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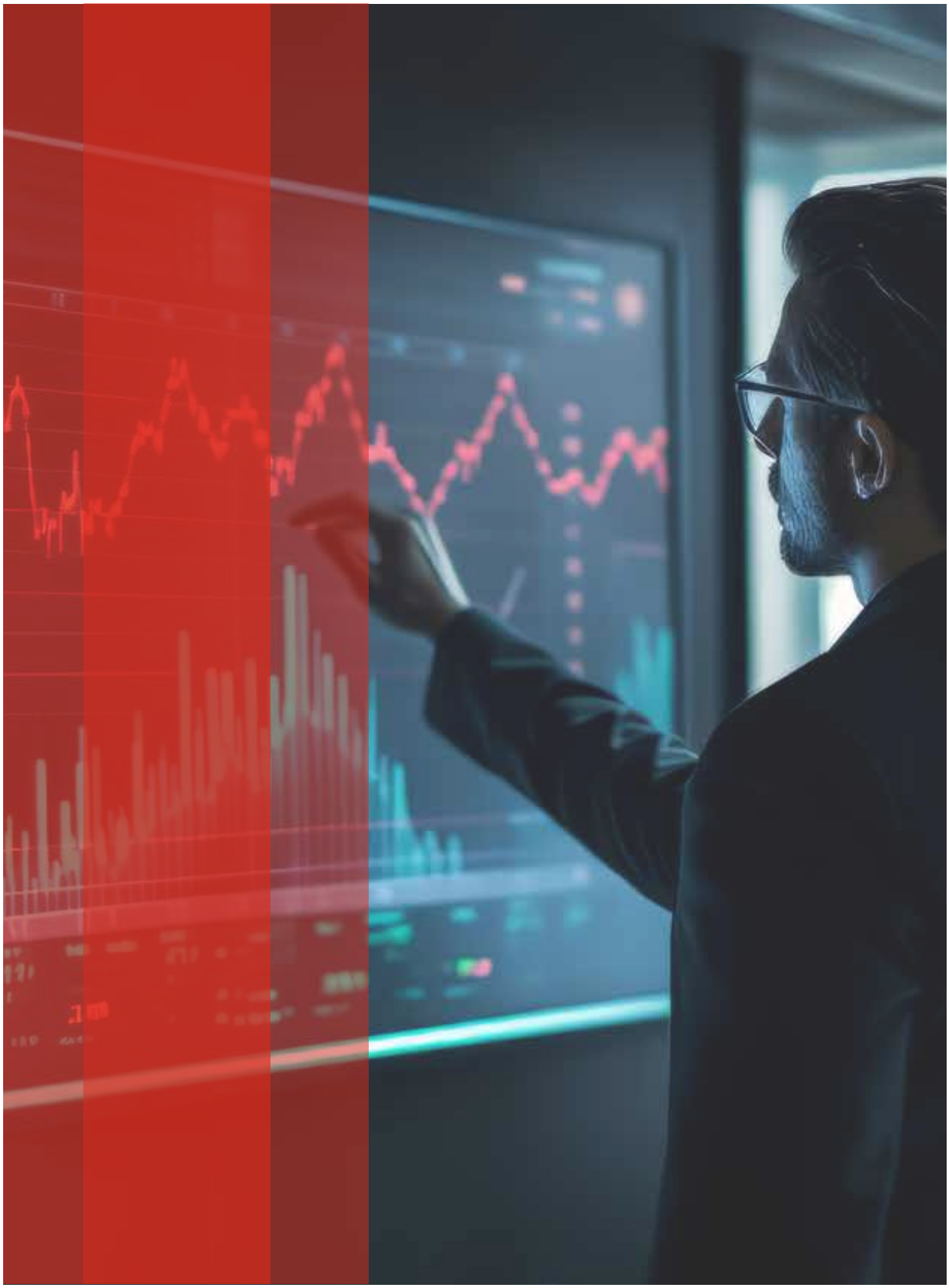

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Scrutiny of Compliance with Accounting Standards by Registrar of Companies.

Introduction:

Section 133 of the Companies Act 2013 ('the Act') authorises Ministry of Corporate Affairs ('MCA') in consultation with National Financial Reporting Authority ('NFRA') to prescribe the accounting standards to be followed by companies while preparing the financial statements. Accordingly, MCA had notified accounting standards prescribed by Institute of Chartered Accountants of India ('ICAI') on 7th December 2009 and the same have been continued under the Act as well. Because the accounting standards relate to true and fair disclosure of financial statements, compliance with the same has a great importance in the eyes of all the regulators.

The requirement of complying with accounting standards while preparing financial statements comes from section 129 of the Act and therefore, consequence of non-compliance with the same also originates from the Act itself. Section 129 of the Act provides for compounding of offence in case of non-compliance, and hence, non-compliance of accounting standards does not fall under adjudication mechanism. However, non-disclosure of violation of accounting standards is adjudicatable offence under different sections like section 134 or section 143 etc.

From the scrutiny of resent ROC orders, it is observed that, The ROC has been highlighting and penalising non-disclosure of non-compliances with accounting standards while preparing financial statements. In this article, we shall try to analyse 8 ROC orders in context of non-disclosure of violation of accounting standards and try to understand what caution is required to be taken by officers of the company in this regard.

Analysis of ROC orders:

If we study the adjudication orders passed by ROCs in last 6months, we may observe that, ROC has penalised the directors and auditors of the company for not disclosing about the violation of accounting standards in the directors responsibility statement (DRS) in the board report and in the auditor report as the case may be. the penalties has been levied under sections 134 and 143 respectively.

The orders are broadly classified under both these sections on the basis of the person on whom penalty is imposed. Wherever the AS have been violated by the company and the statutory auditors have not commented on the same, the penalty under section 143 has been imposed on auditor and wherever, the directors have not reported about non-compliance of AS in the DRS under director report, then the directors of the company are penalised for not giving true and fair disclosure in the financial statements.

Orders under section 134:

The following orders passed under section 134 of Companies Act 2013 have been bifurcated in the table below highlighting the important aspects of these orders:

Name of the Company and Adjudicating Officer	Details of Violation	Penalty
Wellman Wacoma Engineering Private Limited - ROC Kolkata	Company had not written off its preliminary expenses as per AS-26. This fact was not mentioned in the DRS by the directors.	**Penalty: u/s 134(8)** On company: Rs 3,00,000/- On 2 directors Rs 50,000/- each.
Wellman Wacoma Engineering Private Limited - ROC Kolkata	The financial statements of the company for the particular FYs did not disclose as to who are the related parties as per AS-18. & this non-compliance was not highlighted in the DRS.	**Penalty u/s 134(8):** On company: Rs 3,00,000/- On 2 directors Rs 50,000/- each.
Wellman Wacoma Engineering Private Limited - ROC Kolkata	The director responsibility statement did not disclose that the company had failed to mention earning per share (EPS) in the P&L account as required under AS-20.	**Penalty u/s 134(8):** On company: Rs 3,00,000/- On 2 directors Rs 50,000/- each.

Observations from the orders:

Section 134(5)of the Act states that, the directors responsibility statement forming part of boards report should contain a statement regarding compliance with applicable accounting standards. In all the above mentioned orders, there have been lapses on the part of the company in complying with applicable accounting standards and in spite of that the board in its report has made a statement that the company has fully complied with all applicable accounting standards. Making of such statement by the board has been considered as non-disclosure of true and fair view of company's possession and hence penalty is imposed on directors.

Orders under section 143:

The following orders passed under section 143 have been bifurcated in the table below. These orders highlight the situations wherein the statutory auditors have failed to highlight the non-compliance with applicable accounting standards in the audit report.

