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

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**DIR-3 KYC – SOME MORE CLARIFICATIONS**

- 1) Can a DIN be voluntarily surrendered if the individual has held directorship in the past? (As per Rule 11 of the Companies (Appointment and Qualification of Directors) Rules, 2014, DIN can be surrendered under limited circumstances, such as a duplicate DIN or in cases of insolvency or the individual being of unsound mind).

Ans. Pursuant to the provisions of Rule 11 of the Companies (Appointment and Qualification of Directors) Rules, 2014, a DIN holder can surrender his/her DIN only in the following cases:

(a) the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number;

(b) the DIN was obtained in a wrongful manner or by fraudulent means;

(c) In case of the death of the concerned individual;

(d) the concerned individual has been declared as a person of unsound mind by a competent Court;

(e) if the concerned individual has been adjudicated an insolvent.

**(f) he/she has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority.**

Apart from the above, a DIN holder cannot surrender his/her DIN in any other case.

Pursuant to the provisions of Rule 11(1)(f) of the Companies (Appointment and Qualification of Directors) Rules, 2014, a DIN Holder can surrender the DIN if he/she has never been associated at all with any Company/LLP as a Director.

Therefore, if the DIN holder has held a Directorship in the past, **he/she cannot surrender the DIN.**

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- 2) Can a DIN be voluntarily surrendered if the individual has never been a director of any company (in other words the DIN has been used)?

Ans. Pursuant to the provisions of Rule 11(1)(f) of the Companies (Appointment and Qualification of Directors) Rules, 2014, a DIN Holder can surrender the DIN if he/she has never been associated at all with any Company/LLP as a Director.

The extract of the provision is as follows:

*“on an application made in e-form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN”*

- 3) Do you agree that voluntary surrender of a DIN should be permitted under law (over and above the limited circumstances under which it is permitted), should a director no longer require it - this is the crux of our story – the need for a legislative change.

Ans. We understand that voluntary surrender of DIN is not being allowed/ permitted as it may become difficult to trace the Holder of DIN in future.

In our opinion, if the holder of DIN has filed the e-form DIR-3 KYC at least once with the Ministry of Corporate Affairs (MCA), the surrender of DIN may be allowed as the regulators have the details for tracing them in future.

Further, this provision to surrender should be allowed to the Foreign DIN Holder as it is difficult for them to comply with the regulations of India even when they are no longer connected with any Indian Entity, by virtue of cessation of their contract to work for the Indian company.

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- 4) To ensure a DIN is kept active are there any annual fees to be paid or are there any filing obligations?

Ans. To ensure a DIN is kept active, a holder of DIN shall file e-form DIR-3 KYC with Ministry of Corporate Affairs (MCA) every year on or before April 30 and the regulator has not prescribed any fee for filing the e-form DIR-3 KYC, if it is filed within the due date prescribed by the regulators.

Further, if the DIN holder files the e-form DIR-3 KYC after the due date (i.e. April 30), a fee of Rs. 5,000/- is prescribed by the regulator to be paid.

- 5) For those directors whose DIN has been deactivated and who wish to continue having a DIN what is the process to reactive the DIN – in terms of penalty etc? Any punitive action that would be taken against them?

Ans. The DIN Holder whose DIN is deactivated due to non-filing of e-form DIR-3 KYC, he/she shall file the e-form DIR-3 KYC after the due date (i.e. September 15, 2018) to re-activate the DIN with a fee of Rs. 5,000/-.

Further, the regulator has not prescribed any punitive action that may be taken upon deactivation of DIN on the directors apart from the payment of fee of Rs. 5,000/-. This is left to the discretion of the regulators.

