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Extension of Regulation 23 to SME Listed Entities: A Shift Toward Uniform Governance Standards

Background and Regulatory Rationale:

SEBI's November 2024 consultation paper highlighted concerns over increasing RPT volumes in the SME segment. In the Board meeting on December 18, 2025 ¹where this amendment was approved SEBI said that, while the SMEs have not entered into high value transactions exceeding Rs. 1000 crores; nearly 50% of the top 50 SME issuers had entered into RPTs exceeding 10% of turnover. This raised red flags about transparency and minority shareholder protection.

Accordingly, SEBI proposed making Regulation 23 applicable to SMEs.

Introduction:

The governance of related party transactions (RPTs) has always been a cornerstone of corporate transparency in Indian capital markets. Historically, the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") mandated rigorous oversight of RPTs for main board listed companies through Regulation 23. However, SME listed entities were exempt.

This regulatory divide has now narrowed. Through a recent amendment notified on March 28, 2025, following SEBI's board approval in December 2024, Regulation 23 has been extended to SME listed companies ushering in a new era of governance parity across market segments.

Understanding Regulation 23 of LODR and Its Core Requirements:

Regulation 23 governs how listed entities manage their transactions with related parties. The key obligations under this provision include:

- Formulation of the RPT policy on materiality of the RPT transactions and review of such policy once every three years
- Audit Committee prior approval for all RPTs;
- Prior Shareholder approval for material RPTs, with the related party abstaining from voting;

Disclosures to stock exchanges (half-yearly under Regulation 23(9)) and in the Annual Report, specifically under the Corporate Governance Report and the Notes to the Financial Statements as per Ind AS 24, are required for all material related party transactions and other specified RPTs;

¹ Rationale From Board Note of Dec 18, 2025: 4.2.1 (b)(iii) :

As observed from the disclosures by top 50 SME listed entities by market capitalization on NSE and BSE in their annual report for FY 2022-23, while the SMEs have not entered into high value transactions exceeding Rs. 1000 crores, 1 out of 2 SME listed entities have undertaken RPTs of more than 10% of their annual consolidated turnover. The transactions entered by entities should be commensurate to their turnover. In case the transaction is exceeding 10% of the turnover, the same should be subjected to higher scrutiny in the form of approval by shareholders. Hence, the suggestion received may not be accepted.

The Amendment and Applicability to SME Listed Entities

Key Amendment

A new clause, Regulation 15(2)(b)ⁱ, now mandates compliance with Regulation 23 for all SME listed entities which satisfies one of the following thresholds (as on the last day of the preceding financial year):

1. Listed entity having paid-up share capital more than rupees ten crore or;
2. Listed entity having net-worth exceeding rupees twenty-five crore

For instance, consider an SME-listed company, MNO Ltd., whose financials as of March 31, 2025, show a paid-up share capital of ₹12 crore and a net worth of ₹22 crore. Even though its net worth is below the ₹25 crore mark, the company crosses the threshold on account of its paid-up capital exceeding ₹10 crore. Therefore, beginning FY 2025–26, Regulation 23 will become applicable to MNO Ltd., and it must ensure compliance with the prescribed framework for identifying, approving, and disclosing related party transactions.

a. Materiality threshold for SMEs:

As per the amended Regulation 23 (1) of the LODR Regulations a transaction to be considered as material transaction with the related party if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds Rupees fifty crore or ten per cent. of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.

b. Effective Date

The changes took effect from April 1, 2025, and apply both to existing and newly listed SME entities. For companies newly breaching the thresholds, compliance must begin within six months from the date of triggering (as per proviso to the Regulation 15(2)(b) of LODR Regulations³).

So if a company to whom RPT becomes applicable on March 31, 2025 will get six months to comply with the RPT norms. Also Once these regulations of RPT becomes applicable to a company will remain applicable till the time the equity share capital and the net-worth of the listed entity reduces and remain below the specified threshold for a period of three consecutive financial years.

Ongoing and Post-Listing Compliances

For Existing SME Listed Companies

Entities already listed before April 1, 2025, and meeting the applicability thresholds must:

1. Review existing RPTs and assess materiality under the new thresholds.
2. Update Audit Committee composition, if needed, and assign RPT oversight.
3. Adopt and disclose a formal RPT Policy, approved by the Board.
4. Implement tracking systems to monitor cumulative RPT values.
5. Prepare for shareholder approvals under Regulation 23(2), with related parties abstaining from voting.

