



CS NEWS
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Statutes

2018



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2018 – “Year of Ethics”. To Preach or Practice
Initiative by J Sundharesan

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HEADS UP ON EVENTS THAT LED TO HEADS TURN IN MAY 2018**VIDEOCON LOAN CASE: ICICI Bank, Kochhar get notices from SEBI:**

The Securities & Exchange Board of India (SEBI) has served notice on the MD & CEO of ICICI Bank, Chanda Kochhar in the Videocon loan case. The notice related to ICICI Bank's dealings with the Videocon Group and NuPower, an entity in which Chanda Kochhar's husband Deepak Kochhar has a business interest. "Appropriate response would be submitted to the SEBI," said ICICI Bank in a filing to the bourses, confirming that the bank and its MD & CEO were in receipt of the SEBI notice. The Central Bureau of Investigation had launched a preliminary investigation into a ₹3,250-crore loan that ICICI Bank had extended to Videocon in 2012 and the possible role of Deepak Kochhar. It was alleged that Videocon Chairman, Venugopal Dhoot invested ₹64 crore in NuPower Renewables, a firm owned by Deepak Kochhar, after Videocon secured a loan from a consortium of banks, including ICICI Bank. ICICI Bank has denied any wrongdoing in the loan transaction, saying it was part of a consortium of lenders that extended the facility to Videocon. Last month, ICICI Bank Chairman MK Sharma had asserted that the Board has full confidence in Chanda Kochhar and ruled out any quid pro quo as alleged with regard to the loan given to the Videocon group. Earlier, ICICI Bank had clarified that none of investors of NuPower Renewables is a borrower of ICICI Bank. "The MD & CEO and the Bank received a notice from SEBI on May 24, 2018 requiring responses on matters relating to alleged non-compliance with certain provisions of the erstwhile Listing Agreement and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015," said the ICICI Bank in the filing.

Source: [Click here for more information](#)

PNB FRAUD: ED FILES CHARGESHEET AGAINST NIRAV MODI, ASSOCIATES

The Enforcement Directorate has filed its first chargesheet in the over \$2-billion PNB fraud case involving diamantaire Nirav Modi and his associates. According to officials, the 12,000 page chargesheet or the prosecution complaint has been filed before a special court here under various sections of the Prevention of Money Laundering Act (PMLA). They added that the criminal complaint has only been filed against Nirav Modi, his associates and businesses and the entire gamut of issuance of fake Letters of Undertaking (LoU) by Punjab National Bank (PNB) to his firms in alleged connivance of bank officials. It is expected that the agency would file a second chargesheet against Modi's uncle and jeweller Mehul Choksi and his businesses. The chargesheet also details the attachments made by the agency against Modi and his associates in the last few months after it had first registered an FIR in this case on February 14. The CBI had early this month filed two chargesheets in this case. Nirav Modi, who is absconding and has not joined the ED probe in the case till now, and others are being probed under various criminal laws after the fraud came to light this year following a complaint by PNB that they allegedly cheated the nationalised bank to the tune of over Rs 13,000 crore, with the purported involvement of a few employees of the bank.

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The ED's charge sheet focuses on the money laundering aspect and the role of Nirav Modi and others in perpetrating the alleged fraud, a senior official said. Both Nirav Modi and Choksi are said to have left the country before criminal cases were lodged against them.

Source: [Click here for more information](#)

IBC NOT BEING USED TO FULL EXTENT; COCS NEED TO DO MORE: SAHOO:

Objective of the bankruptcy law is to resolve an insolvency and revive an asset for collective good and not to maximize value for a chosen few, Insolvency and Bankruptcy Board of India Chairman M S Sahoo said recently, urging Committee of Creditors (CoC) to do more for all stakeholders. The head of the regulatory oversight board for the nascent Insolvency and Bankruptcy Code, 2016 (IBC), rued that we are not making best use of the Code. "Committee of Creditor is in a custodian and trustee position. It has higher responsibility to look at interest of all the stakeholders. Objective is to work in unison to resolve an insolvency through a process," Sahoo said at an event organised by industry lobby FICCI. The CoC, which includes both financial as well as operational creditors of a Company, should be "proactive" to create value in an asset, Sahoo said, underlining that the primary priority should be to ensure that the going concern continues to being in business and not to liquidate. "The objective of a CoC is to generate competitive resolution plans, and then approve that plan which maximizes the value for everybody, in contrast to recovery which maximizes the value only for one set of people. There is a lot of facilitation in the law for making it happen. The objective is to revive if viable, or close it (the asset), if not viable.

