

MMJCINSIGHTS

NOVEMBER 30, 2021



Index

Sr. No	Particulars
--------	-------------

SEBI Corner

- | | |
|----|--|
| 1. | Changing Face of Related Party Transactions |
| 2. | Common and Simplified Norms for processing investor's service request by RTAs and norms for furnishing PAN, KYC details and Nomination |

MCA Corner

- | | |
|----|--|
| 3. | MCA simplifies Claim Settlement process – IEPF |
|----|--|

IBC Corner

- | | |
|----|--|
| 4. | The Commissioner of Central Taxes Goods & Service Tax (Appellant) Vs. C.S. Ashish Singh & Ors. (Respondent) order dated 10 November, 2021 passed by National Company Law Appellant Tribunal (NCLAT) New Delhi – A yet another case on -once the Resolution Plan has been approved and implemented, no further claims will lie or can be considered |
|----|--|

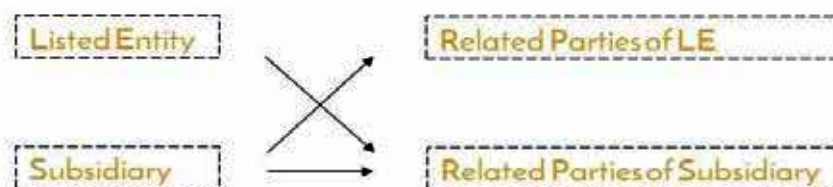
Changing Face of Related Party Transactions



Securities and Exchange Board of India ('SEBI') has brought in Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment), 2021 ['LODR Sixth Amendment'] vide its amendment notification dated November 9, 2021. LODR Sixth Amendment is brought in pursuant to recommendations of 'Report of the Working Group on Related Party Transaction' dt: January 27, 2020 which were approved at SEBI's Board meeting held on September 28, 2021. The amendments are explained as follows:-

- 1. Related Party:** With effect from April 1, 2022 any person or entity forming part of promoter or promoter group of the listed entity (irrespective of shareholding) and any person or any entity (irrespective of whether it is part of promoter/ promoter group or not) holding equity shares of 20% or more in the listed entity either directly or on beneficial interest basis at any time during the immediate preceding financial year will be considered as Related Party. This limit will be reduced to 10% **with effect from April 1, 2023**.
- 2. Related Party Transactions:** Definition of Related Party Transaction Transactions is replaced by LODR Sixth Amendment. Following transactions will be considered as Related Party Transactions irrespective of whether price is charged.

Addition to Related Party Transactions



1st April 2023 - Benefit to a related party of LE or subsidiary

Not Related Party Transactions: Exempted transactions shall be preferential issue as per Securities and Exchange Board of India (Issue of Capital and Disclosure) Requirements, 2018, payment of dividend, subdivision or consolidation of securities, issuance of securities by way of a rights issue or a bonus issue, buy-back of securities, acceptance of fixed deposits from Banks/NBFCs at the terms par with shareholders/ public (but acceptance of fixed deposits shall be disclosed in half yearly statement to

be filed with stock exchanges). Further in addition to transactions between listed holding company and wholly owned subsidiaries, the transactions between two wholly owned subsidiaries of a listed holding company, whose accounts are consolidated with such holding company and placed before shareholders at general meeting for approval will also be exempt from requirement of Audit Committee / shareholders.

3. **Material Related Party Transactions:** Transactions with a Related Party shall be considered as material, if the transaction solely or cumulatively exceeds threshold of Rs.1000 crore or 10% of consolidated turnover of listed entity, **whichever is lower**. Material related party transactions shall now **require prior approval of shareholders**. [The details to be mentioned in explanatory statement are notified by SEBI vide its Circular dated November 22, 2021]
4. **Subsequent material modifications** to approved all Related Party Transactions shall require prior approval of Audit Committee of Listed Entity. What is 'material modifications' will have to be defined by Audit Committee and has to be a part of 'Policy on Materiality of Related Party Transactions'. Subsequent material modifications of material Related party transactions shall require prior approval of shareholders too of listed entity.
5. **Prior Approval of Audit Committee of listed entity:**

Prior Approval required	Not required
With effect from April 1, 2022: Related Party Transaction of subsidiary to which listed entity is not party, if singly or cumulatively it exceeds 10% of consolidated annual turnover of listed entity	With effect from April 1, 2022: For related party transactions of listed subsidiary to whom Regulation 15(2) and Regulation 23 are applicable. [i.e., such listed subsidiaries where corporate governance is applicable]
With effect from April 1, 2023: Related Party Transaction of subsidiary to which listed entity is not party, if singly or cumulatively it exceeds 10% of annual standalone turnover as per latest audited financials of subsidiary.	