**HEADS UP ON EVENTS THAT LED TO HEADS TURN IN SEPTEMBER 2018****Shivinder Singh drags elder brother Malvinder Singh to NCLT**

Former Ranbaxy promoter and founder of Fortis Healthcare, Shivinder Mohan Singh filed a case against elder brother Malvinder Mohan Singh in the National Company Law Tribunal (NCLT), citing oppression and mismanagement at RHC Holding, Religare and Fortis, marking a public rupture between the siblings after the business legacy they inherited slipped out of their hands amid accusations of wrongdoing. The case filed on Tuesday is also against Sunil Godhwani, former Religare Enterprises chairman and managing director. “The collective, ongoing, actions of Malvinder and Sunil Godhwani led to a systematic undermining of the interests of the companies and their shareholders mentioned above as also the committed and loyal employees of the group,” Shivinder alleged in a statement. There were no responses to queries sent to Malvinder and Godhwani. Shivinder said the action had been “long overdue” but he had hoped that “better sense” would prevail. “While it saddens me immensely and I wish Malvinder well, I can no longer be party to activities in which transparency and ethics are continuously and consistently negated,” he said. “It has come to a point where this means that I am now disassociating from my brother as a business partner and will be pursuing an independent path going forward.” Shivinder said he had wanted to spare his family the trauma of a public feud but insisted that he had played only a supporting role. “For two decades now, Malvinder and I have been synonymous with one another,” he said.

“Though the fact is, I have all along been the publicly supportive younger brother to Malvinder’s chairmanship of the group, who took decisions on behalf of the family.” Shivinder said he had focused on Fortis Healthcare since its inception. “It is the only company I have worked for and all my intent and resources have been in nurturing this company,” he said. Shareholders of Fortis Healthcare voted last month to approve a proposed \$1 billion deal with Malaysian healthcare group IHH Bhd. IHH will pick up a controlling stake in the hospital chain by initially infusing around Rs4,000 crore for equity shares at Rs 170 apiece and subsequently initiating an open offer for additional stake. After leading Fortis Healthcare for close to two decades, Shivinder said he moved out to devote himself fulltime to the Radha Soami Satsang Beas. “I took public retirement to my spiritual home, Beas, to serve my master, in 2015, leaving the thriving company I founded in ‘trusted’ hands and in a period of less than two years, it has moved towards disintegration and ruin of a national healthcare asset,” he said.

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“My family reputation kept me a silent spectator, as I mutely watched the organisation I founded come to a point where it was publicly auctioned; where my family and myself have been stripped of our legacy, our finances and my personal credibility.” Shivinder said he’d been unable to salvage the situation despite his best efforts on his return from Beas over the past few months. “The continued systemic missteps resulted in a quicksand which now seems beyond resolution,” Shivinder said. “While the group businesses were in ‘competent’ hands, red flags have crept up in the group with disturbing regularity. Decisions taken in Religare’s NBFC arm; the transaction and subsequent management of the sale of the group’s then flagship Ranbaxy to Daiichi, culminating in one of the most damaging arbitration cases in the history of India Inc., the unimaginable losses accumulated in running a private charter airline business (Ligare Aviation), all these only go to show that the malaise is systemic.” The brothers’ financial woes stem from their sale of Ranbaxy to Daiichi Sankyo for \$4.6 billion in 2008. A Singapore tribunal ruled in xxx that the brothers needed to pay Daiichi Sankyo restitution for concealing information related to wrongdoing at Ranbaxy, once India’s largest drug maker. The Delhi High Court had ordered the former Ranbaxy promoters to pay Daiichi Sankyo Rs 3,500 crore as part of the arbitration award earlier this year. Godhwani ran the company after the brothers resigned from the board of Religare in April 2010 to focus on healthcare. Godhwani was also involved in running the promoters’ holding company RHC Holding.

After the death of father Parvinder Singh in 1999, Malvinder, then 27, had joined the company. Shivinder, then 23, was finishing his education. The two brothers inherited Ranbaxy and financial services firm Religare, in addition to a small aviation business. Shivinder and Malvinder cofounded Fortis Healthcare in 2001. The sale of Ranbaxy to Japan’s Daiichi Sankyo in 2008 for \$4.6 billion gave the Singh brothers the cash to fuel their ambitions. Religare made some half a dozen acquisitions and aspired to become a bank under the leadership of Sunil Godhwani. Fortis also grew rapidly through a dozen or so acquisitions in India and overseas. The sale took place just months before the US Food and Drug Administration banned imports from two of the generic drugmaker’s Indian plants. That same year, the US Department of Justice launched a probe, eventually resulting in a guilty plea by Ranbaxy and a \$500-million settlement for selling adulterated drugs.