6. In cases where an SME-listed entity has not obtained omnibus approval for Related Party Transactions (RPTs) under Section 177(4)(iv) of the Companies Act, 2013, it must ensure such approval is obtained in accordance with Regulation 23(3) of the SEBI (LODR) Regulations, provided the entity meets the thresholds specified under Regulation 15(2)(b). This ensures that audit committee approval, whether specific or omnibus, is in place as per the applicable regulatory framework.

Once a SME falls within the purview of Regulation 23, it must not only ensure that its own material RPTs are approved by shareholders prior to start date of RPTs, but also assess the compliance obligations of its listed subsidiaries, especially in cases where RPTs by subsidiaries are crossing materiality threshold as per regulation 23 of LODR.

So, SME listed entities will not only have to ensure regulation 23 compliance for RPTs entered by them but also for material RPTs entered by their subsidiaries where SME listed entity is not a party.

7. Even if a related party transaction is in the ordinary course of business and at arm's length, and thus exempt from the approval requirements under Section 188 of the Companies Act, 2013, it may still require prior approval of the shareholders under Regulation 23(4) of the SEBI (LODR) Regulations, 2015, if it crosses the prescribed materiality threshold. Such approval must be obtained before September 30, 2025, in line with the effective date for compliance. Related parties would not be able to vote on this resolution irrespective of whether they are party to the transaction are not.

For Companies Planning to List

Entities intending to list post-April 1, 2025, must factor this regulation into IPO planning. Key steps include:

- Pre-IPO governance structuring, including formation of an Audit Committee;
- Drafting and adopting an RPT policy before listing;
- Arm's length benchmarking of intra-group transactions;
- Disclosure of RPT framework in the offer document, where relevant.

Post-listing, such entities will be immediately subject to Regulation 23 if their financials breach either threshold that means they have to obtain audit committee approval before they enter any transaction with the related party.

Interpretive Guidance and Industry Standards

Further, SEBI is set to rolled out Industry Standards for RPTs applicable from September 1, 2025, offering standardized formats for disclosures expected to enhance uniformity, transparency and compliance efficiency.

Now as the Regulation 23 is applicable to SMEs these Industry Standards are also applicable to the SMEs now.

Conclusion

The extension of Regulation 23 to SME listed entities represents a significant regulatory development aimed at strengthening transparency in related party dealings. By calibrating the thresholds and materiality criteria to suit the SME context, SEBI has sought to ensure that corporate governance expectations evolve in line with market realities.

For SME companies, this change necessitates a shift toward more structured internal processes, board-level oversight, and stakeholder disclosures. Those that treat these requirements as an integral part of institutional discipline rather than a compliance burden are likely to position themselves more favourably with investors, improve risk management, and support sustainable market participation. Early preparation and clear documentation will be key to navigating this new framework effectively.

This article is published on Taxmann. The link for the same

<https://www.taxmann.com/research/company-and-sebi/top-story/105010000000026368/material-misstatements-in-drhp-sebis-enforcement-actions-experts-opinion>

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¹³ Regulation 15(2)(b) of LODR Regulations:

listed entity which has listed its specified securities on the SME Exchange:

Provided that with effect from April 01, 2025, the provisions of regulation 23 shall be applicable in respect of a listed entity which has listed its specified securities on the SME Exchange and which has either paid up equity share capital exceeding Rupees ten crore or net worth exceeding Rupees twenty-five crore, as on the last day of the previous financial year:

Provided further that where the provisions of regulation 23 become applicable at a later date to a listed entity which has listed its specified securities on the SME Exchange, it shall ensure compliance with the same within six months from such date:

Provided further that once the provisions of regulation 23 become applicable to a listed entity which has listed its specified securities on the SME Exchange, they shall continue to remain applicable till such time the equity share capital and the net-worth of such entity reduces and remains below the specified threshold for a period of three consecutive financial years.



