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## Amendment in Companies (Accounts) Rules, 2014 with regard to accounting software having audit trail

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- The Companies Act, 2013 (the Act) permits companies to maintain their books of accounts in electronic mode also, instead of keeping in physical form. Rule 3 of the Companies (Accounts) Rules, 2014 (the Rules) prescribes the detailed manner in which books of accounts can be kept in electronic mode.
- Rule 3(1) of these Rules prescribe that the books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.
- A new requirement was inserted that “every Company which uses accounting software for maintaining its books of accounts shall use only such **accounting software which has a feature of recording audit trail** of each and every transaction, **creating an edit log of each change** made in books of accounts along with the date when such changes were made” as per proviso to Rule 3 of Companies (Accounts) Rules, 2014. The said requirement was applicable for the financial year commencing on or after **1<sup>st</sup> April, 2022**. Ministry of Corporate Affairs vide notification dated 31<sup>st</sup> March, 2022 **extended applicability** of this proviso by replacing the words 1<sup>st</sup> April, 2022 to 1<sup>st</sup> April, 2023.

Hence, this requirement is now applicable for financial years **commencing on or after 1<sup>st</sup> April, 2023**.

## Extension for filing CSR-2

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- Rule 12 of the Companies (Accounts) Rules, 2014 (the rules) prescribes the manner of filing financial statements with Registrar of Companies (RoC) as e-Form AOC-4 / AOC-4 CFS / AOC-4 XBRL / AOC-4 NBFC (Ind AS) / AOC-4 CFS NBFC (IndAS).
- Rule 12(1B) was inserted to prescribe the filing of an additional e-Form CSR-2 as an addendum to the above-mentioned applicable e-Form AOC-4 in case of companies to whom CSR provisions under Section 135 of Companies Act, 2013 are applicable. It was also prescribed that only for the F.Y. 2020-21, CSR-2 shall be separately filed as a web-form by 31<sup>st</sup> March 2022.
- Now MCA has also **extended the timeline for filing** of Form **CSR-2** for **F.Y. 2020-21** from 31<sup>st</sup> March, 2022 to **31<sup>st</sup> May, 2022**.

***In the matter of S. Rajendran (Appellant/Resolution Professional of M/s. Vasan Health Care Pvt. Ltd.) Vs. B.M Anand (HUF), B.M Anand, Pradeep Kumar Anand, Sandeep Anand Respondents – in the order passed by National Company Appellant Tribunal Chennai dated 1<sup>st</sup> March 2022.***

***Facts of the case***

- The Corporate Insolvency Resolution Process (CIRP) was initiated against the *M/s. Vasan Health Care Pvt Ltd. – Corporate Debtor (CD)*. The order for CIRP was approved by National Company Law Tribunal via order dated 3 October, 2019.
- *B.M Anand (HUF), B.M Anand, Pradeep Kumar Anand, Sandeep Anand - Respondents* were the owners of the property on which the CD was carrying on the business and accordingly the lease agreement was executed on 28 Feb, 2011 and amended on 7 Feb, 2017.
- Pursuant to the lease agreement, CD was required to pay monthly rent on or before 10<sup>th</sup> of every month without any formal demand by the respondents.
- Since the CIRP was initiated against the CD, Resolution Professional (RP) was managing the affairs of the CD thereby RP was liable to pay the rent to the respondents.
- Despite being the CD into CIRP, the CD was using the property of the respondent and generating revenue from the premises owned by the respondent. However, the RP had failed to make rent payments to the respondent. Further, the lease deed ended on March, 2020 and the respondents requested via email dated 1 June, 2020 to vacate the premises as per the terms of the agreement.
- Applicant responded to respondent via letter dated 6 Feb, 2021 and proposed to pay rent in a phased manner.
- Due to inordinate delay in the CIRP of the CD and non-payment of the rent had been causing the tremendous monetary loss to the respondents.
- In this context, the Respondent filed an application at NCLT with a prayer to pass an order directing the Appellant to make payment of the lease rental dues to the Respondents and handover the vacant premises.
- NCLT passed the order to make payment to the respondents and the same to be paid from the Insolvency Resolution Process Cost. And further, directed to pay monthly rent to the Respondents till such time the CD is in occupation of the premises and in the CIRP Process and rejected the request to handover the premises
- Aggrieved by the order of NCLT, the appellant viz., the RP filed this appeal at National Company Law Tribunal (NCLAT)