Name of the Company and Adjudicating Officer	Details of Violation	Penalty
Bhagirathi Vanijya Private Limited - ROC Kolkata	The auditor in his report has not commented on the fact that the company has not reported basic and diluted earnings per share in its P&L a/c as required by AS20.	**On Auditor** 10,000*2 = 20,000 10,000*2 = 20,000 10,000*1 = 10,000
Mars Mercantiles Private Limited - ROC Kolkata	The auditor in his report, failed to highlight that the company has not disclosed the names of shareholders having more than 20% voting rights as related parties as required by AS-18.	On Statutory Auditor: Rs 1,50,000/-
Sun Pharmaceuticals Industries Limited – ROC Ahmedabad	The company did not disclose material related party transaction details as per the requirement of IND AS-24 of m/s Aditya Medisales Ltd. And the auditor did not report this non-compliance in his report.	On Auditor's Firm. 10,000+ 1,000 per day Maximum Penalty =50,000/-
The Peerless General Finance & Investment Company Ltd - ROC Kolkata	Investment in right to property was classified as current investment, whereas it should have been classified as non-current investment as per AS-13. The auditor has not highlighted this non-compliance in the audit report.	On Statutory Auditor: Rs 1,80,000/-

Observations of orders under section 143:

The statutory auditor through his audit report, is required to highlight to the shareholders and regulators about any kind of non-compliance done by the company while preparing financial statements. In the cases discussed above, the auditor has failed to fulfil his duty of reporting non-compliance and hence auditor has been made liable to pay penalty.

Conclusion:

As mentioned in the beginning, violation of accounting standards itself is a compoundable offence which may end up imposing heavy fines on the company and its officers in default. In addition to that, The analysis of above orders shows that, non-disclosure of such violation leads to altogether different non-compliance resulting in to separate penalty.

Therefore, companies have to be extremely careful with respect to compliance with accounting standards. if there is any violation of accounting standards or non-disclosure thereof by the company, then both, directors and statutory auditors will have to face the consequences of the same.

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Material Related Party Transactions – Proxy advisory perspective of Disclosure and legal concerns

Introduction:

Related Party Transactions is a common phenomenon among all the companies. Related party transactions are subject to higher scrutiny as they inherently involve conflict of interest. Related party transactions subject to various approvals within the company depending on the legal framework applicable to the company.

Transactions brought before the members of the company are subject to clearance from audit committee and board of directors of the company first.

Related party transactions crossing specified threshold as per 1st proviso to section 188(1) read with rule 15(3) of Companies (Meeting of its Board and its Powers), rules 2014 of companies act, 2013 or as per regulation 23 (1) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations, 2015 are brought before the members of the company for approval. Members voting on relating party transactions consider the information provided for in the explanatory statement to the resolution for approval of related party transactions while taking a decision to vote on resolutions. In addition to this they also refer to the views expressed by proxy advisors. In this article we shall understand the relevance of having a detailed explanatory statement and a views of proxy advisors in various scenarios.

Importance of Explanatory statement in the approval of material related party transactions:

Related parties, whether they are part of the transaction or not, are not allowed to vote to approve the related party transactions brought before members for approval[1]. Further no member of the company shall vote on resolution to approve any contract or arrangement which may be entered into by the company if such member is a related party to the transaction[2]. So, related party transactions brought before the members of the company are subject to approval by public shareholders only. Public shareholders would vote on the resolution by referring to the disclosures provided by the company in the explanatory statement provided along with resolutions.

Explanatory statement shall provide for material facts concerning each item of business to be transacted viz. nature of concern or interest, financial or otherwise or any other information and facts that may enable members to understand the meaning, scope, and implication of the items of business and to take decision thereon[3].

Further as per SEBI circular dt: November 22, 2021[4] listed companies are required to provide disclosures relating to proposed related party transactions:

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[1] Reg 23(4) of SEBI LODR
[2] 2nd proviso to section 188(1) of Companies act, 2013
[3] Section 102 of companies act, 2013
[4] https://www.sebi.gov.in/legal/circulars/nov_-2021/disclosure_-obligations-of-listed-entities-in-relation-to-related-party-transactions_54113.html

a. A summary of the information provided by the management of the listed entity to the audit committee;

b. Justification for why the proposed transaction is in the interest of the listed entity;

c. Where the transaction relates to any loans, inter-corporate deposits, advances, or investments made or given by the listed entity or its subsidiary,

d. A statement that the valuation or other external report, if any, relied upon by the listed entity in relation to the proposed transaction will be made available through the registered email address of the shareholders;

e. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT, on a voluntary basis;

f. Any other information that may be relevant.

But is this data sufficient for a member to vote on the resolution relating to related party transactions?

As related party transactions involve conflict of interest, they are assessed on various parameters to ensure their sanctity. Hence it is necessary that explanatory statements shall be drafted stating not only the facts that are required by law but also all the all-relevant facts that a member should know to take decision on voting on related party transactions.

Failure to provide necessary details would make it difficult for members to appreciate the need and justification for proposed related party transaction(s). Members may also be misled due to lack of information. Hence it is very much necessary to draft the explanatory statement pertaining to related party transaction with due care. This would lead to all relevant information being made available to members thereby leading to approval of proposals relating to related party transaction. This would also enhance confidence of shareholders in the company.

Legal provisions relating to explanatory statements are clear enough but as mentioned above members also refer the view of proxy advisors in this article a list of concerns is given which proxy advisors raise while assessing relating party transactions. This needs to be referred to while drafting of resolutions while proposing related party transactions. The concerns raised by proxy advisors are categorized as governance concerns, legal concerns, and disclosure concerns.

In this article we would see the varied nature of legal and disclosure concerns raised by proxy advisors when they assess the material related party transactions. Below is the compilation of these concerns raised by proxy advisors in various scenarios:

Concerns relating to	**Reason by proxy advisors for recommending against.**
Non-disclosure of manner of determining project cost and methodology of awarding of contract	In case of approval of material related party transactions wherein the project is being assigned to a related party, but the project cost report is not disclosed and the methodology as to how was related party determined as the contender for execution of project is also not disclosed. E.g. A transaction is proposed by the listed company with the holding company for construction of a plant for manufacturing products of listed company. Listed company states that the

	contract for manufacturing would cost Rs 300 crores and the contract was awarded through bidding process. Then in this case if the listed company does not disclose the project report through which this cost of Rs 300 crore was taken and also does not disclose the details as to how bidding process was done (viz. how many submitted bids, what was price etc.) then concerns are raised with respect to disclose for related party transactions.
Clubbing of multiple transactions into one resolution for approval of members	Clubbing of multiple transactions with multiple related parties into one resolution may lead to inadequate disclosures in the resolution. E.g. A ltd is proposing to enter transactions for supply of goods, availing of services, sharing of human resources, sharing of premises and other allied services with B Ltd (subsidiary company), C Ltd (associate company), D Ltd (fellow subsidiary) and E Ltd (subsidiary company). In this scenario it is not clear with whom what kind of transaction is proposed to be entered it is to be entered at what price, terms, and conditions. Also, shareholders if they want to approve one transaction but want to reject the other transaction it is not possible.
Non-disclosure of arm's length pricing and arm's length basis	Sometimes resolutions proposing related party transactions don't provide for at what price the transaction would be entered or on what terms the transactions would be entered. Neither any formula or guidance is provided as to how the price will be determined or whether the terms of transactions would be same as that of related party. In this case even if the resolution says that transactions would be at arm's length price and on arm's length basis this statement remains invalidated.
Differing practices in proposing resolutions for approval of material related party transactions	Listed entity has a practice of proposing separate resolutions for approval of material related party transactions with each related party with limit specified for each related party transactions. From a particular period, company decides to change this practice. Listed company now starts proposing material related party transactions for approval with clubbed resolutions and without separate limits for each related party (viz. resolution for approval of related party transactions with multiple related parties for multiple transactions and consolidated limits) then concerns are raised due to this sudden change in practice without adequate justification.
Non-disclosure of details pertaining to the transactions	Inadequate disclosure pertaining to details of transactions. E.g. If A ltd engaged into real estate business is proposing to enter into transactions with related parties for sale of flats, commercial places, shops and establishments being constructed by the listed company then questions are raised as to within how many units will be sold, within what time it will be sold, what will be end purpose of these transactions for the related party buying those units, for what time this arrangement is proposed, at what price these transactions would be entered and how will the price be determined etc.
Nature of relationship with related parties not disclosed	Related party transactions proposed with related parties but nature of relationship with related parties was not mentioned. Due to this it becomes difficult to understand what impact these related party transactions would have on the listed entity. E.g. A Ltd proposing related party transaction with B ltd and C Ltd but what is the relation between A Ltd, B Ltd and C Ltd is not