You can't directly go to liquidation," Sahoo said. "We are not making the optimal use of the law, we are after maximizing value because the Code says so. But the Code (also) says that it is for the maximization of value of the assets of corporate debtor and not for a stakeholder, or set of stakeholders," Sahoo added. He said there is a lot of scope in the law to make resolutions happen, asserting that with the introduction of the IBC, we have moved away from recovery. "Probably we are not making the best use of the Code (IBC). The Code is a much more powerful thing, it can be used for much higher purposes so that the resolution is sustainable. If the objective was just to discover a price, get a big value, perhaps we could have had gone to the stock market," Sahoo said. "The Code offers much more potential that is not being realized. It can look at changing the management, technology, product portfolio. A resolution plan allows you do much more than what is happening today," he added. The CoC, he said, has a "special responsibility" to ensure such resolutions happen, Sahoo said, adding that it has financial creditors who have the understanding of a business and the financial ability to continue with a resolution. "This is the set of people (financial creditors) who have the ability to take a business decision and take the risk of postponing the recovery," he said, adding that they have the "stamina to wait for a while, turnaround a Company and recover from the performance of the Company." The government passed the IBC in 2016, which was followed with an ordinance barring some promoters from bidding for the assets.

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The Cabinet cleared further amendments recently equating home buyers with operational creditors, among others, which is yet to be passed. Sahoo said 800 cases have been admitted to the 12 National Company Law Tribunal benches, upto 2,500 have been rejected, while there have been 200 voluntary insolvency cases which have also been filed. There are over 100 cases that are resolved, he said. The IBBI Chairman said he is broadly satisfied with the progress done under the insolvency law, even though there have been some setbacks which will serve as a learning. He also sought to dismiss notions that the 270-day timeline is not being adhered to, underlining that a maximum number of cases have been resolved within the timeframe. It can be noted that most of the cases that are making media headlines have not adhered the timelines and have seen frequent legal challenges at multiple stages. “When we are doing something for the first time, everyone is learning. There will be some issues which will require time to sort out. We have to go through this process. Once the issues are sorted out, we will be with the timeline on every case,” Sahoo told reporters on the sidelines. He also defended the call to treat the micro, small and medium enterprises differently, saying it is a “rational” approach followed all across the world and will help ensure that small businesses flourish. Sahoo, however, did not comment it, which will be about the cabinet decision, saying he has not yet seen the detailed contours of known only once the ordinance is issued.

Source: [Click here for more information](#)

ANOTHER INFOSYS WHISTLEBLOWER POINTS TO LAPSES IN GOVERNANCE STANDARDS; WRITES TO SEBI, SEC:

A whistleblower has fired a fresh salvo at Infosys, questioning the corporate governance standards at the software major. In a letter to SEBI and US regulator SEC, the whistleblower accused Co-founder and Chairman Nandan Nilekani of conniving with the current Board to “bury” all the “wrongdoings” of the earlier Board. The letter added that Infosys has “quietly revealed in the annual report that they had signed agreements for mutual release of claims” with three Directors who left the Company last year. Infosys had disclosed in its annual report that former Chairman R Seshasayee, and Jeff Lehman, the former head of nominations and remunerations committee of the Board, had signed a mutual release of claims. A mutual release agreement is a document that allows for disputes to be settled quickly, in a professional manner. At the time of his resignation, former CEO Vishal Sikka entered into a separation agreement, which included a mutual release and non-disparagement obligation, which is a clause used to protect an employee’s reputation. Soon after Sikka and Seshasayee quit the Infosys Board, Nilekani was brought in to take charge. Nilekani had said at that time that he would review the prior investigations (concerning corporate governance lapses) conducted by third-party investigators in a “calm and dispassionate” manner. Later, he gave a clean chit. The whistleblower had written to the regulators in April and had questioned the Board’s accountability in the acquisitions of Panaya and Skava, which was at the root of the bitter spat between co-founder NR Narayana Murthy and the former Board. In its annual results for the fiscal year 2018, B board led by Nandan Nilekani is a huge disappointment. He had forgotten the core principles of Infosys and failed to uphold the highest traditions of corporate governance practised by Infosys earlier,” the whistleblower said in the letter.