Source: <https://economictimes.indiatimes.com/industry/healthcare/biotech/healthcare/shivinder-singh-drags-elder-brother-malvinder-singh-to-nclt/articleshow/65675551.cms>

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**Corporate Affairs Ministry summons Deepak Kochhar in ICICI Bank controversy**

As the inspection progresses into six companies linked to ICICI Bank controversy, the Corporate Affairs Ministry will question Deepak Kochhar, husband of the bank's chief Chanda Kochhar, later this month, a senior official said. Deepak Kochhar is the Founder and CEO of NuPower Group, as per its website. Alleged lapses involving ICICI Bank's MD and CEO Chanda Kochhar, her husband and other family members, with respect to a loan extended to Videocon Industries by the lender have come under the regulatory lens.

NuPower Renewables and NuPower Wind Farms are among the six companies whose books are being inspected by the ministry. On April 23, the ministry ordered an inspection of "books and papers" of six companies linked to the ICICI Bank loan controversy. They are NuPower Renewables Pvt Ltd, Supreme Energy Pvt Ltd, Pacific Capital Services Pvt Ltd, Videocon Industries Ltd, NuPower Wind Farms Ltd and Echanda Urja Pvt Ltd. A senior ministry official said that Deepak Kochhar has been summoned later this month for questioning in connection with the case. However, specific details could not be immediately ascertained. The inspection is being carried out by the office of the Regional Director (Western Region) under the ministry. It was ordered under Section 206(5) of the Companies Act. Section 206 provides powers to call for information, inspect books and conduct inquiries. According to Section 206 (5), the central government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose. Last month, Minister of State for Corporate Affairs PP Chaudhary said the inspections into these six companies were "under progress". Chanda Kochhar and her family members are also facing allegations 'conflict of interest' and 'quid pro quo' with respect to loans extended to certain entities. The case is already being looked into by the RBI, the Sebi and the CBI.

Source: <https://economictimes.indiatimes.com/industry/banking/finance/banking/corporate-affairs-ministry-summons-deepak-kochhar-in-icici-bank-controversy/articleshow/65757512.cms>

**SIDBI may take IL&FS to National Company Law Tribunal**

The Small Industries Development Bank of India (Sidbi) may file a case in the National Company Law Tribunal (NCLT) against debt-laden Infrastructure Leasing & Financial Services Ltd (IL&FS) for not repaying its term deposits, said two people familiar with the plan. Such a move could exacerbate the chaos in the markets sparked by IL&FS defaulting on repayments and having its debt rating downgraded.

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“IL&FS owes Sidbi a total of Rs 1,000 crore, of which just Rs 50 crore has been paid back. Rs 500 crore is already in default and some deposits are maturing next week,” said one of them. “The way things are, it feels that legal route is the best one for recovery.”

Sidbi chairman Mohammad Mustafa didn’t respond to calls and messages seeking comment. **IN RECOVERY MODE** A case could be filed as soon as on Wednesday with Sidbi seeking repayment of all its deposits in IL&FS. Since the Insolvency and Bankruptcy Code (IBC) does not provide for cases against financial companies, Sidbi will resort to a little-used section in the Reserve Bank of India (RBI) Act pertaining to non-banking finance companies (NBFCs). “We are using section 45 Q (a) of the RBI Act, which deals with repayment of deposits by NBFCs. In the next few days, a suitable legal measure for recovery of deposits will be worked out,” said the second person. The section empowers RBI to direct an NBFC to make payments. Sidbi is a government-owned development finance institution formed to support lending to micro and small enterprises. It invests its surplus funds in mutual funds and corporate deposits. Some of this was invested in short-term deposits of IL&FS. “Since the old companies law does not exist, there is no provision to file a winding-up petition against IL&FS, so we are using this route, which can help us in recovery,” said the first person. IL&FS has been facing liquidity challenges for almost a month. It first defaulted on August 28 on a commercial paper payment issued by its subsidiary IL&FS Financial Services. The dues to this company were settled two days later, but it subsequently defaulted on Sidbi’s deposits.