	explained due to which it becomes difficult to understand what impact this transaction would have on listed company.
Value of transactions with related parties not disclosed	If related party transactions are being proposed with a related party for 3 years but it is not mentioned what value of transaction will be entered with the related party every year during this period then questions are raised for non-disclosure. Concerns are also raised as to why company is not able to ascertain the value of these transactions.
Minimum data as per SEBI Circular dt: November 22, 2021	While entering into related party transactions if the minimum details as are required by SEBI circular dt: November 22, 2021 are not provided in the notice for approval of related party transactions then legal concerns would be raised.
Omnibus approval for more than one year	As per SEBI Circular dt: April 8, 2022 omnibus approval of material related party transactions shall be proposed for a period of one year only. These transactions shall be proposed to be brought before the members every year. In case a listed company proposes omnibus approval of material related party transactions with related parties or related party for a period exceeding one year or one financial year then legal compliance concerns are raised.

Conclusion

Disclosures in detail about various aspects of proposed related party transactions helps stakeholders understand the relevance of related party transactions. It makes easy for members of the company to decide whether to consent or dissent the proposed related party transactions. Related party transactions inherently involve conflict of interest. Hence it is necessary to ensure that all the requisite details of proposed related party transactions leaving no room confusion amongst stakeholders. It would act as a first step towards stakeholder's engagement.

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Material Related Party Transactions – Proxy Advisory perspective of Governance concerns

Introduction:

In the previous article on subject matter, we saw the relevance of giving legal disclosures and disclosures that are necessary. In this article we would be focusing on recommendations made on 'Governance Concern' by proxy advisors resolutions pertaining to approval of material related party transactions. Governance concerns are pertaining to 'why' this transaction is being entered.

Listed companies proposing to enter into these transactions provide for the reasons for entering into these transactions. Proxy advisors raise governance concerns if related party transactions proposed to be entered into does not prima facie seem commercially viable. Also, concerns are raised if the justification provided by the listed company is not adequate for shareholders to understand implication of the transaction.

Below is the list of governance concerns raised by proxy advisors with respect to related party transactions:

Concerns relating to	**Reason by proxy advisors for recommending against.**
Concentrated transactions with related parties	If related party transactions with a single party are substantially high as compared to the turnover of the related party then questions are asked with respect to the necessity of such huge volumes for such related party transactions.
Sudden surge in related party transactions	If listed company starts entering into related party transaction with a related party with whom there were no transactions entered till now or if related party transactions have seen a sudden surge as compared to previous financial year, then concerns are raised with respect to such sudden surge if there is no adequate justification for such sudden surge [e.g. If transactions with A ltd [promoter controlled company] for availing of services was Rs 10 and from next financial year if the value of transaction has gone beyond Rs 80 (without any growth in business) then concerns are raised. For justifying such related party transaction companies generally mention that purchase of raw material from promoter-controlled company would give company a sustainable supply of raw material as compared to other suppliers looking at geo political situations then questions would be raised regarding at what price this transaction would be done, will this arrangement end once geo political situation normalizes etc.
Non-disclosure of limits of related party transactions	Listed entity had provided limits for each transaction that it would be entering into with a related in party in financial year. Now while continuing the related party transaction in the next financial year the listed company choose to mention a cumulative limit of related party transactions with related party instead of specifying individual limit for each related party transactions earlier.

	e.g. A ltd proposed to enter into transactions for buying raw materials worth Rs 100, provide services worth Rs 200, avail services worth Rs 300 with related party in a financial year. In next financial year A ltd proposed to enter into related party transactions with same related party for Rs 1000 but there is no bifurcation for which services what value is attached.
Is transaction commercially viable?	If related party transaction is relating to inter corporate loans and guarantee then it is checked if the loan being provided to the related party or for whom the guarantee is given is commensurate with the operations of the company. E.g. suppose a company is having losses of Rs 450 crore and loan is provided to the company or guarantee is being given for loan being availed by the company then concerns are raised why such guarantee or loan is being given? What is the valid justification for such transaction? Is the company already defaulting on other loans provided by market and they are not ready to further extend the transaction? Further questions are also asked whether listed company is the only company who is providing guarantee or loan or any other group company has also extended loan or guarantee? If no one else if extending the loan or guarantee then why is listed company giving the same? This raises questions as to how the transaction is in the best interest of the listed company.
	In case a listed company is proposing a material related party transaction to convert a loan into equity then questions are raised with respect to following: a. Why is this transaction of converting loan into equity being proposed? b. If the entire loan is not being converted to equity, then why a small portion is being converted only. E.g. If loan is of Rs 400 crore but only Rs 25 crore is being converted? c. Why is this being proposed when company has a healthy cash flow?
	In case a company is proposing to give loans, provide guarantees to its subsidiary and for doing this company is using cash by withdrawing money from liquid investments before maturity or idle cash lying with the company then following questions are raised: How is this decision commercially viable and in the best interest of the company? Is the subsidiary company generating healthy cash flow enough to service the debt? What was the return company was getting through its liquid investments and what is the return company going to get in the form of interest through this loan?

	Would this loan be given on same terms as the liquid investments were?
	If related party transaction is entered with the subsidiary company for supply of raw materials while there is not much business in subsidiary company for utilizing this material provided and manpower is also not employed then questions are raised for this transaction.
Time period for entering into related party transactions	Listed entity proposing to enter into related party transactions with related parties but no time period is prescribed for continuation of the transaction then concerns are raised as to why such transactions are being proposed in perpetuity.
Resolutions with confusing timelines	Listed entity had proposed and got it approved transaction with a related party for providing loan and guarantee for a period of five years in the previous financial year. Now in the current financial year the same resolution is again proposed for approval with same set of transactions but with one new related party being added. As already the resolution was approved for loan and guarantee for a period of five years then why is the same resolution being again amended with new related party and why not a separate resolution is being proposed with it.
Clubbing of resolution	Clubbing of resolutions of different nature would lead to shareholders not getting a chance to vote on important resolutions. E.g. related party transaction resolution for issuance of non-convertible redeemable preference shares was clubbed with other resolutions for supply of goods or rendering of services or availing of services proposed.
Transactions involving pecuniary relationship.	Transaction is being entered with a firm for availing of consultancy services. Non-executive director of the company is a partner of the firm. Non-executive director is not going to draw any remuneration from company but he is drawing remuneration from the firm. Questions were raised as to why director is not taking remuneration in listed company but having a pecuniary relationship through firm. Why this transaction is being proposed in this year only and was listed company taking this consultancy earlier also? If listed company was not taking the consultancy earlier then why this year has it started and from this firm only?
Ordinary course of business	If listed company is taking an omnibus approval for sale of land, building, plant etc. then questions are raised as to how is this transaction being considered as 'ordinary course of business'? Why omnibus approval is being taken for such transactions and why not specific approval is being taken?

Questionable business arrangements	In case a listed company's promoter has started a news business and wants the listed company to transfer the resources and purchase its finished products then questions are raised as to why this new business is being done by a promoter-controlled entity and not the listed company itself? Was this transaction evaluated by the board of directors? What was the reasoning behind not doing the business under the listed company? How is this transaction in the best interest of listed entity?
Statutory auditors raising concern relating to transactions	Listed companies continuing to enter into related party transactions even when statutory auditors have qualified the audit report stating that there is non-repayment of loan already given to related party or the guarantee given by listed company for and on behalf of related party got invoked due to which there is mounting debt obligations on the listed entity. Inspite of this if related party transactions are being entered without justification or any concrete steps to recover the money then questions are raised on the validity of related party transactions.