Best Practices in CSR Programming: Inculcating Social Theories

Corporate Social Responsibility is necessary because it encourages companies to operate in a socially and environmentally responsible manner, going beyond profit-making. By giving back to society, CSR fosters long-term value creation. In rural areas there exists a **significant development gap**, where people lack access to basic resources and opportunities. Such gaps limit their **ability to improve their living conditions**. CSR programmes are designed to address these **development gaps** by supporting initiatives that promote education, healthcare, livelihood and infrastructure development among others. By doing so, companies provide the critical means, helping rural communities to lead more dignified lives.

Impact assessment measures the results of a project to see how it has improved people's lives. It helps understand **what has changed, what worked well and what can be improved** in the future. The assessment of the CSR empowerment project shows that it improved access to education, healthcare and jobs in rural areas, while also boosting people's confidence and skills to lead their own development.

MMJC uses and encourages adoption of theory-driven approach to address development issues and assess impact of CSR programmes. Such an approach enables CSR teams and Implementation agencies to:

- a) Design Impact focused and needs driven programmes with clearly defined **pathways of change (what changes a project can bring about and why)**
- b) Measure impact correctly by identifying the **right indicators (how a project can bring about change)**
- c) Reach the **key stakeholders in the ecosystem (who can facilitate the changes)**
- d) Enhance Sustainability by integrating a **systems approach** in their projects

Introduction to the Series

The CSR Impact Theory Series explores structured and theory-based approaches to assess, understand and enhance the real-world outcomes of CSR initiatives. The first article in this series aims to look at **Empowerment, as a concept and how CSR programmes can integrate the same in designing, implementation and assessment phases of CSR programmes.**

Empowerment

CSR initiatives often focus on vulnerable and marginalized communities, with goals that include the '**empowerment**' of groups such as women, tribal populations, LGBTQ+ communities. However, empowerment is a complex and often misunderstood concept. **In this article we are adopting and adapting Naila Kabeer's work on Empowerment for CSR.**

Empowerment means helping people, especially vulnerable groups like, women, tribal communities, LGBTQ+ communities gain the power to make important decisions about their own lives.

Kabeer defines empowerment as **"the process by which those who have been denied the ability to make strategic life choices acquire such an ability."** In her article, Kabeer

highlights that empowerment of vulnerable groups can be achieved along three dimensions that addresses different aspects of power inequality:

- Access to Resources
- Agency to make decisions/take control/determine
- Recognition and Acceptance of Achievements

Relevance for CSR

Empowerment theory provides a framework to understand ‘**how**’ CSR programs bring positive changes in individual lives, impact an individual's ability to make choices and enable them to improve their situation. The key aspect of this framework draws the CSR team’s attention on the need to integrate behaviour change in programmes across all thematic areas listed in the Schedule VII of the Companies Act 2013 and the UN Sustainable Development Goals (SDGs). Such a theory driven approach not only helps us address the key underlying and often hidden reasons for poverty, environment degradation or poor health, but also change how people perceive themselves, how they interact with others and how they navigate the systems around them. It enables companies to facilitate long term changes and impact communities positively.

In designing programmes for impact, companies adopting empowerment theory in their **Theory of Change**, can build a narrative that shows the connections between the intent of empowerment with the steps needed to achieve it. It enables companies to overcome a key challenge faced while undertaking Impact Assessments – how do we attribute the change to our CSR programmes? For example, consider a CSR program focused on empowering tribal women through enterprise development. The **Theory of Change** helps outline how:

- **Inputs** like **physical things** like money, land, or **non-physical things** like education, skills, or support from family and community that enable women express their innate capacities (*the power within*).
- Lead to **outputs** such as improved skills, higher confidence and market access — the ability to decide what they want in life and act accordingly, and make choices that are meaningful to them and influence their life and surroundings (*the power to*)
- Result or **outcomes from** using resources and agency include increased income, stronger voice in household and community decisions and collective action through self-help groups. When these achievements are shared and celebrated, they reflect the strength that emerges from collective progress (*the power with*)

Empowerment is a process and is carried out in different ways depending on how a project is planned and designed. Stakeholder mapping is critical understand the champions and blockers of the programme. In addition, a community resource mapping should be done to identify the opportunities and convergences.

