of IBC.

b) The Plan's compliances with Section 30(2) of IBC and Regulation 38 of the CIRP Regulations: The Supreme Court noted that under Regulation 38(1) of the CIRP Regulations, as it stood before amendment on November 27, 2019, the amount due to operational creditors had to be given priority in payment over the financial creditors. The Plan did not comply with this mandatory requirement as the dues of the financial creditors were given priority.

c) Implementation of the Plan: The Plan required an upfront equity infusion of INR 8,550 crore (Indian Rupees eight thousand five hundred and fifty crore) by JSW, which JSW claimed to have fulfilled through equity shares of INR 100 crore (Indian Rupees one hundred crore) and compulsorily convertible debentures of INR 8,450 crore (Indian Rupees eight thousand four hundred and fifty). However, the Supreme Court held that there was no supporting material or affidavit to substantiate this claim and held that the equity commitment, a key factor in JSW securing the highest score, was not complied with.

   The Plan required upfront payments to financial creditors within 30 (thirty) days of NCLT approval (September 5, 2019). These payments were delayed by 540 (five hundred and forty) days and payments to operational creditors by 900 (nine hundred) days.

   The Supreme Court emphasised that the Plan was unconditional and binding, and failure to implement it within the required time, that too in absence of any stay thereof, constituted breach of the terms therein.

   The Supreme Court further held that the commercial wisdom was exercised contrary to the mandatory provisions under the IBC.

d) Maintainability of SRA's appeal before the NCLAT (Section 61 of IBC): Section 61 of IBC provides that 'any person aggrieved' by the order of the NCLT may prefer an appeal to the NCLAT on the grounds mentioned in Section 61(3) of IBC.

   As stated above, JSW approached the NCLAT challenging certain conditions imposed by the NCLT while approving the Plan. The Court observed that since JSW's Plan was approved, JSW could not be said to be the 'person aggrieved' for filing an appeal under Section 61 of IBC, and if it was against the order of NCLT approving the Plan, the grounds specified in Section 61(3) must exist. Since none of the grounds applied to JSW challenging the approval of its own plan, its appeal before the NCLAT was not maintainable.

## Conclusion

The Supreme Court has emphasised the importance of strictly following the timelines and compliances under the IBC and its regulations by the RPs and the CoCs. While not writing down the non- justiciability of 'commercial wisdom' of the COC, however, the Supreme Court does prescribe certain guard- rails on its exercise.

The courts have repeatedly held that many of the timelines under the IBC are directory and not mandatory, especially where delay does not affect the overall purpose of the IBC. In the present case, the Supreme Court has mainly relied on procedural lapses and delays to order liquidation. However, these issues may have been addressed by penalising or reprimanding the parties responsible. Liquidation goes against the basic purpose of the IBC, which is to try and keep the company running as a going concern and to resolve its debts in a manner that maximises value for all stakeholders.

The Supreme Court has also highlighted that the credibility of a SRA's commitment to fully and

promptly implement the plan is critical and must be a key consideration for the CoC. The COC is expected to exercise due vigilance in ensuring implementation of an approved resolution plan in strict accordance with its terms. Approving deviations in a plan by the COC, after its approval, in the guise of commercial wisdom is legally untenable.

Moreover, by setting aside a resolution plan that had been approved 6 (six) years ago, the Supreme Court has shown that non-compliance by RPs or failure by CoCs to follow mandatory rules can invalidate the entire resolution process. This may lead to the plan being cancelled and liquidation being ordered, even after partial payments. These directions have been passed by the Supreme Court, exercising its extra-ordinary jurisdiction under Article 142 of the Constitution of India.

## Singapore High Court grants first recognition to Indian insolvency proceedings under the UNCITRAL Model Law on Cross-Border Insolvency

In a landmark judgment in ***Re Compuage Infocom Limited and Anr.***[41], the Singapore High Court ("**Singapore HC**") has, for the very first time, recognised a CIRP initiated under the IBC as a 'foreign main proceeding' under the UNCITRAL Model Law on Cross-Border Insolvency ("**Model Law**"). It also extended judicial assistance to the RP of Compuage Infocom Limited ("**Corporate Debtor**") appointed in the Indian proceedings.

### Brief facts

In 2017, Singapore adopted the provisions of the Model Law in its own Insolvency, Restructuring and Dissolution Act, 2008 ("**IRDA**")[42]. Accordingly, it put in place a comprehensive regime to address issues relating to cross-border insolvency within its jurisdiction.