Conclusion:

Assessment of related party transactions on governance aspect would differ according to the business and transactions proposed. Governance concerns provide a different perspective to the related party transactions. Addressing these governance concerns proactively would help listed companies get better support from members for the related party transactions.

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The Vital Role of Company Secretaries in Championing ESG Compliance

In the modern corporate landscape, Environmental, Social, and Governance (ESG) criterion have become indispensable for evaluating a company's sustainability and its impact on society. As stakeholders—ranging from investors to consumers—increasingly demand ethical and sustainable practices, companies face growing pressure to improve their ESG performance. This shift necessitates a strong governance framework, making the role of company secretaries more crucial than ever. Company secretaries are pivotal in embedding ESG principles into the corporate fabric, ensuring that companies not only comply with regulatory requirements but also proactively engage in responsible business practices. Their expertise and oversight help companies navigate the complex landscape of ESG compliance, ultimately contributing to a more sustainable and ethical business model.

Understanding ESG Compliance:

ESG compliance encompasses a broad spectrum of responsibilities, from ensuring environmental stewardship and social responsibility to maintaining robust governance practices. Company secretaries are pivotal in embedding these principles into the corporate ethos. They must ensure that the company adheres to relevant laws, regulations, and standards, and that it reports its ESG performance transparently and accurately.

Raining Disclosures & Framework:

SEBI mandated disclosure for listed entities in India[1]

From FY 2023 –2024, the top 1000 listed entities (by market capitalization) shall make disclosures as per the updated BRSR format, as part of their Annual Reports.

Listed entities shall mandatorily undertake reasonable assurance of the BRSR Core, as per the glide path specified in the following table:

Financial Year	**Applicability of BRSR Core to top listed entities (by market capitalization)**
2023-24	Top 150 listed entities
2024-25	Top 250 listed entities
2025-26	Top 500 listed entities
2026-27	Top 1000 listed entities

Prevailing Challenges:

Some common challenges faced by Company Secretaries while ESG reporting include lack of standardization, data collection and quality, evolving regulatory requirements, balancing materiality & stakeholder expectations, integrating ESG into corporate strategy, addressing greenwashing concerns and more.

[1] https://www.sebi.gov.in/legal/circulars/jul -2023/brsr-core-framework-for-assurance -and-esg-disclosures -for-value-chain_73854.html

The Role of Company Secretaries in ESG Compliance

ESG Reporting Preparation:

In-depth knowledge of ESG metrics is crucial for company secretaries. They must understand the specific metrics and indicators relevant to their company's industry, including key performance indicators related to environmental impact, social responsibility, and governance practices. Company secretaries also oversee data collection and verification processes, collaborating with various departments to ensure accurate data gathering. They work to integrate this data into a standardized format for comprehensive reporting. Their role is pivotal in ensuring that ESG reports are precise, transparent, and reflective of the company's true performance, thus fostering trust and credibility among stakeholders.

Ensuring Accuracy and Transparency:

Company secretaries play a pivotal role in ensuring the accuracy, reliability, and consistency of ESG data through rigorous validation processes and internal audits. Transparency is a cornerstone of their work, requiring them to present both the positive and negative aspects of the company's ESG performance. They align ESG reports with globally recognized standards and frameworks such as the Global Reporting Initiative (GRI), the Sustainability Accounting Standards Board (SASB), and the Task Force on Climate-related Financial Disclosures (TCFD). By doing so, they ensure that the reports are not only accurate but also meet international benchmarks, thereby enhancing the credibility and trustworthiness of the company's ESG disclosures.

Compliance with Reporting Requirements:

Company secretaries remain well-informed about the evolving ESG reporting regulations in all jurisdictions where the company operates. They meticulously plan and coordinate the entire reporting process to ensure that all data is accurately compiled and submitted within the deadlines set by regulatory authorities. Their diligence ensures that the company not only meets its legal obligations but also demonstrates a commitment to transparency and accountability in its ESG practices. Through their efforts, company secretaries play a vital role in maintaining the company's compliance and upholding its reputation for ethical governance.

Stakeholder Engagement:

Acting as liaisons, company secretaries effectively communicate the company's ESG performance, initiatives, and goals to a diverse array of stakeholders, including investors, regulators, customers, suppliers, and the public. They handle inquiries and requests for information with transparency and accountability, addressing questions from shareholders and ESG rating agencies alike. Through these interactions, company secretaries reinforce the company's commitment to ethical practices and sustainability, fostering trust and confidence among all stakeholders.

ESG Report Publication

Company secretaries play a crucial role in managing the distribution and publication of Environmental, Social, and Governance (ESG) reports. They ensure that these reports are disseminated effectively across various platforms such as the company's website, regulatory filings, and industry-specific channels. This includes overseeing the accessibility of these reports, ensuring they comply with accessibility standards, and providing clear links on the company's website for easy access.

Moreover, company secretaries are responsible for ensuring that ESG reports are not only accessible but also comprehensible to stakeholders. They work to present the company's ESG

performance in a clear and transparent manner, making it easy for interested parties to understand the company's efforts and achievements in these areas.

By facilitating transparent and efficient dissemination of ESG information, company secretaries contribute significantly to enhancing the company's transparency and accountability regarding its environmental, social, and governance practices. Their efforts ensure that stakeholders, including investors, regulatory bodies, and the public, have access to accurate and relevant ESG data, thereby promoting trust and confidence in the company's sustainability initiatives.

Internal Co-ordination:

Company Secretaries (CS) play a crucial role in internal coordination, working collaboratively with departments such as legal, finance, sustainability, and communications to gather and analyze ESG (Environmental, Social, and Governance) data and insights. They also engage directly with the Board of Directors, ensuring they grasp the importance of ESG performance in driving long-term value creation and managing risks effectively.

CS have a multifaceted responsibility in crafting accurate, transparent, and compliant ESG reports that offer meaningful insights to stakeholders. They serve as intermediaries between the company and regulatory bodies, guaranteeing adherence to ESG reporting standards. Their duties are pivotal in showcasing the company's dedication to ESG principles, fostering transparency, and establishing trust with investors, regulators, and the public.

Governance and Risk Management:

Company secretaries are indispensable to the governance framework of an organization, particularly in the realm of Environmental, Social, and Governance (ESG) considerations. They ensure that the board of directors and its committees are comprehensively informed about ESG-related risks and opportunities, fostering informed decision-making at the highest levels of corporate leadership. They aid in facilitating ESG integration, ensuring informed decision making and reflecting ESG in Board Decisions.

Creating Sustainable Value:

Beyond compliance, company secretaries play a pivotal role in creating sustainable value for all stakeholders, including shareholders, employees, customers, and the broader community. They work to align the company's ESG goals with its overall business strategy, driving initiatives that promote environmental stewardship, social responsibility, and robust governance practices. This alignment not only enhances the company's reputation and stakeholder trust but also contributes to its financial performance and competitive advantage.

Building Resilient and Forward-Thinking Organizations:

By championing ESG initiatives, company secretaries help build resilient, responsible, and forward-thinking organizations. They support the board in understanding and addressing ESG risks and opportunities, facilitating informed decision-making that balances short-term performance with long-term sustainability. This involves fostering collaboration across departments, engaging with stakeholders, and ensuring that the company's ESG strategy is coherent and effectively implemented.

Fostering Innovation and Adaptability:

In a rapidly changing business environment, the ability to innovate and adapt is crucial. Company secretaries encourage the adoption of innovative practices and technologies that support ESG goals, such as renewable energy, waste reduction, and inclusive workplace policies. They also help the organization navigate the complexities of global supply chains, regulatory landscapes, and market expectations, positioning it to thrive in a sustainable future.

Conclusion:

The role of company secretaries in ESG compliance is vital and increasingly integral to the success of modern businesses. By driving ESG initiatives and ensuring regulatory compliance, they help create sustainable value, build resilient organizations, and champion responsible business practices that benefit all stakeholders.