Quality Control Actions for CSR programmes grounded in Empowerment Theory:

- Listening to people's want, understanding their decision making and control challenges
- Finding out which local social and economic condition(s) prevent empowerment

- Studying the planned and unplanned results
- Highlighting the importance of group efforts like SHGs
- Learning from stakeholder feedback

CSR Programs designed to **focus on empowering people to become active participants in their development** goes beyond mere activities or outputs. It works at multiple levels (a dual approach) and **ensures that immediate needs are met while also creating systems, agendas, and social structures to sustain the changes facilitated by CSR. Thereby addressing another CSR objective: Sustainability.**

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ⁱ **Naila Kabeer is a leading development economist** specializing in gender, poverty, and social exclusion. She is a Professor at the London School of Economics, a Faculty Associate at the International Inequalities Institute, and serves on the governing board of the Atlantic Fellowship for Social and Economic Equity. Her work is focussed on inclusive and rights-based development.

Kabeer, Naila, 2010, Women's Empowerment, Development Interventions and the Management of Information Flows; <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1759-5436.2010.00188.x> article accessed on 20th July 2025



Section 8 Companies and Capital Reduction: Legal Limitations Explained

Introduction:

The Companies Act 2013 and the previous enactments thereof, have allowed companies to incorporate themselves with a charitable objects like promotion of arts, culture, science, or social welfare etc. since these companies are regulated under section 8 of Companies Act 2013, they are popularly known as section 8 companies.

Because, the section 8 companies are formed for charitable purposes and they do not work for earning profits, the Companies Act 2013 (the Act) provides exemptions from certain compliances and also imposes restrictions with respect to certain matters, more specifically relating to outflow of money from the company. in this article, we shall try to deliberate upon existence of one such restriction, which relates to capital reduction by a section 8 company.

Concept of capital reduction:

Section 66ⁱ of the Act allows the companies to undertake reduction of its paid-up capital after obtaining the permission of its shareholders and the National Company Law Tribunal (Tribunal). by the virtue of such capital reduction, the company reduces amount of its paid-up capital by cancelling some of the equity shares. the money taken from shareholders at the time of allotment of such cancelled shares is paid back to the shareholders in the form of money, resulting in to outflow of funds from the business.

As per section 66(1), there are 2 (two) methods through which, companies may undertake capital reduction. Under first method, company may extinguish or reduce the liability on shares where the value is not paid up. For example, if the face value of one share is Rs. 10 out of which Rs.7 is called and paid up, and Rs. 3 remaining uncalled and unpaid, the company can reduce face value to Rs. 7. This extinguishes Rs. 3 unpaid liability per share, meaning shareholders are no longer obligated to pay this amount, and the company cannot demand it. This results in an **indirect reduction of funds** the company *could* have received.

Under second method, the company may cancel or payoff the value of paid-up share capital which is more than its current needs. For example, if the face value of share is Rs 10 fully paid up, then the company can cancel this share from its paid-up capital. The corresponding RS.10 previously received at the time of allotment is returned to the shareholder. This results in a **direct outflow of funds** from the company to its shareholders.

In first method, the company waives off its right to receive Rs. 3 which it was authorised to receive as unpaid share capital resulting into indirect outflow of money. Whereas, in case of second method, the company pays out the whole amount of RS. 10 to the shareholders resulting into direct outflow of money.

Although all methods of capital reduction result in to outflow of funds or restrict receipt of unpaid share capital from the company, the point worth noting is that section 66 does not expressly barr capital reduction by any kind of company including section 8 company. The section uses the word "company" and does not bifurcate into public company, private

company, producer company or section 8 company etc. and therefore allows all types of companies to undertake capital reduction After obtaining approval from the Tribunal.

Restrictions on section 8 company as per section 8 & allied rules thereof :

For any company having charitable objects being called as section 8 company, it is mandatory that such company obtains a licence under section 8 of the Act. This section imposes some restrictions on the company while granting such licence. These restrictions pertain to conversion of section 8 company into any other form or alteration of its memorandum of association etc. but the major restrictions pertain to restricting outflow of funds from the company.

2 out of 3 mandatory conditions prescribed under section 8(1) for obtaining licence state that,

- ✓ The profits and other income of the company should be used only for promoting its business.
- ✓ The section 8 company shall not pay any dividend to its members.

Other than this, in case of merger or winding up as well, of section 8 companies there are restrictions. Sub-sections 7 & 10 of section 8 specify that a section 8 company can merge only into another section 8 company having similar objects as that of the merging company. Also, in case of winding up, sub-section 9 of section 8 says that in the process of winding up of section 8 company, if there are any assets left after satisfying all the debts and liabilities, then such assets should either be transferred to other section 8 company having similar objects or should be sold and its proceeds should be deposited in to Insolvency and Bankruptcy fund.