[The details to be placed before Audit Committee while approving related party transactions are notified by SEBI vide its Circular dated November 22, 2021]

6. **Prior approval of shareholders of listed entity** will not be required for Related Party Transactions to which listed subsidiary is a party but the listed entity is not a party, if Regulation 15(2) and Regulation 23 are applicable to listed subsidiary [i.e., such listed subsidiaries where corporate governance is applicable]. Further it has been specified

that for related party transactions of step-down subsidiaries of listed entities approval of shareholders of listed subsidiary will suffice. Further it has been stated that all material Related Party Transactions and subsequent material modifications to these transactions shall require prior approval of shareholders of listed entity.

7. **Timelines for submission of Related Party Disclosures** to stock exchanges as per Regulation 23(9) will be reduced to 15 days from publication of financial results with effect from April 1, 2022 and with effect from April 1, 2023 disclosures of Related Party Transactions will go simultaneously with financial results.
8. **Disclosures to Audit Committee:** SEBI vide its Circular dt: November 22, 2021 has prescribed minimum information that is required to be placed before Audit Committee and Shareholders of Listed Entity for approval of Related Party Transactions. The above-mentioned Report of the Working Group which was released in January 2020 had prescribed a list of minimum items that needs to be placed before audit committee and members of listed entity for approval of related party transactions. The items mentioned in this Working Group report has now been notified by SEBI and shall be applicable for transactions with effect from April 1, 2022.
9. **Disclosures in Annual Report:**
 - a. **High Value Debt Listed Entities** will have to give disclosure of related party transactions along with standalone half-yearly results as per Regulation 23(9) .
 - b. **Disclosures by Non-Convertible Securities:** It has been clarified now that disclosures under Schedule V A will now be given only by entities who have listed their Non-Convertible Securities under Regulation 53(1)(f). Earlier it was appearing that these disclosures are to be given by all listed entities.

These amendments will definitely go a long way in revamping the framework of related party transactions approvals in listed entities!!!

LODR Sixth amendment can be accessed at below mentioned link. https://www.sebi.gov.in/legal/regulations/nov-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-sixth-amendment-regulations-2021_53851.html

SEBI Circular November 22, 2021 can be accessed at below mentioned link:

https://www.sebi.gov.in/legal/circulars/nov-2021/disclosure-obligations-of-listed-entities-in-relation-to-related-party-transactions_54113.html

Common and Simplified Norms for processing investor's service request by RTAs and norms for furnishing PAN, KYC details and Nomination



Effective from: January 1, 2022 except for few compliances for which effective date is mentioned separately.

Applicable: Listed entities having physical security holders.

SEBI has come out with a circular dt: November 3, 2021 providing simplified norms for processing of investor service requests by RTAs. These requests include change in or updation of PAN, nominee, signature, contact as well as bank details; issue of duplicate securities certificate, consolidation of securities certificate, change in status from minor to major and resident to NRI and vice versa and services through depository participants for demat. In addition to this SEBI has put in a framework for furnishing PAN, KYC and nomination by physical Security holders.