Source: <https://economictimes.indiatimes.com/industry/banking/finance/sidbi-may-take-ilfs-to-national-company-law-tribunal/articleshow/65942375.cms>

### **Rana Kapoor mustn't influence board in its new CEO search: Madhu Kapur**

Madhu Kapur, wife of Yes Bank cofounder, the late Ashok Kapur, has written to the board members of the bank urging them to prevent CEO Rana Kapoor from influencing the board in its search for a new CEO. In a letter addressed to the board on Monday, a day before the bank’s board meet, Madhu Kapur asked the board to send Rana Kapoor on leave till January 31 and called for a forensic audit on loans sanctioned by Rana Kapoor. “The board must take a strict view of matters and not even permit Mr Rana Kapoor to attend the board meeting,” Ms Kapur has stated in the letter addressed to eight board members, the company secretary and Rana Kapoor.

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It is absolutely necessary at this juncture that the board gives a message not only to the Reserve Bank of India as the banking regulator but also to all stakeholders that the board is serious in addressing the real issues that affect the bank and are taking decisions and actions accordingly.”

ET is in possession of a copy of the letter. Yes bank did not reply to an email seeking comment. Kapur has been locked in a legal battle with the Yes Bank CEO for the right to nominate directors on the bank’s board. In June 2015, the Bombay High Court recognised Madhu Kapur and her children Shagun Kapur Gogia and Gaurav Kapur as successors of cofounder, the late Ashok Kapur, giving them the right to nominate directors. However, Yes Bank and Rana Kapoor have challenged the ruling in front of a twojudge bench. Madhu Kapur’s latest letter comes after the RBI cut short Kapoor’s tenure till Jan 31, 2019, declining the board’s request for another three-year term starting September 2018. Kapur said RBI’s action is recognition of the fact that all is not well with Yes Bank. “The media publicity has increased the fears of all shareholders in the well-being of the bank and its uncertain future and the ability of the bank to remedy the wrongs that have occurred due to deliberate machinations rather than any other factors,” she said. Kapur said the board must ask Rana Kapoor to go on leave immediately even if his removal is effective only from Feb 1, 2019. “I can only suggest...that he does not remain a director of the bank or have any position in the bank of any nature (including as expert advisor or consultant or otherwise howsoever), not have any opportunity to directly or indirectly interfere or influence any decisions of the board or the operations or the affairs of the bank by himself or through his nominees or otherwise.” Kapur also called for forensic experts to examine “accounts, transactions and loans granted whilst Mr Rana Kapoor was at the helm of affairs and their current status especially since there is information in public domain that influential defaulting customers accounts have been camouflaged to avoid the disclosures to the RBI and to make a report to the board and RBI in that behalf and to recommend the remedial steps to ensure that the same do not occur again.”

Source:<https://economictimes.indiatimes.com/industry/banking/finance/banking/rana-kapoor-mustnt-influence-board-in-its-new-ceo-search-madhu-kapur/articleshow/65942529.cms>

### **Shareholders reject re-appointment of Apollo Tyres MD**

Minority shareholders of Apollo Tyres have rejected the re-appointment of Neeraj Kanwar as managing director in a major defeat of the promoter at the hands of shareholders. Kanwar is also the vice-chairman of Apollo which is the country’s second-largest tyre maker.

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“Apollo Tyres’ board of directors will discuss the resolution in the next meeting and determine the course of action to be taken with respect to it. The company would like to reiterate that it is the vision and resolve of the company, and its senior leadership, to deliver value to all its stakeholders including employees, shareholders, customers, partners and other relevant communities,” it said in a statement.

Some Indian institutional investors including mutual funds are believed to have voted against Kanwar on the issue of high compensation. “The voting result is more a reflection of the compensation drawn by Kanwar than his ability to manage the company,” said the source cited above.