Further, if reference is made to the format of licence granted by the Registrar of Companies to a section 8 company, it clearly enumerates certain clauses, subject to compliance of which, the licence is granted by the registrar. These conditions provide that, "the profits, if any or other income and property of the said company, whensoever derived, shall be applied solely for the promotion of the object as set forth in its memorandum of association and that no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise by way of profit, to persons who at any time are or have been members of the said company or any of them or any person claiming through any one or more of them; no remuneration or other benefit in money or money's worth shall be given by the company to any of its members.

All these provisions clearly highlight that; a section 8 company cannot spend any of its money for any purpose other than for its main object specified in its memorandum of association. More specifically, it cannot pay any money to its members through any direct or indirect method. However, the point worth noting is that, despite imposing so many restrictions, just like section 66, section 8 also does not provide for any express prohibition upon section 8 company from undertaking capital reduction.

Capital reduction resulting in to outflow of funds:

As discussed above, although section 8 and section 66 both do not prohibit capital reduction by section 8 company, section 8 does prohibit outflow of funds for reasons other than the objects of the company. More specifically if it is for benefit of shareholders. Whereas capital reduction by any company, results into direct or indirect outflow of funds.

Judicial pronouncement:

The above discussed view is supported by a judicial pronouncement made by National Company Law Tribunal Chennai bench in its judgment in the matter of: LBR Foundation India.ⁱⁱ In this case, LBR Foundation, a section 8 company had filed an application for allowing its capital reduction. The honourable Tribunal while dismissing the petition, highlighted that,

“32.29 As per Section 8(1)(b) of the Act, 2013, any profits or income received by the Company should be applied only for the purpose of promoting its objects. Further, Section 8(1)(c) of the Act, imposes a restriction on distribution of dividend. Even in the event of winding up or dissolution of a Company registered under Section 8, surplus assets have to be transferred to another company registered under Section 8 and having similar objects or be sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016. The object of such restrictions imposed by this provision is to ensure that there is transparency in the functioning of companies formed for charitable objects and to prevent the siphoning of funds in any capacity.

Any income, in this case foreign contribution, received by the Petitioner ought to be strictly applied towards promoting its objects and the Petitioner cannot escape from the same by returning the foreign contribution to the Overseas Parent Company under the guise of reduction of share capital money.

33. In view of the foregoing discussions, this Tribunal is of the view that it is not just and proper to allow the reduction of share capital of the Petitioner.”

Defeating the purpose:

As is evident from the language of section 8, the section 8 companies are formed for fulfilling charitable objects. Also, payment of dividend or profit in any way to shareholders is prohibited to facilitate maximum spending on such charitable objects. Further, the money invested by shareholders in a section 8 company is a kind of contribution to charitable objects undertaken by the section 8 company. and donations made for charitable objects are not expected to yield any financial returns. Considering all these things, if profit earned by a section 8 company is transferred to its shareholders in the name of capital reduction, then this would defeat the very purpose of forming a non-profit making company for undertaking charitable objects. This would result in to not just legal non-compliance but also defeating the purpose of section 8.

Conclusion:

Combined reading of legal provisions and judicial pronouncements highlights the fact that, although no section expressly prohibits capital reduction by section 8 companies, by the virtue of restrictions imposed by section 8, it is not permissible for such companies to undertake capital reduction. If any section 8 company does undertake such reduction, then it would result in non-compliance with restrictions imposed by section 8.

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<https://www.taxmann.com/research/company-and-sebi/top-story/10501000000026860/section-8-companies-and-capital-reduction-legal-limitations-explained-experts-opinion>

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ⁱ 66. (1) Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in, particular, may -

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

(b) either with or without extinguishing or reducing liability on any of its shares, -

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

(ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

ⁱⁱ In the matter of: LBR Foundation India NCLT order dated 4th March 2025. CP(CA)/73(CHE)/2023



Representation of Body Corporates at General Meetings: Role of Nominee Shareholders

Introduction:

The Companies Act 2013 (the Act) allows the body corporates, that is companies, Limited Liability Partnerships (LLPs), foreign companies etc. to invest in shares of companies and become their members. Once such body corporates become member of the company, they become entitled to all the membership rights available to any other individual member. One such membership right with respect to body corporates that we shall be discussing in this article is, right to vote at the general meeting of shareholders.