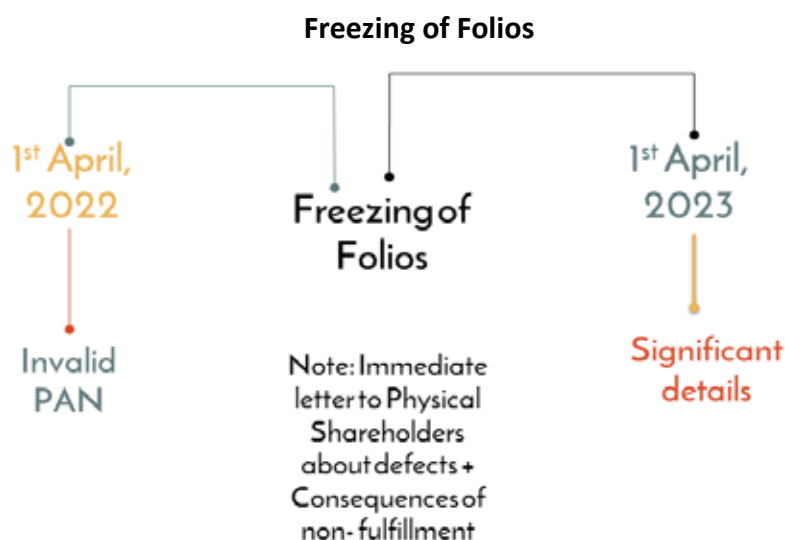
SEBI has now specified three modes of communications for investors holding securities in physical form

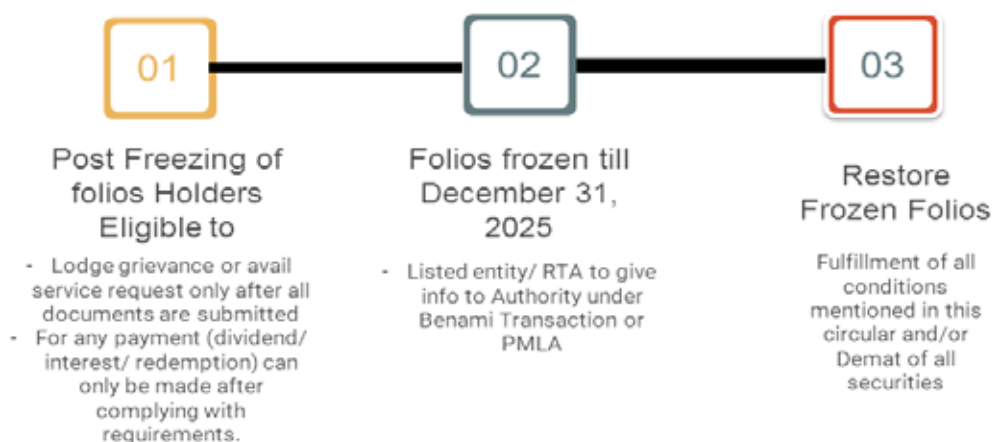
- a) In person Verification' [IPV]: the authorised person of RTAs shall verify the original documents furnished by the investor and retain copies with IPV stamping with date and initials
- b) Through hard copies which are self-attested -and dated
- c) Through electronic mode with e-sign.

Other modalities prescribed in this Circular are as follows:-

1. Processing of investor service requests by RTAs will be post receipt of duly filled request in Form ISR-1. The Form ISR-1 shall be made available on website of listed entity and RTAs prior to January 1, 2022. Investor service requests prior to January 1, 2022 may voluntarily be submitted through Form ISR-1.

2. **Self-Attestation to replace Affidavits, Attestation / Notarization except for transmission:** Copies of documents that are submitted in hard copy shall be processed by the RTA only if the same is self-attested by the holder(s), with date. It is clarified that the RTAs shall not insist on affidavits or attestation/notarization of documents.
3. **Indemnity:** RTA shall not insist on indemnity for any service request, unless the same is specially provided in the Companies Act, 2013 or the Rules issued thereunder or in SEBI Regulations or circulars issued thereunder.
4. **Updation of KYC details:** Physical security holders are mandatorily required to furnish PAN, KYC details (i.e. contract details and bank account details) and Nomination w.e.f November 3, 2021 in order to ensure that their service requests are processed. Upon receipt or updation of bank details, the RTA shall suo - moto, pay electronically, all the moneys of / payments to the holder that were previous unclaimed / unsuccessful.
5. **Nomination:** Nomination details needs to be updated by physical security holders. In case the security holder does not wish to nominate then he submit a Declaration to Opt-out', as per Form ISR-3. In case the security holder wants to cancel nomination then Form SH-14- for cancellation or change in Nominee and declaration of Opt-out shall be provided by the holder(s).
6. SEBI has further standardised the procedure for handling investor service requests relating to minor and major mismatch in signature.
7. RTA shall process the request from the holder within **seven days** from receipt of the complete set of documents. **RTAs shall raise all objections, if any with respect to service requests at once.** The additional information may be sought only in case of any deficiency/discrepancy in the documents / details furnished by the holder.
8. **SEBI has asked RTAs not to process any service request from any physical security holder w.e.f November 3, 2021 unless his KYC, Nomination and PAN details are updated.**
9. Last date of linking of PAN and Aadhaar is March 31, 2022 or any other date as may be specified by the CBDT. SEBI has asked RTAs to freeze the folios which has not linked PAN with Aadhaar by March 31, 2022 or any other date as may be specified by the CBDT.
10. **This flowchart explains how and when freezing of folios will be done:**