Subsequently, the Corporate Debtor, upon an application under Section 7 of IBC, was admitted to CIRP by the Hon'ble NCLT, Mumbai Bench *vide* its order dated November 2, 2023. Further, the NCLT on April 29, 2024, appointed the RP of the Corporate Debtor to conduct the CIRP and manage the operations of the Corporate Debtor during such period.

Thereafter, the RP of the Corporate Debtor, necessitated by the refusal of Singapore banks to share information in relation to the Corporate Debtor's bank accounts maintained in Singapore, approached the Singapore HC seeking recognition and assistance in relation to the Corporate Debtor's CIRP initiated under IBC.[43] By producing the above-mentioned orders of the NCLT, the application under Section 15 of the Model Law particularly prayed for recognition of CIRP under Article 17 of the of the Model Law as a foreign main proceeding; recognition of the RP as a 'foreign representative' as per Article 2(i) of the Model Law; and additional reliefs under Article 21(1)(e) of the of the Model Law, including vesting of the Corporate Debtor's Singapore based assets with its RP.

### Issues before the Singapore HC

1. Whether a CIRP is a foreign proceeding?
2. Whether the RP of the Corporate Debtor is a foreign representative, and whether he was appointed under the CIRP?
3. Whether the procedural requirements under Article 15 of the Model Law were satisfied?

### Analysis and findings

The Singapore HC after appreciating the submissions advanced by the RP of the Corporate Debtor, and

[41] [2025] SGHC 49 (decided on March 24, 2025)
[42] Section 252 and Third Schedule of IRDA.
[43] HC/OA No. 1272/2024

noting the insolvency regime prevalent in India under IBC, opined as follows:-

1. **Whether the CIRP is a foreign proceeding?**

   a) In order to decide whether a CIRP under IBC is a 'foreign proceeding', the Singapore HC noted the definition of 'foreign proceeding' under Article 2(h) of the Model Law (as adopted by Singapore),[44] and relying on a judgment of the Singapore HC of Appeal of Singapore,[45] culled out the following requirements for a proceeding to qualify as a 'foreign proceeding' under the Model Law:

      i) the proceeding must be collective in nature;

      ii) the proceeding must be a judicial or administrative proceeding in a foreign State;

      iii) the proceeding must be conducted under a law relating to insolvency or adjustment of debt;

      iv) the property and affairs of the debtor company must be subject to control or supervision by a foreign court in those proceedings; and

      v) that the proceeding must be for the purpose of reorganisation or liquidation.

   b) With respect to the requirement under Point (a)(i) above, the Singapore HC took note that of various characteristics of a CIRP under the framework of IBC to conclude that the same was collective in nature, particularly its public and inclusive character, structured process envisaged at each step of the procedure, and reorganisation of the Corporate Debtor by a resolution plan which deals with all its assets and is binding on all stakeholders.

   c) With respect to the requirement under Points (a)(ii) and (iii) above, the Singapore HC noted the definition of a 'foreign court' under Article 2(e) of the Model Law,[46] and opined that as the NCLTs are quasi-judicial in nature, and are tasked with adjudication in matters relating to IBC with wide judicial powers conferred for the same, such tribunals would constitute a 'foreign court' under the Model Law. Thus, once the NCLTs are established as foreign courts, by extension, a CIRP being a proceeding before it, would constitute a judicial or administrative proceeding.

   d) With respect to the requirement under Points (a)(iii), (iv) and (v) above, the Singapore HC was clear that CIRPs initiated under IBC related to insolvency or adjustment of debt, and that the property and affairs of a corporate debtor are subject to the requisite control or supervision of the NCLTs. Finally, the Singapore HC recognised that CIRPs are a tool for corporate reorganisation and an alternative to liquidation and thus fulfilled all 5 (five) requirements for a '*foreign proceeding*' under the Model Law.

2. **Whether the RP of the Corporate Debtor is a foreign representative under the foreign proceeding?**

   Noting the definition of a foreign representative under Article 2(i) of the Model Law,[47] the Singapore HC was unhesitant to conclude that the RP of the Corporate Debtor was clearly authorised in the CIRP to administer the reorganisation of the Corporate Debtor, and therefore unequivocally recognised him as a foreign representative within the meaning of Article 2(i) of the Mode Law.