**Appellant's Submission:**

- NCLT had directed to pay monthly rent to the Respondents during the CIRP Period till such time the CD is in occupation of the premises  
CIRP was initiated against the CD vide an order dated 21 April, 2017. However, the CIRP Period had been extended from time to time. The Appellant was appointed as RP for the CD and took necessary steps to take control of the CD. Further submitted that necessary steps were taken to ensure increase in the revenues generated by the CD so as to adequately meet out the payments towards all CIRP Costs.
- In view of lockdown, the generation of revenue has been impacted and only 50% of the payments to the respondent towards rental dues could be paid for the

month of May 2021.

- Post June, 2021, due to the improvement in the pandemic situation and increase in the operations of the CD, they had been able to meet the 100% payment of monthly rent to the Landlords, Staff salaries, statutory dues and other CIRP Costs.
- Also, highlighted the fact that the CIRP of the CD fully depends on the revenues generated from its business and the revenues generated were just adequate only to meet the current CIRP costs and to run the operations of the CD leaving no surplus funds.
- The order passed by NCLT would have great impact on payment of unpaid CIRP costs of Rs. 53 Crores approximately including rental dues to all other Landlords amounting to Rs. 31 Crores approximately whereas the revenues generated at present by the CD were just adequate to meet the payments towards rents, staff salaries, and statutory dues.
- The unpaid accumulated CIRP dues until the month of May, 2021 were due to the critical situation of the CD and the Covid -19 impact and the same being impracticable to be met.
- Further submitted that the CD operates its business, out of leased premises at almost all centres wherein substantial amount towards interior development had been invested and it is important to retain the leased premises of these centres of the CD so as to continue the CD as a going concern based on which the Resolution Plans have been submitted by various prospective Resolution Applicants.
- The payments towards rent to all the Landlords including the Respondents herein for the period up to May 2021 were paid on Pro-rata/Ad hoc basis for reasons being the downfall in revenues generated by the Corporate Debtor and such downfall in the revenues was due to the decline in footfall of patients, consequent to the lockdown situation prevailed across the country due to the Covid- 19 pandemic situation.

### **Respondent's Submission:**

- As per the terms of the lease deed, the CD ought to have made payments of monthly rent as per the terms made in the deed. However, the CD had been inordinately been delayed paying the rents as a result of which the non-payments of rents is causing a tremendous monetary loss who are dependent upon the income from such premises.
- It is submitted that the Application filed by the Respondents before the NCLT with bona fide intent and merely to seek the legitimate dues payable by the CD during the CIRP to the Respondents. After hearing the parties the NCLT passed the order directing the Appellant to pay the sum as directed therein.
- The Appellant is duty bound to pay the CIRP Costs as per the provision of Section 5(13)(c) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with 31 regulation of the IBBI Insolvency Resolution Process for Corporate Persons (CIRP) Regulations, 2016, the Appellant cannot seek to deviate from the provisions of the Code and the Regulations framed there under by claiming peculiar facts or exceptional circumstances to prevent the legitimate dues of the Respondents.
- Further, stated that they are the owners of the premises wherein the CD carries on its business and the applicant only been made certain ad hoc payments between October 2019 and May 2021.
- The Appellant instead of implementing the order and in order to overcome the obligation arising out of the above impugned order, is merely seeking to state

that the other Landlords would also claim such legitimate dues based upon such order which would entail huge outlay on the part of the CD, the said submissions were based on mere conjectures and surmises and ought not to be considered while dealing with the merits of the impugned order. The Rights of the Respondents herein ought not to be prejudiced merely based on apprehensions.