11. Actions that would be taken post freezing of folios:

12. Listed Companies will have to update details of this circular on its website before January 1, 2022.
13. Listed companies shall also directly intimate its securities holders about folios which are incomplete viz. the aforesaid requirement.
14. RTAs shall provide a certificate of compliance from a practicing Company Secretary, within 45 days of this circular, certifying the changes carried out, systems put in place / new operating procedures implemented etc. to comply with the provisions of this circular.
15. Listed Companies, RTAs and Stock Exchanges shall have to upload following forms on their website

Form	Purpose
ISR-1	form for request for registering PAN, KYC details or changes / updation thereof
ISR-2	Confirmation of Signature of securities holder by the Banker
ISR-3	Declaration to Opt-out
SH-13	Nomination form
SH-14	Change in Nominee

16. Update Contact Details of RTA on website of the listed Company (viz. postal address, phone numbers and e-mail address etc.) by January 1, 2022

SEBI circular can be accessed at below mentioned link:
https://www.sebi.gov.in/legal/circulars/nov-2021/common-and-simplified-norms-for-processing-investor-s-service-request-by-rtas-and-norms-for-furnishing-pan-kyc-details-and-nomination_53787.html

MCA simplifies Claim Settlement process - IEPF



MCA amends IEPF (Accounting, Audit, Transfer and Refund) Rules, 2016 vide notification dated 9th November, 2021. With this amendment MCA has made certain changes with regard to the process of claims from IEPF.

The gist of the amendments are as follows:

- Requirement of Advance Receipt, which was to be submitted along with original physical share certificate after submission of Form IEPF-5, has been waived off
- In cases of transmission, where securities are held in physical mode, singly or jointly with nomination, now instead of nominee, the claimant can directly submit the transmission request. Further scanned copy of original share certificate to be attached with form (in addition to physical submission)
- Requirement of Succession Certificate/ Probate of Will/ Will has been relaxed for value of securities up to Rs 5,00,000 (Rupees Five lakhs) both for Physical & DEMAT shares, with or without nomination, so claimant can attach any other decree or order of any court or tribunal apart from succession Certificate or probate or will or letter of administration or decree as may be applicable in terms of Indian Succession Act, 1925. Earlier this relaxation was for value of securities upto Rs. 2,00,000 (Rupees Two lakhs). The Company may enhance the limit of Rs. 5,00,000 (Rupees Five lakh only) per issuer company in accordance with SCHEDULE VII of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, after taking approval of its Board of Directors and provide copy of Board resolution to Authority at the time of verification of claim.
- Further it is clarified that, in case will is provided, the following documents will also be required:
 - (a) Legal heirship certificate issued by Competent Authority;
 - (b) No Objection Certificate from all legal heirs in favor of the claimant;
 - (c) Affidavit from witness about confirmation of will wherever alive or death certificate of such witness;
 - (d) Affidavit with regard to the will as last will and no matter is pending before any court with regard to such will;

(e) Surety affidavit by at least two sureties with their PAN Card.ss

- Notarization of documents has been replaced with self-attestation in case of documents to be submitted in case of loss of securities held in physical mode i.e. self attested copy of FIR/ Police Compliant containing information of security holder, holding details, folio number and distinctive numbers of share certificate can be submitted instead of notarised one.
- Surety affidavit need not be of value equal to market value of shares as on date of execution.
- Copy of advertisement in newspapers (as prescribed) will now be required if the market value of shares is greater than Rs. 5,00,000/- Earlier this limit was Rs. 10,000
- Now affidavit and other supporting documents for change or variations in address in various documents, share certificates, current address and address recorded in share certificate or Form No. IEPF-4 or other places will no longer be needed.