3. **Whether the procedural requirements of Article 15 of the Model Law were satisfied?**

   The Singapore HC noted that the RP of the Corporate Debtor had satisfied the procedural requirements under Article 15 of the Model Law by applying to the Singapore HC with certified copies of the NCLT's orders and providing a statement identifying all proceedings in respect of the Corporate Debtor that are known to him.

[44] Foreign Proceeding means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, under a aw relating to insolvency or adjustment of debt in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation.

[45] *Ascentra Holdings, Inc (in official liquidation) and Ors. vs. SPGK Pte. Limited.*, [2023] 2 SLR 421

[46] Foreign Court means a judicial or other authority competent to control or supervise a foreign proceeding.

[47] foreign representative means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding.

Lastly, in order to grant recognition to the CIRP of the Corporate Debtor as a 'foreign main proceeding' as per Article 17 of the Model Law, the Singapore HC determined that the Corporate Debtor's 'Centre of Main Interests' ("**COMI**") to be India. In determining the Corporate Debtor's COMI, the Singapore HC applied the rebuttable presumption under Article 16(3) of the Model Law and found that the registered office of the Corporate Debtor, the control of the Corporate Debtor's Singapore branch, its assets, operations and substantial business and the majority of its creditors, are based in India.

Accordingly, the Singapore HC granted recognition to the CIRP of the Corporate Debtor as a 'foreign main proceeding' under Article 17(2)(a) of the Model Law, enabling the RP to exercise powers in Singapore, subject to the Singapore HC's supervision regarding asset repatriation.

## Reliefs granted

In addition to granting recognition to the CIRP of the Corporate Debtor as a foreign main proceeding, which would enable the RP of the Corporate Debtor to access information in relation to the Corporate Debtor's assets from Singapore-based banks and other entities, the RP of the Corporate Debtor also sought the power to repatriate the assets of the Corporate Debtor based in Singapore to its estate in India.

However, the Singapore HC declined to permit repatriation of assets at this stage. It emphasised that such relief would be contingent upon prior leave of the Singapore HC, to ensure that Singapore based creditors have an opportunity to raise objections. The Singapore HC underscored the need to balance international co-operation with the protection of local creditor interests, consistent with the provisions of IRDA and to ensure that such a class of creditors are treated fairly and given an opportunity to participate in the CIRP.

## Conclusion

This judgment marks a significant milestone in advancing cross-border insolvency cooperation under the Model Law framework. The Singapore HC's proactive and pragmatic approach stands in stark contrast to India's current regime, where Sections 234 and 235 of IBC have had limited practical utility.

While Indian courts, most notably in the Jet Airways case[48], have attempted to bridge this statutory gap through judicial innovation, these measures remain ad hoc and lack the predictability and consistency of a codified framework.

India continues to await the formal enactment of draft Part Z of IBC and its corresponding subordinate legislation, which are designed to align India's cross-border insolvency regime with global standards. In the interim, building reciprocal arrangements, institutional capacity, and judicial expertise will be crucial to fostering trust and facilitating the recognition of foreign insolvency proceedings.

This ruling should serve as a timely nudge for Indian policymakers to expedite legislative reform and institutionalise a comprehensive, reciprocal cross-border insolvency framework.

## Known statutory claims survive IBC resolution plan, if not disclosed

The Madurai Bench of the Madras High Court ("**Madras HC**"), in ***M/s. Empee Distilleries Limited vs. The Superintending Engineer and Ors.***[49], delivered a pivotal ruling on the interplay between the IBC and statutory claims under litigation. The Madras HC held that a claim pending before a statutory appellate body is not extinguished upon approval of a resolution plan by the NCLT if it was known but not disclosed during the CIRP. This decision underscores the duty of the IRP

[48] NCLAT allows Dutch administrator to participate in insolvency proceedings of Jet Airways (LiveLaw).

[49] W.A (MD) No. 1426 of 2022 (decided on April 2, 2025)

and promoters to ensure full transparency regarding known debts.