## Held:

- Once the application is admitted u/s 7 or 9 or 10 of the IBC, the status quo is required to be maintained with respect to the premises which the business of the CD is carrying on, when the CD is into CIRP. And accordingly, moratorium u/s 14 of the IBC would be declared. In pursuance section 14 (1)(d), which provides that during the moratorium period the lesser or an owner of the property cannot recover the possession of the property from the Corporate Debtor. In view of the law, the CD continuing its business in the premises leased to it. For the aforesaid reason the NCLT rejected the prayer of the Respondents seeking handing over of vacant possession of the premises. Hence, no interference is called for.
- Further, Appellant contended that if the impugned order is implemented it would result in CD to pay huge sums of money towards payment of rental dues to all other Landlords. The said contention for the Appellant cannot be accepted for the reason that the Law provides for payment of Insolvency Resolution Process Costs as defined u/s 5 (13))C) the IBC. **From a plain reading of it, it is crystal clear that during the period of moratorium the Resolution Professional who carries on the business of the Corporate Debtor and in carrying on the business and to keep the Corporate Debtor as a going concern, the costs so incurred by the Resolution Professional shall have to be paid.**
- Further, as stated supra the Landlord cannot recover the possession of its premises in view of imposition of moratorium.** In view of the said embargo the lesser cannot recover the property and in variably the Resolution Professional to keep the business of the Corporate Debtor as a going concern the cost so incurred have to be borne by the Resolution Professional of the Corporate Debtor. Also, Regulation 31 of the CIRP Regulations, provides for Insolvency Regulation Process Costs. It clearly specifies the IRP Costs which includes any cost incurred by the Resolution Professional in running the business of the Corporate Debtor as a going concern.
- In the present case, the CD is into CIRP and due to imposition of moratorium, the Respondents should not suffer. **It is apt to state that no one can seek to deviate from the provisions of the Code and the Regulations framed there under.**
- In view of the above, the dues namely rents due to Respondents need to be treated as IRP Costs and the same are to be paid. As held by this Tribunal in *CoC of M/s. Xalta Food and Beverages Pvt. Ltd. Vs. Ms.Pruna Singh NCLAT*, it is unequivocal that the rents fall under the category of CIRP Costs.
- Resultantly, the order of the NCLT is well sustained in the eye of Law and rejected the appeal

## A. Changes in various timelines to be followed by Insolvency Professional

Sr No	Amendment	Timeline before amendment	Timeline After amendment
1	<b>Regulation 30(2)</b> <b>Preparation of the stakeholders</b>	45 days	15 days
2	<b>Regulation 5(2)</b> <b>Intimation to IBBI on appointment of Insolvency Professional</b>	3 days	7 days
3	<b>Regulation 35(1)</b> <b>Distribution of proceeds from realization to the stakeholders by Insolvency Professional</b>	06 months	30 days
4	<b>Regulation 38(3)</b> <b>Submission of Final Report to Adjudicating Authority</b>	NA	90 days where no claims are received 270 days where the claims are received from creditors

## B. Introduction of the Compliance certificate and compliance checklist

The compliance certificate and checklist of compliances is also to be submitted along with a final report to Adjudicating Authority as it would be expeditious for AA if the checklist of compliances is made available. The format of Compliance certificate in form-I is also notified.

Source: <https://ibbi.gov.in/uploads/legalframework/08722b75c35b6fbbd5a38299a2284e6a.pdf>



## Dispute resolution by listed entities through stock exchange arbitration mechanism – SEBI sets the ball rolling

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1. Investor Grievances are handled by companies in house or through RTA. SEBI has by way of various circulars in past, provided various guidelines and enforcement provisions w.r.t processing of investor service requests.

