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CS NEWS – INSIDE THIS EDITION

REGISTERED VALUER

(Pursuant to Companies (Registered Valuers And Valuation) Rules, 2017)

Who is Registered valuer?

Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

Eligibility:

No individual shall be eligible to be a registered valuer if he-

(a) has not passed the Valuation Examination in the three years preceding the date of making an application under Rule 7:

(b) does not have the qualification and experience specified in Rule 6;

(c) is a minor;

(d) has been declared to be of unsound mind;

(e) is an undischarged bankrupt, or has applied to be adjudicated as a bankrupt;

(f) is a person not resident in India;

(g) has been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence.

An organisation may be recognised as a valuation professional organisation for valuation of a specific class or classes of assets of valuation if it has been -

(i) set up under an Act of Parliament, or;

(ii) registered under section 25 of Companies Act, 1956 or section 8 of Companies Act, 2013, or;

(iii) registered as a society under the Societies Registration Act, 1860 or any relevant state law, or;

(iv) set up as a trust governed by the Indian Trust Act, 1882;

Application for certificate of registration:

(1) An individual eligible for registration as a registered valuer under Rule 5 may make an application to the Registration Authority in Form A of Schedule II, along with a non-refundable application fee of ten thousand rupees in favour of the Registration Authority.

(2) A partnership entity eligible for registration as a registered valuer under Rule 5 may make an application to the Registration Authority in Form B of Schedule II, along with a non-refundable application fee of ten thousand rupees in favour of the Registration Authority or partnership entity

(3) If the Registration Authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary, that the applicant is eligible under these Rules, it may grant a certificate of registration to the applicant to carry on the activities of a registered valuer for the relevant class of assets in Form C of the Schedule II, within sixty days of receipt of the application, excluding the time given by the Registration Authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.

An applicant organisation which meets the conditions prescribed in Rule 12 may make an application for recognition as a valuation professional organisation for specific class or classes of assets to the Registration Authority in Form D of the Schedule II.

HEADS UP ON EVENTS THAT LED TO HEADS TURN IN OCTOBER 2017

What led Sebi to hold back order on loan default information filing to stock exchanges?

What drove the Securities and Exchange Board of India (Sebi) to hold back its directive requiring companies to inform stock exchanges about defaults on loan payments to banks and financial institutions? It's not the outcome of hectic lobbying by corporate groups but emanated from concerns over the likely impact of such information on balance sheets of banks which are struggling with sticky loans. The regulator's announcement — coming just before a long weekend — to postpone the implementation of the directive "until further notice" surprised everyone in the financial markets. What was the trigger? Senior officials in the financial services industry told ET that in recent meetings, bankers had conveyed to credit rating agencies the possible impact of such disclosure on their books. Here's how it could play out. Sharing information on default with exchanges would compel rating agencies to straightaway downgrade a loan to 'D' or default grade. Such an event would be immediately factored into while calculating the minimum capital needs of banks

The floor capital adequacy level for a bank is the ratio of different kinds of bank capital (equity, free reserves, secondary bonds etc.) to its risk-weighted assets. Since a 'default rating' on a loan would sharply raise the risk weight attached to the loan in question, a downgrade would thus lower the capital adequacy ratio of a bank - an event that would require a bank to arrange more capital to sustain the same level of business. Unlike a default on bond — which investors immediately get a whiff of — news of a loan default rarely leaks out. Banks categorise a loan as nonperforming asset (NPA) three months after a default. If a borrower services the loan after a few weeks of delay, it is not reflected on lenders' books as the loan is regularised within the 90-day window. Only when a borrower fails to repay within 90 days, analysts and investors come to know about a corporate default and classification of the loan as NPA. Banks had told agencies that initial default or delay is common among borrowers and reporting each non-payment of interest or principal or even processing fee could cause a downgrade of several loans. Also, since many of these payments happen after some delay (but before 90 days), a default tag would not only trigger hardship for the borrower but also stress capital levels of banks. Indeed, banks had refused to share information on loan default even with rating agencies.