## Brief facts

1. M/s. Empee Distilleries Limited ("**Empee**") underwent CIRP, with a resolution plan approved by the NCLT on January 20, 2020, for INR 475,00,00,000 (Indian Rupees four hundred and seventy-five crore), covering secured creditors, statutory dues, and unsecured creditors under the waterfall mechanism.
2. The Tamil Nadu Generation and Distribution Corporation Limited ("**TANGEDCO**"), a statutory creditor, claimed INR 1,23,69,195 (Indian Rupees one crore twenty-three lakh, sixty-nine thousand, one hundred and ninety-five) in electricity dues, including INR 1,14,80,039 (Indian Rupees one crore fourteen lakh, eighty thousand and thirty-nine) under litigation in a writ petition (W.P. No. 26553 of 2013) pending since 2013, which was known to Empee's promoters and the IRP.
3. TANGEDCO did not participate in the CIRP, and its claim was not included in the resolution plan. Post-approval, the new management sought electricity reconnection, which TANGEDCO denied due to unpaid dues.
4. Empee challenged TANGEDCO's demand *via* a writ petition, arguing that the claim was extinguished under the IBC's 'clean slate theory'. The single judge ruled that while TANGEDCO could not enforce the claim directly, it could refuse reconnection under the Tamil Nadu Electricity Supply Code.
5. Empee appealed, leading to the present intra-court ruling by the Madras HC.

## Issue

Does a statutory claim under litigation, known but not disclosed during the CIRP get extinguished upon approval of a resolution plan by the NCLT?

## Findings and analysis

The Madras HC, after reviewing IBC provisions and judicial precedents, held as follows:

1. the pending writ petition over TANGEDCO's INR 1,14,80,039 (Indian Rupees one crore fourteen lakh, eighty thousand and thirty-nine) claim was known to Empee's promoters and the IRP but was not disclosed to the committee of creditors. This omission breached the IRP's statutory duty, preventing the claim's extinguishment;
2. citing *Ghanashyam Mishra and Sons (P) Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd.*[50], the court affirmed that the 'clean slate theory' (where claims not in the resolution plan are extinguished), applies only when all known debts are disclosed. Non-disclosure of a known, *sub judice* claim undermines this principle;
3. the court harmonised *State Tax Officer vs. Rainbow Papers Limited*[51] ("**Rainbow Papers**"), which treated statutory dues as secured debts, with *Paschim Anchal Vidyut Vitran Nigam Limited. vs. Raman Ispat Private Limited*[52], clarifying that Rainbow Papers applies narrowly and does not override the IBC's disclosure requirements. Here, the focus was on procedural lapse, not the nature of the dues; and
4. due to the IRP's failure to disclose the pending claim, TANGEDCO's demand remained enforceable as a condition for reconnection, subject to the litigation's outcome. The IRP failed to gather and present information about the pending statutory dues, breaching IBC mandates. The court rejected Empee's argument that TANGEDCO's non-participation in the CIRP extinguished the claim, emphasizing that known debts cannot be excluded by silence.

[50] (2021) 9 SCC 657
[51] (2022) SCC Online SC 1162
[52] (2023 SCC OnLine SC 842)

## Conclusion

The 'clean slate theory', or the 'fresh start theory', in the context of IBC, means that once a resolution plan for a financially distressed company is approved, the company is considered to have a fresh start, free from all past liabilities except those specifically addressed in the approved plan. This judgment reinforces that the IBC's 'clean slate theory' hinges on transparency. Known statutory claims, including those under litigation, survive resolution plan approval if not disclosed during the CIRP. It places a heightened onus on IRPs and promoters to diligently report all liabilities, protecting creditors like TANGEDCO from being prejudiced by procedural lapses. The decision clarifies that while the IBC overrides inconsistent laws under Section 238, this protection does not extend to shielding non-disclosure of known debts.

## NCLAT: Acknowledgement of debt cannot revive the defaults that occurred during the pre-Section 10A period under IBC, particularly when the acknowledged debt is partially paid

The NCLAT, Chennai in ***Sudhir Bobba (Suspended Director of Servomax Limited) vs. M/s. TVN Enterprises***[53], has held that defaults occurring during the pre-Section 10A period under IBC, do not continue to constitute a 'default' thereafter once the corporate debtor has made partial payments toward the (acknowledged) debt accumulated during the period excluded under Section 10A of IBC[54].