Since the body corporate is not an individual but an artificial person, it has to exercise its right to vote at general meeting through any individual person. In this article we shall try to deliberate upon the question that,

Can the body corporate who holds shares in a company, vote at the general meeting of such company, through a nominee shareholder who holds shares in same company on behalf of the body corporate?

Who is a nominee shareholder?

In order to understand, whether or not a body corporate can vote through its nominee shareholder, we must first understand, who is a nominee shareholder. The term 'Nominee Shareholder' is not expressly defined under the Act. The proviso to section 187(1ⁱ), allows the company to hold shares in subsidiary company in the name of a nominee in order to maintain the minimum number of members. That means, if X ltd wants to incorporate a subsidiary being a unlisted public company, then the subsidiary will be required to have minimum 7 members. In such a case, majority shares will be held by X ltd in its own name and some minor percentage of shares will be held in the name of 6 different individuals who shall hold such shares as nominees of X ltd.

Provisions relating to voting by body corporate members at AGM of companies:

Considering the fact that, the body corporate is an artificial person and has to exercise its right to vote through an individual person, the Act has made provision under section 113ⁱⁱ of the Act which talks about the person through whom the body corporate member can exercise its right to vote

The section provides that the board of directors or the governing body of the body corporate shall by passing a board resolution, authorise any person (hereinafter referred to as authorised representative) who shall be entitled to vote at the general meeting of the company on behalf of such body corporate. This section simply states that the board may authorise the authorised representative to vote on the behalf of the body corporate. It does not specify any eligibility for such authorised representative, other than that he should be authorised by a board resolution.

Can nominee shareholder act as authorised representative?

Other than section 113, there is one more provision in the Act which discusses about the body corporate acting through its authorised representative. This provision can be found under rule 13(4ⁱⁱⁱ) of Companies Incorporation Rules 2014. This provision states that if a company being newly incorporated has a body corporate subscriber to its memorandum, then on behalf of such body corporate member, the memorandum shall be signed by the authorised representative of that body corporate. However, sub-rule 4 and proviso thereto states that such authorised representative should be director, officer or employee of the company (body corporate) and the authorised representative signing the memorandum should not himself be a nominee shareholder.

That means, if X ltd is incorporating a subsidiary and Mr. A, director of X ltd, is proposed to act as nominee shareholder of X ltd in its subsidiary. In such a case, Mr. A cannot sign the memorandum of subsidiary as authorised representative under rule 13(4). Some other director or officer or employee of X ltd has to sign the same.

However, if we refer to section 113(1) it can be seen that, none of the above mentioned eligibility conditions are prescribed therein for selection of authorised representative. The representative need not necessarily be director or officer or employee of the body corporate member. He can be any person including the nominee shareholder holding shares on behalf of the body corporate.

For example, if X ltd has a subsidiary wherein one member is X ltd itself and other members are nominees of X ltd, then who shall be authorised to vote at the general meeting of subsidiary on behalf of X ltd, is the discretion of the board of directors of X ltd. They can authorize any member of the board or officers or employees or nominee shareholders of subsidiary or any other person to vote at general meeting of subsidiary on behalf of X ltd.

Conclusion:

From the comparative analysis of sections 113 and rule 13(4) of Companies Incorporation rules 2014, it is evident that, although nominee shareholder of body corporate cannot be authorised to sign the memorandum of subsidiary being newly incorporated, but post incorporation, such nominee shareholder can be authorised to vote at the general meeting of subsidiary on behalf of the body corporate member.

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ⁱ Provided that the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

ⁱⁱ 113. (1) A body corporate, whether a company within the meaning of this Act or not, may, —

(a) if it is a member of a company within the meaning of this Act, by resolution of its Board of Directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company;

ⁱⁱⁱ (4) Where the subscriber to the memorandum is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate and where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership:

Provided that in either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association.



In the matter of Shri. Dev Deepak Doshi - Petitioner vs M/s. Dura PUF (Silvassa) Private Limited Respondent in the order passed dated 2 June 2025 by National Company Law Tribunal Mumbai.