2. Regulation 40 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, and bye-laws, listing agreement & regulations of the stock exchanges provide for dispute resolution under the stock exchange arbitration mechanism for disputes between a listed company and its shareholder(s)/ investor(s).

3. Now by this circular dated April 8, 2022, SEBI has asked exchanges to put in place Standard Operating Procedures (SOP) for operationalizing the resolution of all disputes pertaining to or emanating from investor services such as transfer/transmission of shares, demat/remat, issue of duplicate shares, transposition of holders, etc. and investor entitlements like corporate benefits, dividend, bonus shares, rights entitlements, credit of securities in public issue, interest /coupon payments on securities, etc.

4. Further, in respect of disputes in above matters where Registrar and Share Transfer Agents (RTA) are offering services to shareholder(s)/ investor(s) on behalf of listed companies, the RTAs shall continue to be subjected to the stock exchange arbitration mechanism.

Reference of circular: <https://www.sebi.gov.in/legal/circulars/apr-2022/standard-operating-procedures-sop-for-dispute-resolution-available-under-the-stock-exchange-arbitration-mechanism-for-disputes-between-a-listed-company-and-its-shareholder-s-investor-s-57805.html>

## Processing of waiver applications by Stock Exchanges in case of commonly listed entities – BSE and NSE Circulars dt: 31 March, 2022

Securities and Exchange Board of India vide its circular dt: 22 January, 2020 directed exchanges to put in place a framework to monitor submissions made by listed entities and to initiate actions for non-compliant entities. As prescribed by SEBI in this Circular, BSE and NSE have in place, the policies for exemption of fines which provides the basis for granting waiver of SOP fines. Exchanges also have constituted Internal Committees for reviewing the requests received for waiver of SOP fines based on extant norms. Till now processing of applications for waiver of fines was reviewed by respective stock exchanges i.e. BSE and NSE.

Now BSE and NSE have issued circulars dated 31 March, 2022, under which it has been decided to streamline the process for disposal of waiver requests, expediting the disposals and maintaining uniformity of action/decision involving commonly listed entities.

The **Exchanges in consultation with SEBI have agreed that waiver applications received from commonly listed entities shall be segregated so that only one of the Exchanges will process the application and the decision shall be binding on all other Exchanges** which have levied penalties on the Companies for the same non-compliance. It has also been agreed **that a nominal processing fee shall be charged** by the Exchange tasked with the disposal of the waiver application. The procedural aspects for processing of applications for waiver of SOP fines is detailed in these BSE & NSE Circulars as Annexure I, which is applicable for all applications submitted by commonly listed entities on or after 1 April, 2022.

This process will require bifurcation of commonly listed companies between both stock exchanges. Accordingly, the Exchanges have, vide this circular have provided the allocation of companies between both the Exchanges and this bifurcation is provided as Annexure III to this circular. This list is applicable for period from 1 April, 2022 to 30 September, 2022. After completion of six months, the group of companies will be exchanged between both the Exchanges for the next six months.

The details of the said policy on procedural aspects including the applicable processing fees, shall be effective for applications seeking waiver of SOP fines, submitted to the exchanges on or after 1 April, 2022. It may be noted that the aforesaid mechanism for processing will be applicable only to the companies that are listed on more than one Exchange and are also non-compliant on both the exchanges. In case of exclusively listed companies, i.e., companies listed on only one Exchange, the waiver shall be processed by the Exchange where the company is listed. The process for waiver shall remain the same as detailed in Annexure I of these circulars.