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"FIT & PROPER "
Impact on Scheme of Mergers & Demergers

Introduction:

Scheme of mergers, demergers, and various other arrangements (**herein after "Corporate Restructuring"**) involving listed entities are seen increasing at a greater pace in recent times. Listed entities involved in scheme of arrangement have to seek No Objection letter from stock exchanges[1]. Corporate Restructuring involving listed entities which are SEBI Registered Intermediaries and certain individuals forming part of this listed entities have to comply and ensure the 'fit and proper' person criteria. This criterion is checked by stock exchanges on behalf of Securities and Exchange Board of India ('SEBI') during any corporate restructuring. Fit and Proper person criteria seeks to check if the entities involved in the corporate restructuring are morally and ethically sound.

Fit and Proper check has always been crucial in the eyes of SEBI. It has always placed provisions for checking 'Fit and Proper' person criteria for intermediaries registered with it. Fit and proper person criteria is periodically checked by SEBI in case of registered intermediaries. Hon'ble National Company Law Tribunal also screens the cases of Corporate Restructuring on the grounds of "Fit & Proper"**.**

Considering this it is vital to understand what can be considered as Fit & Proper under while going for any corporate restructuring and few precedents in this regard.

Fit and Proper Person Criteria as is stated by SEBI in Schedule II of SEBI (Intermediaries) Regulations, 2008 is also applicable for Corporate Restructuring[2]. The criteria are as follows:

a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;
b) the person not incurring any of the following disqualifications:
   i. criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;
   ii. charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;
   iii. an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;
   iv. recovery proceedings have been initiated by the Board against such person and are pending;
   v. an order of conviction has been passed against such person by a court for any offence involving moral turpitude;
   vi. any winding up proceedings have been initiated or an order for winding up has been passed against such person;
   vii. such person has been declared insolvent and not discharged;
   viii. such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;

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[1] Regulation 37 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015 read with SEBI Master circular dated 20 June 2023 SEBI/HO/CFD/POD - 2/P/CIR/2023/93

ix. such person has been categorized as a wilful defaulter; (x) such person has been declared a fugitive economic offender; or
x. any other disqualification as may be specified by the Board from time to time.

Schedule II of SEBI (Intermediaries) Regulations, 2008 gives that "**Fit and Proper"** criteria shall apply to following persons.

a) the applicant or the intermediary
b) the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and
c) the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly. Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfil the 'fit and proper person' criteria.

Explanation– For the purpose of this sub-clause, the expressions "controlling interest" and "control" in case of an applicant or intermediary, shall be construed with reference to the respective regulations applicable to the applicant or intermediary.

Precedents – ascertainment of Fit & Proper criteria and rejection of schemes

Recently in few cases it is seen that stock exchanges have been rejecting schemes on the grounds of listed Intermediaries and individuals forming part of this listed Intermediaries have not complied with criteria of "Fit & Proper". Couple of schemes which were rejected on the basis of 'Fit & Proper' person criteria is as follows:

a. ***In case of Proposed Scheme of arrangement between Motilal Oswal Financial Services Limited (transferor or resulting Company) and Glide Tech Investment Advisory Private Limited (transferee Company) and Motilal Oswal Wealth Limited (Demerged Company) and their respective shareholders.***

   It was seen that Stock exchange has denied the NOC under Regulation 37 of SEBI LODR on the grounds that one of the directors was named in the Chargesheet filled by "The Economic Offence Wing, Mumbai in the matter of their investigations into irregularities at National Spot Exchange Limited which was disqualifying him under "Fit & Proper Criteria" of Schedule II of SEBI (Intermediaries) Regulations, 2008.

b. ***In Case of Scheme of arrangement between IIFL Securities Limited and 5Paise Capital Limited and their respective shareholders and Creditors:*** In this case the chargesheet by Economic Offence Wing ['EOW'] questioned the "Fit & Proper" status of one of the directors of IIFL Securities Limited and since the matter was sub-judice, SEBI/ Stock exchange was keen to understand the impact of penal action on the scheme of arrangement. In this case the NOC was not issued, and Companies were asked to refile the scheme with additional information.

Considering both the above cases, it gives indication that SEBI/ Stock Exchanges are very clear that any non-compliance of the "Fit & proper" Criteria under SEBI (Intermediaries) Regulations, 2008 may result in not entertaining any application of any scheme of merger, demerger or any other arrangements for Intermidiary. Stock Exchanges may look into this Fit& Proper criterion at the time of Corporate Restructuring because of first and second proviso to clause 6 of Schedule II of SEBI (Intermediaries) Regulations, 2008.

NCLT & NCLAT Rejection due to Fit & Proper

In the matter of Hotel City Plaza Private limited vs Union of India in reference to scheme of amalgamation, NCLT and NCLAT rejected the scheme on the grounds of violation of Sections 73 to 76A of the Companies Act, 2013 i.e. prohibiting the private limited companies from accepting or renewing any deposits from shareholders in excess of the aggregate of the paid-up capital, free reserves, and securities premium amount. Further, Registrar of Companies had issued 'Show Cause Notices' and appellants had not responded to it. NCLAT while passing the order expressly stated as follows:

"Taking note of the surrounding facts and circumstances of the present case, comes to an 'inevitable', 'inescapable' and 'irresistible' conclusion that the 'Appellants', had not made out a fit and proper case, for 'Sanctioning the Scheme of Amalgamation', in accordance with 'Law'. Looking"

Considering the above case, Hon'ble tribunals has clearly outlined that any non-compliances of Companies act, 2013 especially related to public deposits and the ignorance of show cause notices is not a case of "Fit & Proper" for scheme of merger.

Conclusion

The Conduct and the actions of the Companies and the directors play an important role to demonstrate the **"Fit & Proper"** criteria before any corporate restructuring. Any violation to the criteria results in loss of confidence by the regulator on the company as well as the intent of the transactions. Therefore, a Pre **"Fit & Proper Criteria check"** has become the unavoidable action point before any corporate restructuring.

This article is published in Taxmann. The link to the same is as follows: -

https://www.taxmann.com/research/company-and-sebi/top-story/105010000000024216/fit-proper-criteria-impact-on-scheme-of-mergers-demergers-experts-opinion

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Supreme Court Ruling: Security Deposit Classified as Financial Debt

In the matter of Global Credit Capital Limited & Anr - Appellant vs SACH Marketing Private Limited & Anr – Respondent in the order passed by the Hon'ble Supreme Court dated 25th April 2024

Facts of the Case:

- SACH Marketing Private Limited (**SMPL/ first respondent)** entered into agreements with Mount Shivalik Industries Limited (**MSIL/ Corporate Debtor /CD**), on 1 April, 2014, and 1 April, 2015 (**Agreements**), whereby the first respondent (SMPL) was appointed as Sales Promotor for promoting the beer manufactured by CD over twelve months, for which Rs. 4,000 (Rupees four thousand) per month was agreed to be paid to the first respondent.
- The terms of the Agreement dated 1 April, 2014, were nearly identical to those of the Agreement dated 1 April, 2015, except for an additional requirement of Security Deposit under the latter agreement.
- Under the Agreements, it was agreed that first respondent would deposit a minimum security of Rupees Fifty-Three Lakhs Fifteen Thousand (Rs. 53,15,000/-) (**Security Deposit**) with CD which would carry interest @ 21% per annum for which CD would pay interest on Rupees Seven Lakhs Eighty-Five Thousand Eight Hundred And Fifty (Rs.7,85,850/-) at the same rate.
- In an independent proceeding, CD was admitted into Corporate Insolvency Resolution Process (**CIRP**) by an order of the National Company Law Tribunal, Jaipur (**NCLT**) under the Insolvency Bankruptcy Code, 2016 (IBC).
- Consequently, the NCLT imposed a moratorium, and appointed an Interim Resolution Professional (**IRP/ RP**).
- In the CIRP of CD, first respondent filed a claim for Rupees One Lakh Fifty-Eight Thousand Three Hundred and Forty-One (Rs.1,58,341/-) as operational debt (arising out of its monthly remuneration as a sales promoter) and Rupees One Crore Forty-One Lakhs Thirty-Nine Thousand Four Hundred and Ten (Rs.1,41,39,410) as financial debt (arising out of the interest from the security deposit).
- The RP reclassified the claim for financial debt as operational debt, stating that the first respondent /SMPL could not be considered a financial creditor.
- Challenging the said classification, the first respondent filed an application before the NCLT.
- During the pendency of the application, the committee of creditors (**CoC**) of CD approved a resolution plan submitted by a bidder. Thereafter, the RP filed an application seeking approval of the resolution plan before the NCLT.
- The NCLT rejected the application filed by the first respondent and allowed the application seeking approval of the resolution plan. The first respondent filed an appeal before the National Company Law Appellate Tribunal (**NCLAT**) against the rejection. By judgment and order dated 7 October, 2021 (**Impugned Order**), NCLAT held that the first respondent /SMPL was a financial creditor and not an operational creditor.
- Aggrieved by the Impugned Order, Global Credit Capital Limited and other members of the CoC (**Appellants**) preferred an appeal before the Supreme Court on the following grounds:

    - First Respondent's role was to provide services promoting CD's beer manufacturing. Therefore, the Security Deposit paid to CD constituted operational debt and not funds extended to CD for financial purposes.
    - CD had no intention of availing any financial facility. The mere payment or accrual of interest should not determine the classification of the debt as financial debt.

- First respondent contested the appeal on the following grounds:

    - The essence of the transaction needed to be scrutinized to determine the nature of the debt.
    - The criteria for defining financial debt—such as disbursement, time value of money, and the commercial impact of borrowing under the IBC were all met.
    - The money was repayable under the Agreements without any deductions or provisions for forfeiture, and the interest rate of 21% per annum was the consideration for the time value of money

Arguments of the Appellant:

- The reason is that the agreements indicate that the CD was appointed by the first respondent to render services to promote the beer manufactured by the CD. He relied upon the definition of operational debt under sub-section (21) of Section 5 of the IBC. Both the agreements provided for paying a minimum-security deposit by the first respondent as a condition for being appointed as Sales Promoter of the CD.
- There was no intention on the part of the CD to avail any financial facility from the first respondent. The amount paid towards the security deposit was not the money disbursed to the CD towards financial facilities availed by the CD.
- The security deposit paid by the first respondent would not qualify as a financial debt defined under sub-section (8) of Section 5 of the IBC.
- That the payment of the security deposit by the first respondent is a condition precedent for being appointed as a Sales Promoter of the CD. The intent of the agreements is to appoint the first respondent as the Sales Promoter and not to avail any financial facilities from the first respondent. The amount paid by the first respondent does not constitute financial facilities extended to the CD. There was no intention to raise finance from the first respondent, who was appointed as a Sales Promoter.
- Also relied upon the decisions of in the *cases of Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited & Ors., Phoenix ARC Private Limited v. Spade Financial Services Limited & Ors.6 and New Okhla Industrial Development Authority v. Anand Sonbhadra wherein it was held that* booking or payment of interest was not the only criterion for ascertaining whether the debt is a financial debt.
- In the case of an invoice involving any transaction, the delay in payment attracts interest liability. Therefore, the payment of interest is not the sole criterion for ascertaining whether a debt is a financial debt.

Arguments of the Respondents:

- The true nature of the agreements will have to be examined for deciding the nature of the debt. The CD's acknowledgement of the liability of payment of interest on security deposit for the Financial Years 2014-2015, 2015-2016, 2016-2017 and 2017-2018. The CD deducted TDS on the interest payable to the first respondent for three financial years
- That the three criteria, namely, disbursal, time value of money and commercial effect of borrowing, were satisfied in the case of the present transaction.
- Relied upon the decision of the Tribunal in the case of Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited. It was submitted that it was very clear from the terms of the agreement that the money was repayable after a fixed tenure without a deduction or provision for forfeiture. An interest @21% per annum was the consideration for the time value of money.
- NCLAT was right in going into the issue of the true nature and effect of the transaction reflected in the agreements. Relying upon the decision in the case of Pioneer Urban that clause (f) of sub-section (8) of Section 5 of the IBC is a "catch all" and "residuary" provision

which includes any transaction having the commercial effect of borrowing and any transaction which is used as a tool for raising finance.

- That the agreements entered into were the tools for raising finance, and no actual services were ever been rendered to the first respondent or other lenders. The true effect of the transaction has to be taken into consideration. It was pointed out that the CD established a practice of raising finance through private entities in the garb of security deposit under various services agreements. Therefore, it was submitted that there was no fault in the impugned judgment.

Arguments of the second respondent /RP:

- Resolution Professional, supported the appellants by contending that the money advanced by the first respondent cannot be categorised as a financial debt. Therefore, the first respondent was an operational creditor.
- Relied upon the definition of operational debt under sub-section (21) of Section 5 of the IBC. That the security deposit was not meant to reorganize the CDs debts.
- That the agreements are service agreements by which the CD agreed to take services from the first respondent for consideration. Therefore, the security deposit was obviously to ensure the performance of the terms of the agreements by the first respondent.
- It was submitted that accounting treatment cannot override the law and the definition of operational debt under the IBC.
- That none of the ingredients of clauses (a) to (f) of sub-section (8) of Section 5 of IBC are present in the case at hand. In this case, there is no disbursal of debt. That there was no financial contract between the CD and the first respondent. Lastly, it was submitted that in view of the judgment date 29 September 2018 of the NCLAT on an application filed by M/s. New View Consultants Private Limited, the second respondent categorised Global Credit Capital Limited & Anr. v. Sach Marketing Pvt. Ltd. & Anr the first respondent as operational creditor and submitted that the view taken by the NCLAT was not correct.

Held:

- The Supreme Court interpreted the words of 'debt', 'claim' and 'financial debt' as defined under the Code and held as follows:

    - Both financial debt and operational debt must stem from a liability or obligation associated with a claim.
    - Cases falling within the categories outlined in the definition of financial debt must meet the criteria specified earlier in Section 5(8) of IBC, namely, there must be a debt with any applicable interest disbursed as consideration for the time value of money.
    - In situations where one party owes a debt to another party under a written agreement or arrangement involving the provision of 'service', the debt qualifies as an operational debt only if the claim (which is the subject matter of the debt) is connected with or correlated to the service (that is the subject matter of the transaction).
    - The wording of the written document cannot be taken at face value. Thus, it is essential to discern the true nature of the transaction by examining the agreements.

- Applying the above principles, the Supreme Court held the following as regards the clauses in the Agreement:
    - A nominal amount of rupees four thousand per month (Rs.4000/-) was paid to the first respondent for its role as a sales promoter, and this sum was the only correlation for the services provided.
    - The first respondent was not entitled to any commission based on sales volume.

- There was no provision for the forfeiture of the Security Deposit.
- The payment of the Security Deposit was unrelated to the performance of other conditions by the first respondent.
- Funds were arranged to be transferred to the first respondent, resembling a form of commercial borrowing, given the treatment of interest on the Security Deposit as long-term loans/liabilities and interest revenues in the financial statements of CD and the first respondent.

- Consequently, the Supreme Court determined that the Security Deposit specified in the Agreements constitutes a financial debt owed to CD, classifying the first respondent as a financial creditor under the provisions of the IBC.