## Brief facts

1. M/s. Servomax Limited ("**Corporate Debtor**"), placed several purchase orders with M/s. TVN Enterprises, ("**Operational Creditor**"), for the supply of goods until September 15, 2020. The Operational Creditor fulfilled these purchase orders and raised corresponding invoices. While the Corporate Debtor made periodic payments against the invoices, an outstanding amount of INR 1,00,49,270 (Indian Rupees one crore forty-nine thousand two hundred and seventy) remained unpaid.
2. On September 29, 2022, the Operational Creditor recorded the outstanding debt of INR 1,00,49,270 (Indian Rupees one crore forty-nine thousand two hundred and seventy) with the National E-Governance Services Limited ("**NeSL**"). Subsequently, on September 28, 2022, the Operational Creditor issued a demand notice to the Corporate Debtor under Section 8 of IBC. Upon the Corporate Debtor's failure to discharge the liability or raise a valid dispute, the Operational Creditor filed an application under Section 9 of IBC before the NCLT, Hyderabad, seeking initiation of the CIRP against the Corporate Debtor.
3. By an order dated February 22, 2024, the NCLT admitted the Section 9 application and initiated CIRP against the Corporate Debtor, based on the following observations:
   a) As of November 11, 2022 (the filing date), the operational debt of ₹1,00,49,270 (Indian Rupees one crore forty-nine thousand two hundred and seventy) exceeded the statutory threshold of INR 1,00,00,000 (Indian Rupees one crore) under Section 4 of IBC and the Corporate Debtor failed to establish any pre-existing dispute regarding the debt.
   b) Although certain invoices fell within the exclusion period under Section 10A of IBC (March 25, 2020 – March 25, 2021), the NCLT held that Section 10A of IBC did not apply because of the following:
      i) the default first occurred on March 14, 2020 (date of default mentioned in the NeSL) which is prior to the Section 10A exclusion period;
      ii) the default continued throughout and beyond the Section 10A exclusion period; and

[53] Company Appeal (AT) (CH) (Ins.) No.95 of 2024, NCLAT, Chennai (decided on February 14, 2025)
[54] Section 10A of the IBC provides a temporary suspension of the initiation of CIRP for defaults arising on or after March 25, 2020, and until a specified period, due to the COVID-19 pandemic. It prevents insolvency proceedings against defaulting companies during this period to protect them from being dragged into insolvency due to the pandemic's economic impact.

iii) the Corporate Debtor acknowledged the outstanding debt after March 25, 2021, through financial statements for FY 2021-2022. The Corporate Debtor also issued a debt confirmation letter dated January 5, 2022, as well as 3 (three) post-dated cheques totaling INR 39,94,000 (Indian Rupees thirty-nine lakh ninety-four thousand), which were subsequently dishonored.

c) Aggrieved by the NCLT's order, Mr. Sudhir Bobba, the suspended director of the Corporate debtor, filed an Appeal before the NCLAT.

## Issue

Whether the CIRP can be initiated on the basis of the default of invoices between March 25, 2020, and March 25, 2021 (during the Section 10A exclusion period under the IBC) only because the Corporate Debtor acknowledged the debt post-March 25, 2021?

## Findings and analysis

The NCLAT allowed the appeal and set aside the NCLT's order admitting the Corporate Debtor into CIRP. The NCLAT decided on the above issue in the following manner:

1. **Applicability of Section 10A**: The NCLAT emphasised that under Section 10A of IBC, no CIRP application can be filed for defaults arising between March 25, 2020, and March 25, 2021.
2. **Effect of Acknowledgement of Debt**: Despite the Corporate Debtor acknowledging the debt post-March 25, 2021, the NCLAT held that such acknowledgment could not revive defaults occurring during the Section 10A period or circumvent the statutory bar.
3. **Debt Calculation**: Defaults arising out of invoices before the exclusion period are not covered by Section 10A of IBC. However, in the present case, out of the total claimed debt of INR 1,00,49,270 (Indian Rupees one crore forty-nine thousand two hundred and seventy), INR 97,62,508 (Indian Rupees ninety-seven lakh sixty-two thousand five hundred and eight) related to 27 (twenty-seven) invoices that fell due during the Section 10A period. Excluding these, only an amount of INR 2,86,762 arises out of an invoice dated February 13, 2020, remained. However, the remaining amount did not meet the INR 1,00,00,000 (Indian Rupees one crore) threshold under Section 4 of IBC.
4. **Distinction from Precedents**: The NCLAT distinguished the present case from other judgments by emphasising that each unpaid invoice constitutes a separate default, and that the debt accrued during the Section 10A period cannot be included in CIRP initiation.
5. **Legal Remedies**: The NCLAT clarified, citing the Supreme Court's ruling in *Ramesh Kymal vs. Siemens Gamesa*[55], that the debt itself is not extinguished, and the Operational Creditor may seek its remedies for recovery through other legal avenues - outside the IBC framework.