The issue came to the fore in May 2017 when the market regulator Sebi asked rating agencies to explain what lead to the downgrade of Reliance Communications' debt securities and loans by several swift notches. Sebi had then wanted to know whether investors of RCom securities could have been alerted with an early rating action. **RCAP EXPOSURE TO RCOM** With RCom calling off its merger with Aircel, some of the rating agencies will soon ask Reliance Capital BSE -2.16 % to spell out its exposure to the group's debt-laden telecom company. While the Reliance Capital's exposure to Reliance Communication is small compared to the former's net worth, rating agencies are likely to seek information and finances as of September 30. The rating on RCap papers is currently on 'credit watch with developing implications'.

Disqualified directors seek reprieve from Ministry of Corporate Affairs

Disqualified directors have started knocking on the doors of the Ministry of Corporate Affairs (MCA) seeking reprieve from the debarment ordered by the government last month, with several of them explaining to the government that they have been wrongly disqualified and that they were not associated with the struck-off companies. The government could consider coming up with some solution for the aggrieved directors since no recourse is currently available under the Companies Act 2013. While companies can approach the National Company Law Tribunal (NCLT), directors have no such option. “The directors have got disqualified by the operation of law. We had sent notices to the companies before we struck off their names. We are seeing what can be done now…discussions will start soon,” a senior official told ET. Chartered accountants and company secretaries have also met government officials over the disqualification of directors.

Many CAs have also raised the issue of directors not receiving any prior notice before the disqualification. The senior official ET spoke to clarified that since a director gets disqualified “under the operation of law” no notices were required to be sent to them but only to the companies which were found non-compliant. As far as the struck-off companies are concerned, the government has assured that it will “take all aspects into account and hear the stakeholders to provide some redressal mechanism”. “Not all companies removed from the Registrar of Companies list are shell but simply non-compliant. We will listen to their cases,” the senior official explained. Ministry of corporate affairs has struck off more than 2 lakh companies and disqualified 3 lakh directors as part of an ongoing exercise of cleaning up Corporate India and a crackdown on shell companies.

Several public sector companies and their directors have also been named in the list made public by the government. “There’s some recourse for public listed companies but not for the directors of those companies,” another senior official said. Following the disqualification by MCA, directors have been barred from using their digital signature to sign any document. The National Stock Exchange, taking note of the development, has also asked about 200 listed companies to consider whether directors who have been disqualified by the ministry of corporate affairs should continue on their boards. As per Section 164 of the Companies Act, 2013, a director in a company which has not filed financial statements or annual returns for three years in a row will not be eligible for reappointment as a director in that or any other company for five years. ET VIEW: Amend The Rule More legal disputes are avoidable, given that disqualified directors of shell companies can move courts to seek legal recourse. The government can amend the rules to give them a chance, but it should be accompanied by a stern warning that there will no errant conduct in the future. Enforcement agencies must also swiftly complete investigation of shell companies to establish whether or not there has been malfeasance.

Cyrus Mistry seeks transfer of pleas against Tatas to Delhi bench

Cyrus Mistry has approached the National Company Law Tribunal (NCLT) to seek transfer of his appeals challenging his removal as Tata group chairman from the Mumbai bench to the New Delhi bench. The transfer pleas filed by the two investment firms scheduled for hearing tomorrow before the Principal bench of the NCLT headed by Chairman Justice M M Kumar. Confirming the development, senior advocate C A Sundaram said that an application has been filed for transfer of the case. The investment firms are Cyrus Investments Pvt Ltd and Sterling Investments Corporation Pvt Ltd. Last month, the National Company Law Appellate Tribunal (NCLAT) had granted Cyrus Mistry waiver in the minimum shareholding rule for him to file a case of alleged oppression of minority shareholders after observing 'exceptional' and 'compelling circumstances' in the entire episode. The Mistry family owns 18.4 per cent stake in the closely-held Tata Sons. The shareholding, however, is less than 3 per cent if preferential shares are excluded, not meeting the criteria of at least 10 per cent ownership in a company for filing of a case of alleged oppression of minority shareholders. The NCLAT has asked the NCLT, which previously dismissed Mistry's petition against Tata Sons on the ground of not meeting the minimum shareholding criteria, to decide on the case in three months.