**‘First Instance’** Kanwar took home an annual compensation of ₹42.8 crore in 2017, a 43% hike over his take-home of ₹30 crore in 2016. Apollo’s annual standalone net profit in 2017 was ₹622.4 crore, a decline of 23% over last year. Annual consolidated net profit also declined by 34% at ₹724 crore “This is the first instance where the shareholders have questioned the controlling shareholders on their right to manage their own company,” said Amit Tandon, MD at Institutional Investor Advisory Services (IIAS), a proxy advisory firm. “This is also a signal that promoters should be more thoughtful in the resolutions they propose and have an open channel of communication with investors to understand their thinking,” Tandon said. Minority shareholders, including local and foreign institutional ones, have been using every opportunity to vote against resolutions that they consider to be unfair or against the interests of the firm, scuppering management and promoter plans. The most high-profile case was that of HDFC where chairman Deepak Parekh was almost voted out in July when foreign proxy firms advised clients to vote against him.

Source: <https://economictimes.indiatimes.com/markets/stocks/news/shareholders-reject-re-appointment-of-apollo-tyres-md/articleshow/65988382.cms>

### **In 2nd petition before NCLAT, Mistry accuses Mumbai tribunal of bias**

Coming down heavily on the National Company Law Tribunal (NCLT) Mumbai bench’s order that dismissed his plea against Tata Sons, Cyrus Mistry has alleged that the entire judgment of the tribunal is “vitiating by legal bias and suffers from lack of objectivity and impartiality”. In a second petition filed before the National Company Law Appellate Tribunal (NCLAT) in New Delhi, the ousted chairman of the salt-to-software conglomerate Tata Group alleged that incorrect recording of facts bolstered arguments against the Mistry family.

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Further, Mistry has also sought “expungement of several caustic remarks made against him”, sources briefed on the legal tangle told BusinessLine.

Second petition: The second petition, filed in his personal capacity, also sought the entire July 9 NCLT judgment to be set aside. It also charged the NCLT order with drawing support from selective reliance on extraneous material from Wikipedia, Encyclopedia Britannica and websites of Tata Trusts. At the same time, the petition said, the order ignores or misinterprets important facts placed before it, One of the sources, quoting the NCLAT filing, said: “In the petition Mistry has highlighted the foundations of the order were based on errors. In his filing, Mistry has pointed out that NCLT wrongly recorded that Mistry was on the board of Tata Sons when the questionable transaction was done with Siva (serial entrepreneur C Sivasankaran) and as also being on board of Tata Sons when the Corus deal was done.” On Tata Nano, the petition said that the NCLT order has erroneously stated that there was no proof to show that the Tata Motors board had decided to stop the production of the small car. However, the minutes of Tata Motors’ board meeting on October 5, 2016, shows that the board had authorised closure of Nano operations. While the sources refused to be identified, Mistry’s office declined to comment terming the issue as being sub judice. Both the petitions of Mistry will come up for hearing at NCLAT on September 24. The petition said that the NCLT order also incorrectly interprets Section 121A and 121A(h) of the Articles of Association of Tata Sons on investments of more than ₹100 crore taken by Tata companies’ boards would require pre-consultation and clearances from Tata Trusts. Further, these have to be cleared by Tata Sons. This would render boards of listed Tata operating companies, including its independent directors, incapable of exercising their fiduciary duties, the petition before NCLAT alleges. The Mumbai court had also recorded that Mistry was removed as chairman under a board agenda titled ‘Any other items’, which according to the NCLAT petition, “did not exist”. Further, the petition said, removal of a chairman could have only been done through a committee, as confirmed in Tata Sons board minutes of July 3, 2000. This was suppressed by Tata Sons in its submissions and allegedly ignored by NCLT, despite being brought to its notice, it added.