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A few days ago, Ravi Venkatesan who has been an independent director since 2011, resigned from Infosys to accept an “exciting new role”. In the aftermath of the clean chit given to the acquisitions, Murthy had also asked that the report be made public. Since the spat began, some executives had vociferously called for the Board to be reconstituted.

Source: [Click here for more information](#)

JIO ALLEGES SECURITY BREACH IN AIRTEL'S APPLE WATCH SERVICE

Reliance Jio Infocomm (Jio) has asked the telecom ministry to take “severe action” and levy “strictest of penalties” against rival Bharti AirtelINSE -6.19 % for allegedly violating licence conditions by using a network of nodes based abroad to offer its services on the latest Apple watch, which could lead to a security breach. Airtel has denied the accusations, calling Jio’s complaint “frivolous”. In a letter to the department of telecommunications (DoT) dated May 11, Jio alleged that Airtel has not set up “eSIM provisioning node in India and the node being used to provide Apple Watch Series 3 is currently located outside India in gross violation to the licence terms”.

The Mukesh Ambani-owned telco alleged that this may lead to a national security breach and is a “deliberate and gross violation” of terms and conditions of unified licence. The maximum penalty for a breach of licence conditions is Rs 50 crore per circle. India has 22 telecom circles. Airtel has denied Jio’s accusations, saying it is “another frivolous complaint by a desperate operator, whose sole aim appears to have a monopoly over everything that they do”

“All information relating to customers, network nodes, etc. is hosted in a fully secure manner by Airtel India, along with provision for lawful interception,” the country’s top telecom operator told ET in an emailed response. “We will be happy to share more details with the DoT as and when required,” it said. Officials at Airtel, who did not want to be named said that the only information outside of India is the eSIM inventory, which is like any other SIM inventory data and is a practice followed by almost all global operators. “There is no CDR (call detail record) or KYC (know your customer), or any private information, outside the country and lawful interception is within India,” one of the officials said.

He said Apple watch does not change anything per se while changing from the physical SIM to the eSIM, and both are compliant with security and privacy requirements. Both Airtel and Jio have announced that they are selling the latest Apple watch that comes with built-in cellular, in an attempt to attract or retain high-valued subscribers amid severe revenue and margin pressure due to rock bottom voice and data rates. The latest Apple watch offers a service through which a customer can remain connected, make calls, and receive texts and more, even without their iPhone nearby.

In its letter to DoT, Jio has asked the department to direct Airtel to stop its latest Apple service and start it “only upon complying with the requirements of national security and addressing the violations of the license terms and conditions”. ET reviewed a copy of the letter.

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A subscriber shares the same number in an iPhone and Apple Watch, and uses an eSIM to make or receive calls. The air provisioning of this eSIM is done by a dedicated network of nodes and they contain user information and other sensitive data. The Unified License (UL) states that location of switches and network elements needs to be within the country. "Airtel has deliberately chosen to install a critical network element outside India for a service being offered under the Access Services License (which) indicates its blatant disregard for the sanctity of the license terms and conditions including important security conditions," Jio has alleged. It said the new service also necessitates changes in the way security agencies receive and analyse any target information. Airtel should have carried out Lawful Interception Management (LIM) demonstration before launch of this service "so that national security interests are not compromised in any manner", it claimed. The telco said it was unaware if Airtel had made necessary changes in its LIM solution or offered the LIM demonstration to DoT or security agencies.

The market leader, in its response, said it had notified DoT prior to the launch of the latest Apple Watch, including product features, network architecture and lawful interception, and had requested them to carry out a demonstration of the same. Jio's latest complaint is the latest in a series of accusations and counter accusations between the two telcos on several issues including points of interconnect, interconnect charges and advertisements over speed of networks, and Indian Premier League tournament coverage.