Mistry has been locked in a legal battle with the Tatas since his unceremonious exit as chairman of Tata Sons -- the promoter company of the USD 105-billion car-to-software Tata group in October last year. Mistry was ousted as Tata Sons chairman on October 24, 2016, and was also removed subsequently as a director on the board of the holding company on February 6, 2017. Cyrus Investments Pvt Ltd and Sterling Investments Corporation Pvt Ltd had moved the NCLT against Tata Sons after Mistry's ouster last year alleging oppression of minority shareholders and mismanagement. However, on April 17, the Mumbai bench of the NCLT had rejected the waiver plea filed by the investment firms while on March 6, it had set aside the one over maintainability. Following that, both the investment firms had moved the appellate tribunal.

Now, independent directors could face more scrutiny

The committee on corporate governance, formed by market regulator Sebi in June 2017 under the chairmanship of Uday Kotak, has recommended several changes in current regulations to improve the standards of corporate governance of listed companies in India. The suggestions include those pertaining to independent directors, disclosures on related party transactions, accounting, auditing practices, board evaluation practices, disclosure and transparency-related issues. The public can send their comments on the report by November 4, 2017.

Independent directors head for exit doors on compliance stress

For a well known tax expert based in Mumbai who is on the board of an infrastructure company, recommendations by the committee formed by Sebi were the last straw. The expert, who sits on the board for the last five years, is now planning to render his resignation in next few months. He fears that he may end up in a legal tangle as the company is “unable to tackle rising debt problem”. He may not be alone. As compliance burden increases for independent directors many of them are planning to press the exit button. The committee on corporate governance, formed by market regulator Sebi in June 2017 under the chairmanship of Uday Kotak, has recommended several changes in current regulations to improve the standards of corporate governance of listed companies in India. “Independent directors are now more cautious while selecting a company on whose board they plan to sit and there is reluctance to be part of boards where the standard of corporate governance and compliance are low or there are some potential problems.

Every aspect of the company including corporate governance, debt, past or potential fraud, profile of promoter are being scrutinised by independent directors who have a good profile and reputation," said Rajesh Narain Gupta, managing partner, SNG & Partner, who also sits on the board of one of the well-known housing finance companies in the affordable housing space. In the last two years, many independent directors have been resigning from companies they feel could land them in trouble. "So much is the worry that an unsubstantiated letter written by a customer to board members was debated for half an hour in a board meeting," an independent director sitting on a financial services company said. According to the figures obtained by Prime Database, till date 851 independent directors have resigned since 2016. Some experts point out that going ahead more independent directors would resign from various companies. "Over a period of years, the role and responsibility of independent directors has become more onerous, and this is primarily due to enhanced expectations from directors qua their role in governance of listed companies," said Ketan Dalal, managing partner at advisory firm Katalyst Advisors who also sits on the board of two well-known companies. In last two years independent directors have resigned from debt laden companies, or companies that have been declared to be non-performing assets (NPA). Independent directors are also cautious in cases where the promoter is too flamboyant, say industry insiders. Going ahead, many companies may even find it hard to find independent directors, feel industry trackers.

High Court notice to government over disqualification of shell companies' directors

The Delhi High Court has issued notice to the Ministry of Corporate Affairs and Registrar of Companies (RoC) on a petition challenging the disqualification of more than one lakh directors of shell companies. The Ministry of Corporate Affairs, last month, identified 1,06,578 directors of shell companies for disqualification. While issuing notices to the ministry, the HC also stayed the disqualification of three such directors. Advocate Manish Jain, counsel for the petitioners, challenged the vires, Latin for powers, of Section 164 (2) of Companies Act, 2013 which was notified in the year 2014. Jain said that the section was wholly ambiguous, as it is unclear as to whether it is applicable only to existing directors or extends to all those who no longer are directors of the disputed shell companies. "The vires of the section in question has been challenged," Jain told ET. He argued that the ministry had violated the principles of natural justice in disqualifying the directors.