<https://www.thehindubusinessline.com/info-tech/in-2nd-petition-before-nclat-mistry-accuses-mumbai-tribunal-of-bias/article24865780.ece?homepage=true>

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**ICICI Bank files insolvency case against JP Associates**

ICICI Bank has filed a bankruptcy petition against debt-ridden Jaiprakash Associates with the Allahabad Bench of the National Company Law Tribunal (NCLT). The petition, under Section 7 of the Insolvency and Bankruptcy Code, will formally initiate insolvency proceedings against the company. “As is clear from the Order itself that (sic) no notice of the Petition had been served on the Company,” Jaiprakash Associates said in a regulatory filing on Monday, adding that it has been given time to file its reply within seven days. The matter is listed for hearing on September 17.

₹1,500 crore owed: ICICI Bank is the lead lender in the consortium. Jaiprakash Associates, which is into the construction, real estate and cement businesses, is understood to owe it close to ₹1,500 crore. The move comes nearly a year after the Reserve Bank of India came out with a second list of close to 30 companies to be taken to the NCLT. Jaiprakash Associates featured on the list. Banks were given time to resolve these cases outside the NCLT till December 2017, failing which they were to face insolvency proceedings. The RBI had rejected an appeal by the lenders to exempt Jaiprakash Associates from insolvency proceedings and allow debt restructuring outside the bankruptcy process. Earlier, in the JP Infratech case, the Supreme Court had asked the RBI to initiate insolvency proceedings against Jaiprakash Associates, noting that it owes over ₹30,000 crore to 30 banks.

The company’s scrip fell 3.70 per cent and closed at ₹10.68 a piece on the Bombay Stock Exchange on Monday. Jaiprakash Associates is the flagship firm of the Jaypee Group. Manoj Gaur is its Executive Director and CEO. For the quarter ended June 30, 2018, the company posted a net loss of ₹285 crore as against a net profit of ₹764.99 crore in the corresponding period a year ago.

<https://www.thehindubusinessline.com/money-and-banking/icici-bank-files-insolvency-case-against-jp-associates/article24919459.ece?homepage=true>

**Bank loan fraud: ED to file charge sheet against Sterling Biotech promoters**

The Enforcement Directorate (ED) will soon file a charge sheet under the anti-money laundering law against the Sandesara brothers, promoters of a Gujarat-based pharmaceutical company Sterling Biotech Ltd, wanted in an over ₹ 5,000 crore alleged bank loan fraud case, officials said Monday.

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The central probe agency will subsequently seek Interpol red corner notices (global arrest warrants) against the brothers and other accused based on this criminal complaint even as their exact locations remains unknown and changing-- from UAE to Nigeria, the officials said. The charge sheet under the Prevention of Money Laundering Act (PMLA) is expected to be filed before a special court here within the next fortnight, they said. The ED had earlier filed few charge sheets, called prosecution complaints, in this case against other accused.

The agency said it had registered a PMLA case against the Sandesara brothers-- Chetan Jayantilal Sandesara and Nitin Jayantilal Sandesara-- and their Vadodara-based company Sterling Biotech Ltd and others on October 27 last year, two days after a case of alleged bank fraud of ₹ 5,700 crore and corruption was filed against them by the CBI. "Loans to the tune of ₹ 5,700 crore was disbursed by various banks during the years 2004-2012. Look Out Circulars (LOCs) were opened against the accused in August, 2017. "During the course of investigation, three persons were arrested, one of them Gagan Dhawan, who was close to the power centre when the loans were sanctioned," the ED said in a statement. It added that the agency has already attached properties worth ₹4,703 crore and is looking for "more properties and trails for the proceeds of crime" in this case. The ED and the CBI have booked the company, its directors-- the Sandesara brothers, Dipti Chetan Sandesara, Rajbhushan Omprakash Dixit, Vilas Joshi, chartered accountant Hemant Hathi, former director Andhra Bank Anup Garg and some unidentified persons in connection with the alleged bank fraud case. It is alleged that the company took loans of over Rs 5,000 crore from a consortium led by Andhra Bank which had turned into non-performing assets. As per the FIR, the total pending dues of the group of companies were ₹ 5,383 crore as on December 31, 2016. The ED has taken cognisance of this FIR to file its PMLA case.