As per Rule 7 of IEPF Rule, the Company shall within 30 days from the date of receipt of claim, send an online verification report to authority in the specified format alongwith documents submitted by claimant.

Therefor the Company as well as Nodal Officers so appointed should verify the claims henceforth after taking into consideration the effects of amended Rules as these are already effective from 9 November 2021.

The Commissioner of Central Taxes Goods & Service Tax (Appellant) Vs. C.S. Ashish Singh &Ors. (Respondent) order dated 10 November,2021 passed by National Company Law Appellant Tribunal (NCLAT) New Delhi - A yet another case on- once the Resolution Plan has been approved and implemented, no further claims will lie or can be considered.



Facts of the Case

- M/s American Express Banking Corporation filed an application u/s 7 of Insolvency and Bankruptcy Code (IBC/Code) against the Fourth Dimension Solutions Limited (Corporate Debtor/CD) at National Company Law Tribunal (NCLT) for initiation of Corporate Insolvency Resolution Process (CIRP). NCLT admitted the application of CIRP on 25 July, 2019.
- The NCLT approved the resolution plan submitted by Respondent
- The Appellant, in averments in the appeal memo, has stated that his claim of Goods and Service Tax dues arises from a Show Cause Notice issued on 19 June, 2019, which was available in the record of the CD, which was taken over by the Resolution Professional (RP) was not accounted in the Resolution plan.

Arguments by the Appellant

- The Appellant submitted pending dues to RPreating to GST which appeared in the balance sheet of the CD.
- Referring to Section 17(2)(d) of IBC stated that which authorizes the RP ‘to access all books of accounts, records and other relevant documents of Corporate Debtor available with Government authorities, statutory auditors, accountants and such other persons as may be specified’
- Further, the appellant adverted to Section 18(1)(a) of the IBC, wherein the RP is enjoined with the duties to collect information relating to assets, finance and operations of the CD for determining the financial position of the CD, including information relating to business operations, financial and operational payments, assets and liabilities and such other matter as may be specified.
- Also pointed out that u/s 29 (1) of IBC wherein the RP has been given the duty of preparing the Information Memorandum containing such relevant information of the CD
- Furthermore, referred to Regulation 36(2)(h) of the Corporate Insolvency Resolution Process Regulations, 2016, wherein it is stated that “details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities” has to be included in the Information Memorandum.

- Pending GST dues should ***have been automatically considered by the RP in the Information Memorandum and should have been accounted for in the Resolution Plan***

Arguments by the Respondent

- Resolution Plan was approved by the NCLT on 25 September, 2020. Thereafter, the Successful Resolution Applicant has stepped into the shoes of the CD and the approved Resolution Plan has to be implemented.
- Referring to section 31 of the IBC claimed that once the Resolution Plan is approved by the NCLT, it is binding on all the stakeholders including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law is owned.
- Placed reliance on the judgment of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors.*
- According to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, financial and operational creditors have to file claims in accordance with Regulations 7 and 8 respectively in a specified format and stipulated time period.
- As per the records submitted by the Appellant and in the arguments presented it is nowhere pointed out as to when and in what form, the claim of pending dues of GST was filed by the Appellant.

Held

- NCLAT noticed that it is nowhere pointed out as to when and in what form, the claim of pending dues of GST was filed by the Appellant regarding his dues.
- Placed reliance on the *Ghanshyam Mishra and Sons Private Limited through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Limited (supra)* that ***once the Resolution Plan has been approved and implemented, no further claims will lie or can be considered.***
- In the light of the aforesaid discussion, NCLAT held that the claim of the Appellant cannot be considered.
- Accordingly, the appeal was dismissed.

Contributors:

Deepti Jambigi Joshi - Partner - deeptijambigi@mmjc.in

Aarti Ahuja Jewani - Partner - artiahuja@mmjc.in

Saurabh Agarwal - Partner - saurabhagarwal@mmjc.in

Madhura Godbole - Team Leader - IBC wing - madhuragodbole@mmjc.in

Vrushali Bhave - R&D Team - vrushalibhave@mmjc.in

Vallabh Joshi - R&D Team - vallabhjoshi@mmjc.in

Esha Tandon - R&D Team - eshatandon@mmjc.in