Facts of the Case:

- This Company Petition is filed by Shri. Dev Deepak Doshi – Petitioner and Financial Creditor (FC) - an individual who was appointed as a Director of **M/s. Dura PUF (Silvassa) Private Limited** - Corporate Debtor (Respondent/CD) on 1 August 2006.
- The FC provided necessary Financial Assistance to the CD as and when needed.
- The FC advanced a Loan amount of Rupees Two Crores Twenty Lakhs only (approx.) (₹2,19,43,097/-) to the CD in various tranches which was repayable on demand.
- During February 2023, the FC had disagreements with the other Directors of the CD regarding certain key business decisions. Because of these differences, the FC was excluded from participating in the regular business affairs and decision-making processes of the CD. Faced with continued oppressive conduct by the other Directors, the FC contemplated resigning from the position of Director around October 2023.
- On 11 November 2023, the FC issued a Loan Recall Notice to the CD demanding repayment of the outstanding dues. The said notice was duly received by the CD. However, despite acknowledging the liability, the CD failed to make any payment towards the outstanding amount.
- As the oppressive acts continued and the loan amount remained unpaid, the FC resigned from directorship on 1 March 2024.
- The FC issued two further notices to the CD on 31 December 2023 and 5 March 2024 respectively, demanding repayment of the loan.
- Despite issuance of notices, the CD failed to make any payment to the FC, resulting in the filing of the Petition u/s 7 of the Insolvency and Bankruptcy Code, 2016 (IBC/Code).

Arguments of the Petitioner/FC:

- It was submitted that the Financial Statements of the CD reflect that an amount of Rupees Two Crores Sixteen Lakhs (approx.) (₹2,15,98,097/-) was due and payable to the FC as of 31 March 2023. The statements further confirm that the said loan is classified as “payable on demand”
- The FC asserted that the petition was maintainable and that the Corporate Insolvency Resolution Process (CIRP) should be initiated against the CD for the committed default.
- The FC’s claim is substantiated by multiple pieces of documentary evidence, including bank statements demonstrating the transfer of funds, the ledger account maintained in the CD’s books under the FC’s name, and, most importantly, the CD’s Balance Sheet as on 31 March 2023, which records the outstanding amount under “Long Term Borrowings” in the name of the FC.

Arguments of the Respondent/CD:

- The CD submitted that the petition filed by the FC was non-maintainable. There was no written Agreement/Contract or document between the parties to demonstrate the nature of the transaction and the terms of the alleged financial debt. The FC failed to bring on record even a single document to demonstrate the alleged financial debt.
- The CD was a close-knit family business, and directors advanced funds from time to time as required for working capital.
- There was no specific date of repayment agreed between the parties.
- The FC unilaterally determined the date of default as 11 November, 2023, by issuing a demand notice. The CD, however, contended that the said notice was motivated by the FC's dissatisfaction with the management and functioning of the CD. It was further argued that the notice was addressed to the Board of Directors and not specifically to the Respondent. The CD asserted that mere receipt of such a letter does not constitute an event of default.
- The claim made by the FC was without any interest component. Therefore, there is no "time value of money," and the amount cannot be termed as *Financial Debt* u/s Section 5(8) of IBC.
- Consequently, the alleged debt does not bear the commercial effect of a borrowing, as the funds were neither utilized by the CD for its working capital requirements nor were they obtained from the FC for the purpose of meeting such operational needs.
- The FC failed to demonstrate the actual date of default of the alleged financial debt, which is a settled position of law that without which, actual default cannot be ascertained.
- The contents of the reminder letters (31 December, 2023, and 5 March, 2024) demonstrate that the FC was aggrieved due to alleged oppressive acts of the other directors of the CD.
- The CD contended that the present proceeding is a fit case for adjudication through a Civil Trial, where the terms of the alleged transaction, if any, could be properly examined and determined. The CD further submitted that the FC has circumvented this appropriate legal recourse by directly invoking the remedy available under Section 7 of the IBC.

Held:

- The NCLT held that the existence of financial debt can be proved through various documents, not just a written financial contract. Referring to *Agarwal Polysacks Ltd. vs. K. K. Agro Foods & Storage*, it was noted that financial statements or records with an information utility are sufficient. In this case, the debt was established through the FC's bank statements, the CD's ledger, and notably, the CD's Balance Sheet as on 31 March 2023, which reflected the amount under "Long Term Borrowings" in the FC's name. The NCLT also relied on *Vidyasagar Prasad vs. UCO Bank & Anr.*, where the Hon'ble Supreme Court held that balance sheet entries amount to acknowledgment of debt.