## Conclusion

The NCLAT's ruling provides clarity on the interplay between Section 10A of IBC and the acknowledgment of debts incurred during the pandemic's exclusion period. The NCLT's decision underscores that defaults occurring within the Section 10A exclusion window cannot be revived for the purpose of initiating CIRP through subsequent acknowledgments made post-exclusion period.

For creditors, this decision highlights the importance of understanding the temporal boundaries set by Section 10A of IBC. Acknowledging debts that accrued during the exclusion period does not extend the window for initiating CIRP beyond the statutory limits. Consequently, creditors should be vigilant about the

[55] (2021) 3 SCC 224

dates of defaults and ensure that any actions taken fall within permissible periods under the IBC.

Corporate debtors, on the other hand, must recognise that while acknowledging debts is a step toward resolution, such acknowledgments cannot retroactively alter the classification of defaults that occurred during the exclusion period. This understanding is vital for accurate financial reporting and in formulating strategies for debt resolution.

In essence, the NCLAT's decision reinforces the legislative intent behind Section 10A, ensuring that the exclusion period serves its purpose without being circumvented through post-period acknowledgments. Both creditors and corporate debtors must align their actions with the statutory framework to uphold the integrity of insolvency proceedings.


## Demand notice under Rule 7 of personal guarantors rules does not constitute invocation of guarantee

NCLAT, in the case of ***State Bank of India vs. Mr. Deepak Kumar Singhania***[56], has clarified that a statutory demand notice issued under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("**PG Rules**") does not amount to a valid invocation of the personal guarantee for the purpose of initiating insolvency resolution proceedings under Section 95 of IBC.

### Brief facts

The State Bank of India ("**Appellant**") extended financial facilities to M/s LML Limited ("**Corporate Debtor**"), for which Mr. Deepak Kumar Singhania ("**Respondent**") and 2 (two) others executed a deed of guarantee and multi-partite agreement to secure the debt in case of default.

On March 23, 2018, the Corporate Debtor was ordered into liquidation.

On April 30, 2022, the Appellant issued a demand notice under Rule 7(1) of the PG Rules, demanding INR 125,05,28,848.56 (Indian Rupees one hundred and twenty-five crore five lakh twenty-eight thousand eight hundred and forty-eight and fifty-six paise) from the Respondent. The Appellant subsequently filed an application under Section 95 of IBC. However, the NCLT, Allahabad Bench, Prayagraj dismissed the application by order dated November 28, 2024, on the grounds that the Appellant had failed to invoke the guarantee prior to issuing the demand notice, rendering the application non-maintainable. The NCLT also ruled that the Respondent did not qualify as a guarantor under Rule 3(1)(e) of the PG Rules.

The Appellant challenged the decision by filing an appeal before the NCLAT.

### Issue

Whether a statutory demand notice issued under Rule 7(1) of the PG Rules constitutes a valid invocation of the personal guarantee for initiating insolvency proceedings under Section 95 of IBC?

### Findings

The NCLAT upheld the order of the NCLT and dismissed the appeal. It ruled that the statutory demand notice under Rule 7(1) of the Rules does not qualify as a valid invocation of the personal guarantee. The NCLAT reasoned as follows:

1. **Invocation of guarantee**: The statutory demand notice alone does not invoke the personal guarantee. The NCLAT emphasised that invoking a personal guarantee requires strict adherence to the terms of the deed of guarantee. The NCLAT

[56] Company Appeal (AT) (Insolvency) No. 191 of 2025, NCLAT (decided on March 12, 2025)

relied on the decision in the case of *Syndicate Bank vs. Channaveerappa Beleri*[57] and *Archana Deepak Wani vs. Indian Bank*[58], where the courts stressed the importance of complying with the terms of the deed of guarantee. The NCLAT emphasised that the terms of the guarantee agreement take precedence.