This procedure will be applicable for companies which are listed at both Exchanges and **Excludes**

- a) which are non-compliant at only one Exchange e.g., if ABC Limited is listed on both the Exchanges, falls under the group which is to be handled by NSE but observed to be non-compliant at BSE only, the same shall be disposed of by BSE only.
- b) whose compliance at the other exchange is later than the Exchange in whose bucket the company falls for that period. E.g., if ABC Limited is listed on both the Exchanges, falls under the group which is to be handled by BSE but has delayed compliance at both the Exchanges, but delay is greater at NSE or non-compliance continues at NSE, the same shall be disposed of by NSE only and BSE will not consider the exemption

application. This will ensure that compliance is met at both the Exchanges and the Exchange where there is a larger delay will be able to consider the justification for the delay. The Exchanges vide these circulars have also provided in Annexure II of these Circulars, an illustrative list of scenarios which may lead to rejection of waiver requests and be read together with the Policy for Exemption of Fines.

### **Pointers regarding for submission of waiver or reduction of SOP fine application:**

1. The listed entity shall file application to the stock exchange (as per Annexure III) along with the processing fee. Also as per the 'Policy for exemption of fines' the non-compliant companies are required to file an application for waiver of fine only on achieving compliance with provisions of listing regulations.
2. It may be noted that the application for waiver is to be submitted at all the exchanges where the fines have been levied; however, processing fees are to be submitted only to the designated exchange.
3. Time limit for filing of waiver/ review request shall be 3 months from the date of compliance by the Company. Applications will be segregated based on the date of application i.e. all application received during a period of six months will be reviewed by one exchange.
4. If any Company wishes to apply for waiver beyond this timeline, the same shall only be admitted by the Exchange if it can demonstrate circumstances to the satisfaction of the Exchange.
5. Personal hearing, if sought by the companies, will be conducted only by the Exchange which is handling (disposing) the waiver requests for that Company/Group for that period.
6. Companies making an application seeking waiver of fines, along with applicable processing fees, should have cleared their earlier dues, including fines (other than that for which waiver is applied for) and fees, to all the Exchanges where it is listed, prior to making an application.
7. Companies shall also make detailed submission seeking waiver of SOP Fines considering the extant Policy for Exemption of Fines and shall indicate whether it intends to seek personal hearing before the concerned Committee.
8. Companies are advised to submit all the supporting documents along with application and shall resist from filing response or supporting documents/information on a piece meal basis.
9. While filing an application for waiver request as per this circular, the Company is also advised to refer to the Policy for Exemption of Fines which provides basis for seeking waiver of SOP fines.

**Application for review of cancellation of waiver by one stock exchange :**

1. Second time waiver (Review) requests received from companies will be placed before the committee of the Exchange which had handled the request for the first time, irrespective of the date of receipt of applications.

For example: The waiver application by ABC Limited was handled by BSE Limited (other Exchange) when the company was falling under group allocated to BSE Limited. If ABC Limited files a review application against the rejection order filed by BSE Limited after the completion of the 6-month period of interchanging the companies between the Exchanges, the same shall continue to be handled by BSE Limited only.

2. Though the company may fall under the group which is to be handled by other Exchange (NSE), the second application of review will be placed at BSE (the Exchange which had handled the initial application of the Company).

**Processing Fees:**

1. Processing fees shall be Rs. 10,000 per application. Companies may submit a single application for multiple requests for waiver pertaining to different regulations/ period.
2. In the event that the waiver request is accepted fully, the Exchange shall refund the processing fees charged. In case of Partial waiver of the fines, processing fees of Rs. 5000 shall be refunded and balance fees may either be refunded / adjusted against outstanding fines.
3. No processing fees shall be charged if the fine amount for which waiver is requested is less than Rs. 5000.
4. Processing fees for review application would be Rs 20,000.