- The NCLT rejected the CD's argument that absence of interest disqualifies the loan as 'financial debt'. Citing *Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd.*, it clarified that under Section 5(8) of the IBC, interest is not mandatory and even an interest-free loan can have a "commercial effect of borrowing". The CD's own admission that the funds were for working capital, along with their classification as "Long Term Borrowings" in the balance sheet, confirmed the loan as financial debt.
- The NCLT defined 'default' as non-payment of debt when due. It was held that the FC's loan recall notice dated 11 November 2023 made the debt immediately payable. Concluding that all conditions u/s 7 of the IBC were met, the NCLT confirmed the Petitioner as a 'Financial Creditor' and that a 'Default' had occurred
- The NCLT referred to the Hon'ble Supreme Court's ruling in *M/s. Innoventive Industries Ltd. vs. ICICI Bank*, which mandates that once the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete.

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**VIEW SHARED IN MEDIA BY MAKARAND JOSHI -
FOR THE MONTH OF AUGUST 2025**

Sr. No.	Topic for Media Comment	Link
1.	SEBI's proposed RPT rules ease compliance but increased vigilance needed as firms could structure smaller deals to bypass thresholds: Experts	<p>https://www.moneycontrol.com/news/business/markets/sebi-s-proposed-rpt-rules-ease-compliance-but-increased-vigilance-needed-as-firms-could-structure-smaller-deals-to-bypass-thresholds-experts-13393427.html</p> <p>The data-driven back-testing presented in the paper shows a 60 percent reduction in RPTs requiring shareholder approval under the new thresholds, without diluting shareholder protection—enabling companies to focus more on their business operations without compromising on investor protection or transparency,” said Makarand M Joshi, founder partner, MMJC & Associate, a company secretary firm in Mumbai.</p>
2.	SEBI's IPO allocation revamp may bring efficiency and stability: Experts	<p>https://www.thehindubusinessline.com/markets/sebis-ipo-allocation-revamp-may-bring-efficiency-and-stability-experts/article69893486.ece</p> <p>“Larger issues come with significantly higher share volumes. As a result, retail investors may still have equal or even better chances of allotment.” Joshi added that higher allocation to long-term institutions “would lend credibility to the issue,” strengthening both retail investor confidence and overall market stability.”</p>



NEWS UPDATES AND AMENDMENT
FOR THE MONTH OF APRIL 2025

Sr. No.	News Updates	Link
	TOPIC	
1	Amend Companies Act to bolster ESG initiatives, set up oversight body: House panel tells MCA	<p>https://economictimes.indiatimes.com/news/company/corporate-trends/amend-companies-act-to-bolster-esg-initiatives-set-up-oversight-body-house-panel-tells-mca/articleshow/123100318.cms?from=mdr</p> <p>A parliamentary panel urges amending the Companies Act to integrate ESG objectives into directors' duties and establish an ESG oversight body to combat greenwashing. The committee also calls for improved efficiency at the SFIO, swift filling of vacancies at the NFRA, and a transparent oversight system for CSR, emphasizing the need for empirical data on project outcomes and enforcement actions.</p>
2	ICAI	<p>https://economictimes.indiatimes.com/industry/services/consultancy/-audit/icai-notifies-rules-to-limit-annual-tax-audits-to-60-per-partner/articleshow/122982442.cms</p> <p>To discourage audit assignment concentration among senior partners and curb anti-competitive practices, the Institute of Chartered Accountants of India (ICAI) has set new guidelines. Effective April 2026, these guidelines limit each accounting firm partner to a maximum of 60 tax audits annually. The audit of a head office and its branches will be considered a single assignment</p>
	Consultation Paper	Particulars
1.	SEBI Consultation Paper on Amendments to the provisions relating to related party transactions under SEBI (LODR) Regulations	<p>https://www.sebi.gov.in/reports-and-statistics/reports/aug-2025/consultation-paper-on-amendments-to-provisions-relating-to-related-party-transactions-under-sebi-lodr-regulations-2015-and-circulars-thereunder_95824.html</p>