Source: [Click here for more information](#)

MORTGAGE OF JAYPEE INFRATECH LAND TO GET LOANS FOR JAL WAS FRAUDULENT: NCLT

In a setback for the insolvent Jaypee Infratech, a bankruptcy court on Thursday said the transaction by which 758 acres of land had been used to secure loans for Jaiprakash Associates, its parent company, was fraudulent, preferential and undervalued. In a 77-page verdict, the Allahabad bench of the National Company Law Tribunal (NCLT) tribunal ordered immediate release of the collateral that JAL had used to secure loans of more than Rs 21,000 crore from a clutch of lenders that included State Bank of India ICICI Bank and Standard Chartered Bank. "The corporate debtor entered into a transaction without even taking prior approval of the Joint Lenders Forum and mortgaged its unencumbered land in favour of lenders of Jaiprakash Associates," the NCLT order noted. "The impugned transactions are declared fraudulent, preferential and undervalued. We pass the order for release and discharge of the security interest created by the corporate debtor in favour of lenders of Jaiprakash Associates." As per the NCLT order, the transactions that have been deemed fraudulent are the mortgage deeds of 335 acres in favour of Axis Trustee Services to provide additional security for terms loans given to Jaiprakash Associates. Mortgage deeds for 310 acres in favour of ICICI Bank, 25 acres in favour of Standard Chartered Bank and 90 acres in favour of State Bank of India have also been deemed fraudulent by the tribunal.

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“Instead of capitalizing on this unencumbered land which could have been used to raise money and complete construction of projects, JAL decided to use this to secure its own loans, this is virtually asset stripping,” a source involved in the matter said. “At the time of taking collateral, banks never concern themselves from where the collateral is coming, whether it is owned by the parent or its subsidiaries ... what is the financial situation of those subsidiaries ... this NCLT order has huge implications.”

The insolvency resolution professional for Jaypee Infratech had accused it of fraudulently mortgaging 858 acres of land to secure the loans of JAL. The IRP had claimed that the land was valued at Rs 5,000-6,000 crore and was mortgaged to secure loans taken from SBI, ICICI Bank, IDBI Bank and Standard Chartered Bank. The move took place at a time when banks had started classifying Jaypee Infratech as a “non-performing asset” due to loan defaults. In a petition before the NCLT, the IRP had said that the land could have been sold or mortgaged to raise funds and complete the construction of flats and prevent value erosion. Of the 33,000-odd apartments due to be delivered by Jaypee Infratech, nearly 25,000 are yet to be completed and are delayed until 2021. The mortgaged land parcels are in Gautam Buddha Nagar, Aligarh and Agra districts.

Source: [Click here for more information](#)

EMPLOYEES UNDER LENS FOR LEAKING EARNINGS DATA

Mumbai: Internal investigations by two banks and more than half a dozen companies have revealed that a few employees may have been aware about unpublished price sensitive information (UPSI) leaked before the quarterly results of these banks and companies were released.

Most of the companies and banks have submitted their internal probe reports to the market regulator Securities and Exchange Board of India (SEBI) and action could be taken against these employees — including a CFO in one case — in the coming weeks, four people aware of the development said.

The probes revealed that in many cases the earnings details leaked were accurate to the last decimal and many employees received these through WhatsApp, but they failed to flag off the issue. At least in one case, the matter was raised by the employees of the company but the CEO and CFO failed to take any concrete action. “Investigators had done phone imaging for a CFO and it was found that he had received earnings details of his company through WhatsApp two days prior to the announcement but failed to flag it off to the board,” one of the people cited above said. Most companies have now told SEBI that they are putting in place mechanisms to prevent similar leaks in the future.

These new checks and balances are likely to include dummy results being prepared by junior employees and only senior executives would have access to partial real figures henceforth. Quarterly results of HDFC Bank, Axis Bank, Tata Steel, Tata Motors, Bata, Mahindra Holidays, Wipro and many others were leaked, sometimes hours before the announcement of their earnings in June last year.

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“The problem that the company faced is that some employees refused to hand over their cell phones to the investigators. Since these cell phones are personally owned, the company doesn’t have a right to search these handsets,” said a senior executive with one of the companies. He added that in his company’s case, at least two lower level employees who were in charge of photocopies and other administrative work may have been involved. He claimed SEBI has been updated about the same. SEBI had launched a probe in November last year after media reports cited circulation of unpublished price sensitive information in various private WhatsApp groups about certain companies ahead of their official announcements.