For, he contended, the directors were not even issued show-cause notices before disqualifying them. The petitioners have also contended that there was no provision under Section 164 (2) of Companies Act, 2013 for "immediate disqualification" of a director. Jain said the section is "unconstitutional", as it is apparently applicable even to those directors who were not the directors of defaulting companies at the time of default and have vacated or quit the officer prior to the default. The government recently de-recognised 2.10 lakh companies that were dormant and utilised for dubious transactions. After de-recognition, the finance ministry directed banks to restrict operations of bank accounts of such companies by their directors or authorised representatives. The ministry is further analysing the data of these companies from the Registrar of Companies, to identify the directors and the significant beneficial interest behind these companies. Under Section 164 (2) of the Companies Act, 2013, a director in a company that has not filed financial statements or annual returns for three years in a row will not be eligible for re-appointment as a director in that or any other company for five years.

What happens if you do not link your bank account with Aadhaar by December 31

The government has set a deadline for banks to link customers' accounts to their Aadhaars by December 31, 2017, and those accounts where this is not done before this date will 'cease to be operational'. Undoubtedly, before the December 31 deadline, no bank can make your account un-operational due to non-compliance with the Aadhaar linking requirement. The Ministry of Finance amended the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 through a notification dated June 1, 2017. As per the amended rules, new bank accounts opened post the above-stated notification will have to be linked with Aadhaar at the time of opening the account or within 6 months from the date of opening the bank account. Further, existing bank accounts are have to be linked with Aadhaar by December 31, 2017. Elaborating the finance ministry directive, Puneet Gupta, Director, People Advisory Services Ernst & Young said, "It is important to note that these rules apply to all individuals, companies, firms, trust, associations, etc who have a bank account. For companies, firms, trust and associations, the individual authorised to transact on its behalf is required to link his/her Aadhaar with the respective bank account. Exemption is only available if the individual is not eligible for Aadhaar i.e. a non resident as per Aadhaar rules." To comply with the finance ministry directive, banks are now not opening new accounts without Aadhaar and have been giving constant reminders to those who still haven't linked their accounts with the 12-digit biometric number.

Corporate Development Judicial

CASE LAW	Surendra Trading Company v. Juggilal Kamlapat Jute Mills Co Ltd [SC]
DECIDED ON	September 19, 2017
LEGISLATION	Insolvency and Bankruptcy Code, 2016- proviso to section 9 (5)
BRIEF FACTS	7 days' time limit to remove defects in the application- whether directory

Facts: The crux of the issue was that the appellant operational creditor filed an application before the NCLT under sections 8 and 9 of the Insolvency and Bankruptcy Code 2016 (the Code) against the respondent corporate debtor. The NCLT observed certain deficiencies in the application and directed the appellant to remove the same within 7 days as provided under section 9. The appellant removed the defects but after the expiry of 7 days. The NCLT dismissed the application. On appeal, the NCALT held that the appellant should have cured the defects within 7 days as the provision was mandatory. This is being challenged in the present appeal.

The core issue involved in the appeal was whether the 7 days prescribed in the section is mandatory or directory.

Decision: Appeal allowed.

CASE LAW	Mobilox Innovations Pvt Ltd v. Kirusa Software Pvt Ltd [SC]
DECIDED ON	September 21, 2017
LEGISLATION	Insolvency and Bankruptcy code,2016- section 8
BRIEF FACTS	operational debt- term 'existence of dispute'- meaning thereof- explained by the Supreme Court.