<https://www.thehindubusinessline.com/companies/bank-loan-fraud-ed-to-file-charge-sheet-against-sterling-biotech-promoters/article25030550.ece>

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## Corporate Development Judicial

<b>CASE LAW</b>	Shah Brothers Ispat Pvt. Ltd. v .p. Mohanraj & ORS. [NCLAT]
<b>DECIDED ON</b>	July 31, 2018
<b>LEGISLATION</b>	Section 14 of Insolvency & Bankruptcy Code, 2016 read with section 138 of the Negotiable Instruments Act, 1882
<b>BRIEF FACTS</b>	Moratorium fixed against corporate debtor- Operational creditor filed complaint under NI Act against corporate debtor & ids directors during moratorium period- whether tenable-Held, Yes.

**Facts:** The Appellants filed complaint under Section 138 of the Negotiable Instrument Act, 1881 prior to initiation of Corporate Insolvency Resolution Process. Another complaint under Section 138 of NI Act was filed after the order of moratorium. The Respondent – Directors moved before the Adjudicating Authority and argued that during the period of moratorium proceeding petition under Section 138 of NI Act was not maintainable. This was opposed by the Appellants but the Adjudicating Authority directed the Appellants to withdraw the complaint case filed under Section 138 of NI Act treating it as a proceeding filed after order of moratorium with observation that such action amounts to deliberate attempt on the part of Appellant and sheer misuse of the process of law.

**Decision:** Appeal Allowed

<b>CASE LAW</b>	PR. CIT -8 v. Samtel India Ltd [DEL]
<b>DECIDED ON</b>	July 9, 2018
<b>LEGISLATION</b>	Income tax Act, 1961- failure of project
<b>BRIEF FACTS</b>	Value of machinery written off- claimed as revenue loss- claim rejected and penalty imposed on the ground of non-disclosure –whether tenable- Held, No.

**Facts:** During the Financial Year 2007-08, in order to continue in the business, the assessee company decided to set up another project for manufacture of ‘metal parts’ for which the company purchased some machinery to the tune of Rs.3.34 crores. The Company was unable to mobilize funds for the machinery and as a result the machinery could not be removed from the port.

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During the year under 2008-09 the financial position of the company worsened further and finally, the assessee company dropped the idea of putting up the new project and wrote off the machinery in the books of account and claimed it as a revenue loss.

The Assessing Officer (AO) accepted that there was a loss but declined to accept it as a revenue loss. Subsequently penalty proceedings under Section 271(1)(c) of the Act were initiated on the issue of the writing off of capital work-in-progress, i.e. the subject matter of disallowance, which was taxed for the relevant assessment year and a penalty of Rs.1,02,53,238/- was imposed for making a wrong claim in the return of Income. Aggrieved, the assessee approached the Appellate Commissioner, who confirmed the penalty, but on appeal the ITAT set aside the penalty order, relying on the decision in CIT vs Reliance Petroproducts Pvt Ltd [2010] 322 ITR 158. The ITAT accepted the assessee's claim that this writing off of amounts for capital works-in- progress was fully disclosed in the annual accounts of the company. The assessee also claimed that the company has disclosed the write off. Aggrieved Revenue appealed to the Supreme Court.

**Decision: Appeal Dismissed**



**SAVE OUR ENVIRONMENT**

**Affordable Nano-particle Water Filter – IIT Madras**

Water is a universal solvent that absorbs all kinds of materials including chemical contaminants such as metal ions, organic dyes, insecticides, pesticides, etc. Contaminated water contains dangerous impurities that are extremely small or even microscopic and need molecular level or ultra-trace level purification processes in order to be removed. Considering this, a group of students led by Professor T Pradeep, from the Department of Chemistry at IIT Madras have used metal/metal oxide nanoparticles to design a filter for drinking water purification. This approach can help fight contaminants such as halogenated organics including pesticides, heavy metals such as arsenic, as well as microorganisms. Currently, different techniques such as adsorption, membrane filtration, ion exchange etc., are available for water purification. However, nano-materials have proven to be extremely effective to purify a wide range of contaminants and relatively cheap adsorbents for water purification, due to large surface area, easy surface modification and selective catalytic activity.