BSE circular can be accessed at below mentioned link:

[https://www .bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20220331-52](https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20220331-52)

NSE Circular can be accessed at below mentioned link:

[https://staatic.nseindiaom//s3fs-public/inline-files/NSE\\_Circular\\_31032022\\_1.pdf](https://staatic.nseindiaom//s3fs-public/inline-files/NSE_Circular_31032022_1.pdf)



## What is the validity period of omnibus approval of related party transactions? SEBI clarifies

### **SEBI Circular dt: 30 March, 2022 and 8 April, 2022:**

Regulation 23 of Securities & Exchange Board of India (Listing Obligations & Disclosure Requirement) Regulation, 2015 ["SEBI LODR"] was amended vide Securities & Exchange Board of India (Listing Obligations & Disclosure Requirement) Sixth Amendment, 2021 dt: November 9, 2021 whereby the framework of related parties & related party transactions were enhanced. To resolve the ambiguities, SEBI vide its circulars dt: March 30, 2022 and April 08, 2022 has clarified as follows:

- a. **Approved material related party transactions:** Related Party Transactions for which audit committee and shareholders' approval is already taken before April 1, 2022 need not be brought before shareholders again. So Related Party Transactions for which specific approval is taken by listed entities.
- b. **Material Related Party Transactions:** All existing related party contracts or arrangements which were already approved by audit committee and which continue beyond April 1, 2022 but become material related party transactions as per the revised materiality threshold (exceeding 10% of consolidated turnover as per latest audited financials or Rs 1000 crore, whichever is lower), shall be placed before shareholders for approval in the first general meeting held after April 1, 2022 in accordance with Regulation 23(8) of SEBI LODR.
- c. **Omnibus Shareholders Approval:** SEBI has clarified that Omnibus shareholders' approval of omnibus RPTs approved in an AGM shall be valid upto the date of the next AGM for a period not exceeding fifteen months. SEBI has further clarified that in case omnibus approval for material RPTs is taken at shareholders meeting other than AGM, the validity of such omnibus approvals shall not exceed one year. For related party transactions where specific approval has been taken by the listed entity the transactions will be governed as per the terms approved in the resolution.
- d. **Minimum items to be placed before audit committee and shareholders:** SEBI had, vide its earlier circular dated November 22, 2021, clarified that explanatory statement in the notice sent to shareholders for seeking approval for a material Related Party Transaction shall provide for relevant and detailed information to enable shareholders to take an informed decision. SEBI has, vide its circular dated March 30, 2022, clarified the information shall be provided in such a manner that will enable shareholders to take a view whether the terms and conditions of a Related Party Transaction are favourable or not in comparison with similar transaction entered between unrelated parties.
- e. SEBI further clarified that information to be provided to the audit committee for approval of Related Party Transactions and in the explanatory statement being sent along with notice of shareholders' meeting for approval

of Material Related Party Transaction as detailed under SEBI Circular dt: November 22, 2021 is inclusive in nature, therefore the information to be placed as per the said circular are just bare minimum & additional items can be placed. SEBI has highlighted that listed entities shall ensure compliance of new provisions of related party transactions in letter as well as spirit & endeavor to provide relevant & detailed information to enable & empower shareholder to take an informed decision as restated by SEBI in the given circular.

Copy of the circular can be accessed at below mentioned link::

[https://www.sebi.gov.in/legal/circulars/mar-2022/clarificic\\_on-on-applicability-of-regulguon-23-of-sebi-llii-ng-obli-obons-and-disclosure-requirements-regulations-2015-in-elaationo-related-party-trtransactions\\_5739\\_tml](https://www.sebi.gov.in/legal/circulars/mar-2022/clarificic_on-on-applicability-of-regulguon-23-of-sebi-llii-ng-obli-obons-and-disclosure-requirements-regulations-2015-in-elaationo-related-party-trtransactions_5739_tml)

SEBI Circular April 8, 2022: [https://www.sebi.gov.in/legal/circulars/apr-2022/clarification-on-applicability-of-regulation-23-4-read-with-regulation-23-3-e-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-in-relation-to-related-party-transactio-\\_57807.html](https://www.sebi.gov.in/legal/circulars/apr-2022/clarification-on-applicability-of-regulation-23-4-read-with-regulation-23-3-e-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-in-relation-to-related-party-transactio-_57807.html)

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