2. **Triggering liability**: A personal guarantor's liability arises only upon the formal invocation of the guarantee, as per the contractual agreement. The issuance of a mere statutory notice does not amount to an invocation under the contract.
3. **Debt and default**: According to Section 3(12) of IBC, default occurs when there is a pre-existing debt under Section 3(11) of IBC. The guarantor is considered a debtor only after the guarantee is properly invoked.
4. **Definition of guarantor**: Rule 3(1)(e) of the PG Rules defines a 'Guarantor' as a person who has executed a personal guarantee, and the guarantee must have been invoked. The NCLAT rejected the interpretation that 'and' in the definition should be read as 'or', as such an interpretation would undermine the statutory framework.
5. **'Personal Guarantor' under Section 5(22) *versus* 'Guarantor' under Rule 3(1)(e)**: The NCLAT distinguishes between the definition of 'Personal Guarantor' under Section 5(22) of IBC and 'Guarantor' under Rule 3(1)(e) of the PG Rules. It concludes that Rule 3(1)(e) applies in cases under Section 95 since both provisions fall under Part III of IBC, whereas Section 5(22) falls under Part II of IBC. This distinction is significant because, under Rule 3(1)(e), a 'Guarantor' refers to a debtor who is a personal guarantor to a corporate debtor and whose guarantee has been invoked by the creditor but remains unpaid, either in full or in part.

## Conclusion

This NCLAT ruling is a significant clarification in insolvency law, establishing that a statutory demand notice under Rule 7(1) of the PG Rules does not constitute a valid invocation of a personal guarantee under Section 95 of IBC. The judgment reinforces the principle that creditors must strictly comply with the terms of the Deed of Guarantee before initiating insolvency proceedings against personal guarantors.

This decision carries important implications for creditors and guarantors alike. It emphasises that a mere demand notice is insufficient to trigger a guarantor's liability, reaffirming the necessity of formally invoking the guarantee in accordance with contractual terms and legal provisions. The ruling also strengthens protections for personal guarantors by preventing premature insolvency proceedings where the guarantee has not been properly invoked. Ultimately, it reinforces that liability under a personal guarantee arises only when the creditor adheres to both contractual and statutory requirements, ensuring procedural safeguards are upheld in insolvency proceedings.


## Interest claimed without agreement cannot be included in operational debt

A 3 (three) judge bench of NCLAT, New Delhi in ***Shitanshu Bipin Vora vs. Shree Hari Yarns Pvt. Ltd. & Anr.***[59] held that clauses of unilateral interest in invoices without a formal agreement, cannot inflate claims of operational debt to meet the threshold of INR 1,00,00,000 (Indian Rupees one crore) under Section 4 of IBC. The NCLAT set aside the order dated September 5, 2024, passed by the NCLT, Mumbai wherein it initiated CIRP against the corporate debtor – Exclusive Linen Fabrics Private Limited, emphasising the statutory distinction between operational debt and financial debt and the necessity of explicit contractual terms for interest claims ("**Impugned Order**").

## Brief facts

[57] (2006) 11 SCC 506
[58] Company Appeal (AT) (Ins.) No.301 of 2023, NCLAT
[59] Company Appeal (AT) (Insolvency) No. 2204 of 2024 (decided on April 16, 2025)

1. The dispute arose on the basis of a claim of operational debt amounting to INR 1,29,08,449 (Indian Rupees one crore twenty-nine lakh eight thousand four hundred and forty-nine) by respondent No. 1 i.e. Shree Hari Yarns Private Limited. The claim comprised of the principal amount i.e. INR 88,16,301 (Indian Rupees eighty-eight lakh sixteen thousand three hundred and one) and interest amount i.e. INR 40,92,148 (Indian Rupees forty lakh ninety-two thousand one hundred and forty-eight).
2. The appellant contested the interest component, arguing that no formal agreement existed for interest on delayed payments, and the principal alone fell below the threshold of INR 1,00,00,000 (Indian Rupees one crore) for initiation of CIRP.
3. The appellant also contended that the date of default mentioned in the additional affidavit is incorrect, as it does not consider a payment made on June 2, 2021.
4. The appellant further stated that the respondents failed to substantiate how the default date was determined and the NCLT overlooked these deficiencies while passing the Impugned Order.
5. Accordingly, the appellant filed the appeal before the NCLAT, challenging the initiation of CIRP on the grounds of maintainability, procedural irregularities, and violation of natural justice.
6. Furthermore, as an interim measure, the corporate debtor deposited the principal amount of INR 88,16,301 (Indian Rupees eighty-eight lakh sixteen thousand three hundred and one) with the NCLAT.