Facts: The present appeal raises questions as to the triggering of the Insolvency and Bankruptcy Code, 2016 when it comes to operational debts owed to operational creditors.

The appellant was engaged by Star TV for conducting tele-voting for the "Nach Baliye" program on Star TV. The appellant in turn subcontracted the work to the respondent. The respondent provided the requisite services and raised monthly invoices and also followed up with the appellant for payment of pending invoices. It is also important to note that a non-disclosure agreement ("NDA") was executed between the parties.

More than a month after execution of the aforesaid agreement, the appellant, wrote to the respondent that they were withholding payments against invoices raised by the respondent, as the respondent had disclosed on their webpage that they had worked for the "Nach Baliye" program run by Star TV, and had thus breached the NDA.

Respondent filed an application with the NCLT under Sections 8 and 9 of the new Code stating that an operational debt of Rs.20,08,202.55 was owed by the Appellant. NCLT dismissed the application on the ground that the appellant had disputed the claim of debt alleged by the respondent. On appeal NCALT remanded the case back to NCLT. Appellant challenged the order of the NCALT before the Supreme Court.

Decision: Appeal allowed.

From the Government

Exemptions given to certain unlisted public companies under the Companies (Appointment and Qualification of Directors) Rules, 2014 from the appointment of independent directors

[Issued by the Ministry of Corporate Affairs vide [No. 1/22/2013-CL-V] General Circular No. 9/2017 dated 05.09.2017]

1) This Ministry, vide notification number G.S.R. 839(E) dated 5th July, 2017 issued the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 interalia amending rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014. The said amended Rule 4 inter-alia provides that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors. Stakeholders have sought clarifications with regard to the meaning of joint venture for the purposes of availing exemption under Rule 4 of the aforesaid Rules as such a term is not defined in the Companies Act 2013.

2) The matter has been examined and it is hereby clarified that a "Joint venture,, would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards.

3) This issues with the approval of Competent Authority.

SAVE OUR ENVIRONMENT

TOXIC COOKING

Meal preparation can be a deadly chore in the developing world. About half the planet's population still cooks with solid fuels like dung, coal, and wood, and the air pollution from these sources is thought to lead to more than four million premature deaths a year.

Simple Solution: A Green Stove

African Clean Energy, a South African company, has invented a stove that works more efficiently (using 70 percent less fuel) and cleanly (creating 95 percent fewer harmful emissions) than traditional methods. The battery-powered appliance recharges via a solar panel, and it has a USB port to power cell phones and laptops.

African Clean Energy is giving its cookstoves to families headed by orphans in Lesotho.

African Clean Energy (ACE) is the producer of the ACE 1 solar biomass energy system: an advanced cookstove which reduces smoke emissions to negligible levels. The ACE 1 is among the cleanest and most high-tech stoves currently available, providing clean cooking with a range of biomass fuels as well as offering solar electricity for mobile phone charging and LED lighting.

Source: *https://www.rd.com/health/wellness/inventions-to-save-the-world/*

UPDATES

MCA UPDATES

1. Ministry of Corporate Affairs, vide notification number G.S.R. 1172(E) dated 19th September 2017 has issued the Companies (Acceptance of Deposits) Second Amendment Rules, 2017 thereby amending the Companies (Acceptance of Deposits) Rules, 2014. The said amendment Rules inter-alia provide for substitution of existing Form DPT-3 with a new Form DPT-3. In this regard, new Form DPT-3 shall be made available for E-filing after the month of November 2017 and till the time the new e-form is made available, the existing e-form can be used.

2. Companies (Removal of Difficulties) 2nd Order 2017.

   In exercise of the powers conferred by section 458 of the Companies Act, 2013 (18 of 2013), the Central Govemment hereby delegates the powers and functions vested in it under section 247 of the said Act to the Insolvency and Bankruptcy Board of India, subject to the condition that the Central Govemment may revoke such delegation of powers or it may exercise the powers under the said sector if in its opinion such a course of action is necessary in the public interest.