The regulator has so far asked Axis Bank, HDFC Bank, Tata Motors and Bata India to conduct internal inquiries and strengthen their systems. “The company is in the midst of doing the investigations and are fully committed to ensuring security of UPSI (unpublished price sensitive information),” Tata Motors said in response to ET’s query. “We are keeping the authorities updated of the progress and will discuss the outcome of the investigation with the authorities.” According to another person close to the development, some of the employees in the information technology department of a company were also under the scrutiny. “The IT guys have access to a lot of information and in some cases it’s observed that even a vendor to whom services were outsourced has access to sensitive information. The report was submitted to SEBI and we expect some action against these individuals,” he said. One other company said that it was complying with SEBI’s diktat after being directed to take some measures within a specified time frame. HDFC Bank, Axis Bank, Tata Steel and Bata did not respond to ET’s questions seeking comment. Wipro refused to comment on the story. “We have complied with all the directives of SEBI in this matter and have submitted our report to them. At Mahindra Holidays, we follow the highest standards of corporate governance and are committed to transparent and ethical business practices,” a spokesperson for Mahindra Holidays said. On December 27, SEBI had asked Axis Bank to conduct an internal inquiry into the suspected leak of its June-quarter financial results on WhatsApp groups and pinpoint the source of UPSI and submit the findings by the second week of April. Financial figures pertaining to the quarterly results of Axis Bank were either identical or closely matched those in circulation prior to the announcement of the results, SEBI had said in the order.

On February 23, SEBI directed HDFC Bank to strengthen its systems and controls to prevent any leakage of sensitive information so that SEBI’s insider trading norms are not breached and nobody get to make illegitimate gains. The bank was also directed to conduct an internal inquiry into the leakage of financial figures and take appropriate action against those responsible for the same. HDFC Bank’s report is due for submission in the first week of June.

Source: [Click here for more information](#)

Corporate Development Judicial

CASE LAW	PENTA GOLD LIMITED v. NATIONAL STOCK EXCHANGE [SAT]
DECIDED ON	April 17, 2018
LEGISLATION	SEBI (ICDR) Regulations, 2009
BRIEF FACTS	SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 - regulation 106P - discharge of underwriter's obligation - done through procuring applications from third parties - whether permissible - Held, Yes.

Facts: The Appellant Company had entered into an underwriting agreement in accordance with the model underwriting agreement prescribed by SEBI which records that the underwriters agree to underwrite and/or procure subscription for the issue of shares in case the issue is undersubscribed. The Underwriting Agreement was vetted by NSE before the public issue was opened. However, NSE rejected the basis of allotment on the ground that the underwriters have failed to subscribe to the unsubscribed shares as contemplated under Regulation 106P of the ICDR Regulations. Where a public issue is undersubscribed, whether, the underwriters to the public issue are entitled to discharge their obligation contained in regulation 106P of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 ('ICDR Regulations' for short) by procuring applications from third parties is the basic question raised in this appeal.

Decision: Appeal Allowed

CASE LAW	PROWESS INTERNATIONAL PVT. LTD v. ACTION ISPAT & POWER PVT. LTD [NCLAT]
DECIDED ON	Decided on March 26, 2018
LEGISLATION	Insolvency & Bankruptcy Code, 2016
BRIEF FACTS	Insolvency & Bankruptcy Code,2016 - section 61 - appeal – limitation period to file - appellant filed appeal after six months of the passing of the order - whether delay condonable - Held, No.

Facts: The Appellant preferred the appeal against the judgment passed by the Adjudicating Authority rejecting the application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code"), after delay of more than six months without any application for condonation of delay. When it was pointed out, the Appellant preferred an application for condonation of delay and taken plea that there is a delay of only two days.

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Decision: Appeal dismissed

SAVE OUR ENVIRONMENT

CUT PLASTIC USE



All over the world, beach fronts are most sought after as important and necessary recreational space for society, said United Nations environment Chief Erik Solheim recently. At Versova beach in Mumbai again after almost a year, to launch the World Environment Day 2018, events which India is hosting, he said, “first when I had come, it was unbelievable. Now things are better.

Avoid what you don’t need is Solheim’ simple mantra to cut down plastic use, thus reducing its disposal in the absence of recycling tools.