## Key issues

1. Whether unilateral interest clauses in invoices, without a formal agreement, constitute 'operational debt' under Section 5(21) of IBC?
2. Whether disputed interest can be included to meet the threshold of INR 1,00,00,000 (Indian Rupees one crore) under Section 4 of IBC?
3. Whether quality-related disagreements and cash discounts indicated a pre-existing dispute?

## Findings and analysis

1. The NCLAT emphasised that operational debt under Section 5(21) of IBC, unlike financial debt (Section 5(8) of IBC), does not inherently include interest unless contractually agreed between the parties. The vague reference in the invoices "*18% interest on delayed payment*" clause lacked specificity and was unilaterally imposed. Past payments of interest were insufficient to establish mutual consent, as no documentary evidence proved the corporate debtor's acknowledgment of liability.
2. Excluding the disputed interest amount of INR 40,92,148 (Indian Rupees forty lakh ninety-two thousand one hundred and forty-eight), the principal amount of INR 88,16,301 (Indian Rupees eighty-eight lakh sixteen thousand three hundred and one) fell short of the threshold amount of INR 1,00,00,000 (Indian Rupees one crore). The NCLAT reiterated that inflated unsubstantiated interest claims cannot be used to invoke the jurisdiction under Section 4 of IBC.[60]
3. Quality-related disputes and cash discounts offered by the operational creditor indicated pre-existing disputes, thereby rendering the application under Section 9 of IBC as inadmissible. The NCLAT re-affirms that the IBC is a resolution tool and not a recovery mechanism.

## Conclusion

1. Operational creditors must establish unambiguous contractual agreements to claim interest as part of operational debt under Section 5(21) of IBC. The NCLAT emphasised that unlike financial debt under Section 5(8) of IBC, which expressly includes interest, operational debt is strictly confined to

[60] Company Appeal (AT) (Insolvency) No. 1227 of 2019

claims arising from goods, services or statutory dues. Absent a mutual and explicit agreement, unilateral interest clauses in invoices do not create enforceable obligations. The NCLAT rejected the Operational Creditor's reliance on past payments and held them to be insufficient to infer consent, stressing that sporadic payments without documented acknowledgment cannot substitute a formal contract. This aligns with precedents like *SS Polymers vs. Kanodia Technoplast*[61] and *Krishna Enterprises vs. Gammon India*[62], wherein the NCLAT barred interest claims lacking bilateral agreements.

2. The courts must rigorously exclude disputed or unsubstantiated interest components when assessing whether operational debt meets the threshold amount of INR 1,00,00,000 (Indian Rupees one crore) under Section 4 of IBC. The NCLAT cautioned against permitting creditors to "invoke jurisdiction of the NCLT" through inflated interest claims, reaffirming that artificial inflation undermines the IBC's procedural integrity.
3. The NCLAT reiterated that initiating CIRP solely for debt recovery contravenes the foundational objectives of the IBC. Relying on *Mobilox Innovations vs. Kirusa Software*[63] (2018) and *Swiss Ribbons vs. Union of India*[64], the NCLAT emphasised that the IBC prioritises maximising the assets of the corporate debtor over coercive recovery.
4. Initiating CIRP for recovery undermines the intent of the IBC. The judgment reinforces IBC's intent on resolving insolvency and not adjudicating disputed claims.
5. The judgment reinforces the IBC's resolution-centric ethos, mandating strict adherence to contractual formalities and vigilance against jurisdictional overreach.
6. By invalidating unilateral interest claims and curbing procedural misuse, the NCLAT ensures that operational creditors pursue legitimate insolvency resolution rather than adversarial recoveries.

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[61] *Ibid*
[62] 2019 SCC OnLine 1310
[63] 2018 (1) SCC 353
[64] (2019) 4 SCC 17

## Finance Practice

JSA has a widely recognised market leading banking & finance practice in India. Our practice is partner led and is committed to providing quality professional service combining domain knowledge with a constructive, consistent, comprehensive and commercial approach to issues. Clients trust our banking lawyers to take a practical and business-oriented approach to achieving their objectives. Our lawyers have a clear understanding of the expectations and requirements of both sides to a financing transaction and provide tailored advice to each client's needs. The practice is especially praised for its accessibility and responsiveness and its ability to work well with international firms and clients. We represent a variety of clients including domestic and global banks, non-banking financial companies, institutional lenders, multi-lateral, developmental finance and export credit institutions, asset managers, funds, arrangers and corporate borrowers in different sectors on a wide range of financing transactions.

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