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NEWS UPDATES/AMENDMENTS FOR THE MONTH OF JULY & AUGUST 2024

Sr. No.	News Updates/Amendments	Link & Brief Summary
	NEWS	
1	New benches for company law tribunals to speed up merger case approvals: Experts	https://www.livemint.com/companies/new-benches-for-company-law-tribunal-set-to-speed-up-approvals-for-merger-cases-experts-say-11721968806851.html Currently NCLT is over burned with cases related to both mergers and insolvency hence proposal is to add new benches to the tribunal , designated for matters related to Companies Act.
2	Insolvency resolutions likely to clock a fresh record in FY25: IBBI chief	https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/insolvency-resolutions-likely-to-clock-a-fresh-record-in-fy25-ibbi-chief/111703784?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-07-13&dt=2024-07-13&em=aGFzdGl2b3JhQG1tamMuaW4= The Insolvency and Bankruptcy Code (IBC) is seeing a rise in resolved cases, with a focus on innovative approaches and transparency to improve recovery rates.
3	Stock exchanges, clearing corporations need to disclose shareholding patterns: SEBI	https://legal.economictimes.indiatimes.com/news/litigation/stock-exchanges-clearing-corporations-need-to-disclose-shareholding-patterns-sebi/112173502?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-08-01&dt=2024-08-01&em=aGFzdGl2b3JhQG1tamMuaW4= Market regulator has amended rules, requiring stock exchanges and clearing corporations to disclose their shareholding pattern on their respective website every quarter.
4	Sebi mulls measures to curb speculative trading in index derivatives	https://legal.economictimes.indiatimes.com/news/regulators/sebi-mulls-measures-to-curb-speculative-trading-in-index-derivatives/112146371?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-07-31&dt=2024-07-31&em=aGFzdGl2b3JhQG1tamMuaW4= Market regulator has proposed tightening the rules for index derivatives by revising the minimum contract size and requiring upfront collection of option premiums to curb speculative trading.

5	RBI tightens rules for domestic money transfers	https://legal.economictimes.indiatimes.com/news/regulators/rbi-issues-norms-to-improve-safety-of-payment-systems/112146575?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-07-31&dt=2024-07-31&em=aGFzdGl2b3JhQG1tamMuaW4= RBI has tightened the framework for domestic money transfers in order to keep track of both cash pay in and pay out services.
6	Coming soon, a 'combo product' of rights and preferential issue, hints Sebi chair	https://www.moneycontrol.com/news/business/markets/sebi-chair-madhabi-puri-rights-pref-issue-innovation-12785385.html Through the combo product, the entire process, can be finished in 23 days, as compared to preferential allotment, which the industry loves for ease of the process, which needs more than 40 days
7	NCLT approved record 269 resolution plans in FY24	https://legal.economictimes.indiatimes.com/news/litigation/nclt-approved-record-269-resolution-plans-in-fy24/112230904?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-08-03&dt=2024-08-03&em=aGFzdGl2b3JhQG1tamMuaW4= NCLT has approved a record 269 resolution plans under the insolvency law in 2023-2024 , which is 42% higher than the year ago.
8	Sebi unveils new system to streamline IPO approvals with simplified template	https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/sebi-unveils-new-system-to-streamline-ipo-approvals-with-simplified-template/112238256?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-08-03&dt=2024-08-03&em=aGFzdGl2b3JhQG1tamMuaW4= SEBI plans to set up new system to speed up approval of IPO.
9	Sebi amends mutual fund rules to curb front-running, insider trading	https://legal.economictimes.indiatimes.com/news/regulators/sebi-amends-mutual-fund-rules-to-curb-front-running-insider-trading/112293311?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-08-06&dt=2024-08-06&em=aGFzdGl2b3JhQG1tamMuaW4= Capital markets regulator Sebi has amended mutual fund norms requiring Asset Management Companies to put in place an institutional

		mechanism to identify and deter front running and insider trading in securities.
10	Sebi proposes uniform timeline for credit, trading of bonus shares	https://legal.economictimes.indiatimes.com/news/regulators/sebi-proposes-uniform-timeline-for-credit-trading-of-bonus-shares/112293338?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-08-06&dt=2024-08-06&em=aGFzdGl2b3JhQG1tamMuaW4= Market regulator has proposed uniform timeline to ensure timely credit and trading of bonus shares.
11	India sees surge in MSME registrations: 4.77 cr registrations on Udyam Portal as of July 2024	https://cfo.economictimes.indiatimes.com/news/india-sees-surge-in-msme-registrations-4-77-cr-registrations-on-udyam-portal-as-of-july-2024/112305059?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-08-06&dt=2024-08-06&em=aGFzdGl2b3JhQG1tamMuaW4= In terms of exports, MSME products have maintained a substantial share in India' s overall export figure.
12	Sebi proposes guidelines for CRAs on detailed reasons for rating actions	https://legal.economictimes.indiatimes.com/news/regulators/sebi-proposes-guidelines-for-cras-on-detailed-reasons-for-rating-actions/112023332 In consultation paper, the regulator has recommended removing "technical default" from policies due to potential negative market signal and covenant triggers.
13	Excl: MCA likely to strike off upto 400 Chinese companies over next 3 months	https://www.moneycontrol.com/news/business/economy/excl-mca-likely-to-strike-off-upto-400-chinese-companies-over-next-3-months-12785230.html These companies are found to have incorporation related fraud or financial frauds. Some companies have an Indian director, but the bank account is operated from China.
14	Sebi's Madhabi Puri may soon formalise a feedback forum of veterans into regulatory framework	https://www.moneycontrol.com/news/business/markets/sebi-chair-buch-says-mulling-formalising-industry-standard-forum-into-regulatory-framework-lauds-success-12785420.html Sebi Chairperson Madhabi Puri Buch highlighted that the Industry Standards Forum has successfully brought together key stakeholders to draft and implement regulatory standards.

15	Sebi tweaks guidelines on REITs, InvITs to promote ease of doing biz	https://legal.economictimes.indiatimes.com/news/regulators/sebi-tweaks-guidelines-on-reits-invits-to-promote-ease-of-doing-biz/112326188?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-08-07&dt=2024-08-07&em=aGFzdGl2b3JhQG1tamMuaW4= Under the current rules, unitholders who exceed a specified ownership threshold can nominate one director to the Board of the REIT's or InvITs' Manager. If an entity has right to nominate directors as a shareholder or lender, it cannot use its unitholder status to nominate director. Regulator has added exception to this .
16	Headhunters may get to access independent directors' databank	https://cfo.economictimes.indiatimes.com/l.php?email=--email--&clid=729238 At present, only companies are allowed to access this data bank for a nominal fee. But since large listed companies and conglomerates often outsource to search firms the job of due diligence of potential candidates, IICA is seeking to make the data bank available to these entities as well.
17	Companies race against taxing times to give buyback call	https://cfo.economictimes.indiatimes.com/l.php?email=--email--&clid=729251 Companies are moving swiftly to buy back shares before new tax rules proposed in the budget take effect on October 1.
18	Over 1.4 lakh startups recognized in India; 67,499 have women directors	https://cfo.economictimes.indiatimes.com/news/over-1-4-lakh-startups-recognized-in-india-67499-have-women-directors/112455119?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-08-12&dt=2024-08-12&em=aGFzdGl2b3JhQG1tamMuaW4= India’s startup ecosystem continues to thrive, with a significant milestone of over 1.4 lakh entities recognised as startup by the Department for Promotion of Industry and Internal Trade.
19	New IBBI guidelines aim at faster decisions and dispute resolution in insolvency process	https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/new-ibbi-guidelines-aim-at-faster-decisions-and-dispute-resolution-in-insolvency-process/112455031?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-08-12&dt=2024-08-12&em=aGFzdGl2b3JhQG1tamMuaW4= The new guidelines for committees of creditors focus on several key areas, including the objectivity