With the theme, beat plastic pollution, Solheim said, people need to avoid what they don’t need and stop single use plastics such as straws, cups, plates and spoons. Stop buying two apples in a plastic tray a wrapped in plastic. The goal would be have artificial intelligence to produce plastic that is highly biodegradable and recycle all plastic. Policy changes and business models need to change too he said, exhorting businesses to adopt an environment friendly stand.

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Solheim, who officially inaugurated the diver's team and special wet and dry segregation waste cycles made by thermoformers and allied industry associations as well as boats to clean up mangroves and creeks, addressed few thousands who showed up bright and enthusiastic. He recounted a moving story that Prime Minister Narendra Modi had narrated him when they met. Modi, he said told him of his very modest background and how when once his grandfather spoke of chopping trees in a forest for livelihood, it was Modi's grandmother, who rebuked him by saying they may be poor, but she forbade harming the environment and living things, just to make a living.

Source: [Click here for more information](#)

From the Government

Notification of few more sections under the Companies (Amendment) Act, 2017

[Issued by the Ministry of Corporate Affairs vide Notification Number S.O. 1833(E) dated 7th May, 2018]

The Ministry of Corporate Affairs has notified few more sections under the Companies Amendment Act, 2017. A brief on the notified sections are enumerated below: -

SL. No	Section of Amendment Act	Section of Companies Act, 2013	Short Description
1	Clause (i) and clause (xiii) of section 2	Section 2(87)	Subsidiary status would be decided based on voting power rather than Total Share Capital.
2	Section 8	Section 26	Amendment in respect of Prospectus is made effective.
3	Section 13	Section 54	Restriction of 1 year for issue of sweat equity is removed.
4	Clauses (i) and (ii) of section 21	Section 89	Additional Fees for Form MGT – 6 would be Rs. 100/- per day after 30 days.
5	Clauses (iii) and (iv) of section 23	Section 98	Additional Fees for Form MGT – 7 would be Rs. 100/- per day after 30 days.
6	Section 30 and 31	Section 117	Additional Fees for Form MGT – 14 would be Rs. 100/- per day after 30 days
7	Section 33	Section 121	Additional Fees for Form MGT – 15 would be Rs. 100/- per day after 30 days
8	Section 39	Section 137	Additional Fees for Form AOC – 4 would be Rs. 100/- per day after 30 days
9	Section 40	Section 139	Ratification of auditor is not required
10	Section 46	Section 149	Changes in Independent Director provisions
11	Section 49	Section 157	Additional fees for Form DIR – 3C would be Rs. 100/- per day after 30 days.

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12	Section 52	Section 164	A Director appointed in defaulting Company would be disqualified for six months from appointment
13	Sections 54	Section 167	The Director vacates office of all Companies other than the defaulting Company
14	Section 55	Section 168	The filing of Form DIR – 11 is not mandatory
15	Section 56	Section 173	A Director more than Quorum can participate in audio visual mode
16	Section 57	Section 177	Related Party Transactions not ratified by Audit Committee are voidable.
17	Section 58	Section 178	Evaluation of Board is applicable only for public listed Company.
18	Sections 61	Section 185	Loan to Directors and other parties can be given by obtaining Special Resolution
19	Section 62	Section 186	Not applicable to loan to employees and other changes
20	First Proviso to clause (i) of section 80 and clause (ii) of section 80	Section 403	Protection of 270 days has been removed and minimum additional fees will be Rs. 100/- per day
21	Section 83	Section 410	Orders of NFRA are also included
22	Sections 86 to 89 (both inclusive).	Section 435, 438, 439 & 440	Notification of speedy trials and special courts

UPDATES

RBI UPDATES

DATE	SOURCE	DESCRIPTION
1 st May	Updates on RBI	<u>Investment by Foreign Portfolio Investors in debt – Review</u> Click here for Notification
3 rd May	Updates on RBI	<u>Monitoring of foreign investment limits in listed Indian companies</u> The Reserve Bank of India in consultation with SEBI has put in place a new system for monitoring foreign investment limits. Click here for Notification
17 th May	Updates on RBI	<u>Setting up of IFSC Banking Units (IBUs) – Permissible activities</u> Click here for Notification

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