		and integrity of decision making, independence and impartiality, professional competence and timelines in the resolution process.
20	Sovereign green bonds trading at IFSC to start in 2nd half of FY25: RBI Guv	https://www.business-standard.com/markets/news/sovereign-green-bonds-trading-at-ifsc-t-start-in-2nd-half-of-fy25-rbi-guv-124081000839_1.html The government has been raising funds through green bonds since 2022-23 and has raised a total of Rs 36,000 crore in the last two years.
21	MCA introduces E-adjudication platform	https://www.mondaq.com/india/corporate-and-company-law/1504284/mca-introduces-e-adjudication-platform The Ministry of Corporate Affairs (MCA), via Notification No. G.S.R. 476(E) announced the Companies (Adjudication of Penalties) Amendment Rules, 2024. These new rules are set to come into force on 16 September 2024 and represent a significant shift towards digitalization in the adjudication process.
22	Some positive changes by audit firms, but a lot more needs to be done: Ajay Bhushan Pandey	https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/some-positive-changes-by-audit-firms-but-a-lot-more-needs-to-be-done-ajay-bhushan-pandey/112510615?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-08-14&dt=2024-08-14&em=aGFzdGl2b3JhQG1tamMuaW4= NFRA is inspecting seven audit firms this year, with plans to increase the number further. NFRA also working with IICA to enhance communication and training for audit committees of listed companies.
23	44% of closure in ClRP ends with commencement of liquidation: IBBI	https://legal.economictimes.indiatimes.com/news/corporate-business/44-of-closure-in-clrp-ends-with-commencement-of-liquidation-ibbi/112513571?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-08-15&dt=2024-08-15&em=aGFzdGl2b3JhQG1tamMuaW4= The liquidation process is usually initiated when no resolution plan has been received under the CIRP.
24	Investment Advisers, Research Analysts should disclose AI tool usage to clients: SEBI	https://legal.economictimes.indiatimes.com/news/regulators/investment-advisers-research-analysts-should-disclose-ai-tool-usage-to-clients-sebi/112544335?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-08-16&dt=2024-08-16&em=aGFzdGl2b3JhQG1tamMuaW4=

		SEBI has proposed that registered investment advisers and research analyst who employ AI tools in their service must disclose the extent of usage of clients , emphasizing the importance of strong security measures to avoid unintended data exposure.
25	Govt eases cross-border share swap rules to woo foreign money	https://cfo.economictimes.indiatimes.com/news/policy/govt-eases-cross-border-share-swap-rules-to-woo-foreign-money/112580862?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-08-17&dt=2024-08-17&em=aGFzdGl2b3JhQG1tamMuaW4= The amendment aim to attract more investment, particularly in startups and streamline rules aligning them with other regulations.
26	Sebi proposes to ease compliance for non-convertible securities	https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/sebi-proposes-to-ease-compliance-for-non-convertible-securities/112580948?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-08-17&dt=2024-08-17&em=aGFzdGl2b3JhQG1tamMuaW4= The new rules mandate that quarterly FR must be approved by the board of directors before submission.
27	Sebi proposes changes in debenture trustee appointment	https://www.newsdrum.in/business/sebi-proposes-changes-in-debenture-trustee-appointment-6868894 To legally validate and streamline disclosure in respect of debenture trustee appointments in offer documents, markets regulator Sebi has proposed to replace the term 'consent letter' with 'debenture trustee agreement'.
	AMENDMENTS / CIRCULARS /CONSULTATION PAPERS	
1	SEBI Consultation Paper	https://www.sebi.gov.in/reports-and-statistics/reports/jul-2024/extension-of-timeline-for-submission-of-public-comments-on-the-consultation-paper-titled-recommendations-of-the-expert-committee-for-facilitating-ease-of-doing-business-and-harmonization-of-the-provi-_84918.html SEBI had earlier issued a consultation paper on “Recommendations of the Expert Committee for facilitating ease of doing business and harmonization of the provisions of ICDR and LODR Regulations” on June 26, 2024 seeking

		comments from public and other stakeholders by July 17, 2024. The said timeline was extended to July 29, 2024, for submission of comments
2	SEBI Consultation Paper	https://www.sebi.gov.in/reports-and-statistics/reports/jul-2024/consultation-paper-on-proposed-amendments-to-the-sebi-prohibition-of-insider-trading-regulations-2015-to-rationalize-the-scope-of-the-expression-connected-person-while-not-increasing-compliance-_85249.html Consultation Paper on proposed amendments to the SEBI (Prohibition of Insider Trading) Regulations, 2015 to rationalize the scope of the expression 'connected person', while not increasing compliance requirements. Last date of submitting comments on this CP was latest by August 18,2024
3	SEBI Circular	https://www.sebi.gov.in/legal/circulars/aug-2024/amendment-to-circular-for-mandating-additional-disclosures-by-fpis-that-fulfil-certain-objective-criteria_85371.html Amendment to Circular for mandating additional disclosures by FPIs that fulfil certain objective criteria. The SEBI circular dtd August 24,2023 mandates additional disclosures for Foreign Portfolio Investors (FPIs), except for those meeting specific criteria, as detailed in the FPI Master Circular dated May 30, 2024. University Funds and University-related Endowments, registered or eligible as Category I FPIs, are exempt from these disclosures if they meet conditions related to Indian and global AUM and tax-exempt status. This exemption applies to jurisdictions specified by SEBI and is effective immediately.
4	BSE Circular	https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240801-51 BSE Circular on Exemption under Rule 19A of Securities Contract (Regulation) Rules. 1957 (Minimum Public Shareholding for public sector company). In accordance with the Ministry of Finance directive, every listed public sector companies with less than 25% public shareholding are allowed to meet the 25% requirement by August 1, 2026. All listed companies must comply with this directive as

		stipulated in Rule 19A of the Securities Contract (Regulation) Rules, 1957.
5	SEBI Consultation Paper	https://www.sebi.gov.in/reports-and-statistics/reports/aug-2024/consultation-paper-on-streamlining-the-process-and-reduction-in-timelines-of-bonus-issue-enabling-t-2-trading-of-shares-post-record-date-where-t-being-record-date-_85466.html Consultation Paper on Streamlining the process and reduction in timelines of Bonus Issue (enabling T+2 trading of shares post record date where T being record date). Last date of submitting comments on this CP is latest by August 26,2024.
6	BSE/NSE Circular	https://www.sebi.gov.in/legal/circulars/aug-2024/amendment-to-master-circular-for-infrastructure-investment-trusts-invits-dated-may-15-2024-board-nomination-rights-to-unitholders-of-invits_85491.html Amendment to Master Circular for Infrastructure Investment Trusts (InvITs) dated May 15, 2024 - Board nomination rights to unitholders of InvITs. https://www.sebi.gov.in/legal/circulars/aug-2024/amendment-to-master-circular-for-real-estate-investment-trusts-reits-dated-may-15-2024-board-nomination-rights-to-unitholders-of-reits_85493.html Amendment to Master Circular for Real Estate Investment Trusts (REITs) dated May 15, 2024 – Board nomination rights to unitholders of REITs. In both the master circulars new proviso is added w.r.t right to nominate a Unitholder Nominee Director.
7	SEBI Consultation Paper	https://www.sebi.gov.in/reports-and-statistics/reports/aug-2024/consultation-paper-on-measures-towards-ease-of-doing-business-and-streamlining-compliance-requirements-for-non-convertible-securities-review-of-lodr-regulations_85690.html Consultation paper on measures towards Ease of Doing Business and streamlining compliance requirements for Non-Convertible securities– review of LODR Regulation August 2024. Last date of submitting comments on this CP is latest by September 6,2024.

8	SEBI Consultation Paper	https://www.sebi.gov.in/reports-and-statistics/reports/aug-2024/consultation-paper-on-faster-rights-issue-with-flexibility-of-allotment-to-selective-investor-s-_85960.html Consultation Paper on Faster Rights issue with flexibility of allotment to selective investor. Last date of submitting comments on this CP is latest by September 10,2024
9	SEBI Consultation Paper	https://www.sebi.gov.in/reports-and-statistics/reports/aug-2024/consultation-paper-on-streamlining-disclosure-in-respect-of-appointment-of-debenture-trustee-dt-in-the-offer-document_85692.html Consultation paper on streamlining disclosure in respect of appointment of Debenture Trustee (DT) in the offer document. Last date of submitting comments on this CP is latest by September 6,2024