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The proposed technique involves a two-step purification process: the purifier first removes the microbial contaminants, through the help of the silver nanoparticles in the purifier (AgNps) release a very low concentration of silver ions (nearly 50 parts per billion) to kill microbes present in the water. Meanwhile, followed by chemical contaminants such as arsenic, lead, iron and others are selectively removed with the help of multiple combinations of metal nanoparticles. The water, thus obtained, is safe for consumption since the silver ion concentration is found to be lower than the permissible level of 100ppb.

This low-cost water purifier costs just about INR500, while the replacement cartridge is priced at INR120 per annum. A larger version of the nanoparticle purifier has a capacity to purify around 18,000 litres of water per hour to cater to nearly 50,000 people. Prof. T Pradeep feels the filter has the potential to double the number of people who can avail safe drinking water over the long-run.

**Source:**<http://www.ecoideaz.com/innovative-green-ideas/innovative-green-ideas-in-iit-campuses-part-iii>

**UPDATES**

**MCA UPDATES**

DATE	SOURCE	DESCRIPTION
Sep 12, 2018	Updates on MCA Amendment to Rules	<p><b><u>The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018</u></b></p> <p>In the said Rules, under Rule 6, for the heading “application to Central Government”, the heading “Parameters for consideration of remuneration” shall be substituted.</p> <p>Source: <a href="http://www.mca.gov.in/Ministry/pdf/companiesAmendRules_13092018.pdf">http://www.mca.gov.in/Ministry/pdf/companiesAmendRules_13092018.pdf</a></p>
Sept 20, 2018	Updates on MCA Amendment to Rules	<p><b><u>The Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018</u></b></p> <p>In the said Rules, under the proviso to Rule 12A, for the words and figures “before 15<sup>th</sup> September 2018”, the words and figures “before 5<sup>th</sup> October 2018” has been replaced.</p> <p>Source: <a href="http://www.mca.gov.in/Ministry/pdf/AppointmentAndQualificationSixthAmendmentRules_20092018.pdf">http://www.mca.gov.in/Ministry/pdf/AppointmentAndQualificationSixthAmendmentRules_20092018.pdf</a></p>
Sep 6, 2018	Updates on MCA Circular	<p><b><u>Relaxation of additional fees and extension of last date of filing of Form BEN-2</u></b></p> <p>The Ministry of Corporate Affairs on receipt of several representations requesting to extend the last date for filing of e-Form BEN-2 without additional fees, on account of the Companies (Significant Beneficial Owners) Rules, 2018, notified vide G.S.R. No. 561(E) dated 13.06.2018, has stated that the time limit for filing the Form BEN-2 without any additional fee will be 30 days from the date of deployment of the BEN-2 e-form on the MCA-21 portal and no additional fees shall be levied if the same is filed within 30 days from the date of deployment of the said eform.</p> <p>Source: <a href="http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.7_06082018.pdf">http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.7_06082018.pdf</a></p>

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<p>Sep 10, 2018</p>	<p>Updates on MCA Circular</p>	<p><b><u>Clarification in filing BEN-1 under the Companies Act, 2013</u></b></p> <p>The Ministry of Corporate Affairs on receipt from stakeholders expressing their difficulties in filing Form No. BEN-1 in respect of Companies (Significant Beneficial Owners) Rules, 2018 notified vide G.S.R. No. 561(E) dated 13.06.2018 has stated that Form BEN-1 shall be revised and notified soon. The stakeholders are advised to file declaration as per the revised form only and adhere to the time lines which will be specified therein.</p> <p>Source: <a href="http://www.mca.gov.in/Ministry/pdf/GCCircularBen_10092018.pdf">http://www.mca.gov.in/Ministry/pdf/GCCircularBen_10092018.pdf</a></p>
<p>Sep 12, 2018</p>	<p>Updates on MCA Notification</p>	<p><b><u>Amendment to Schedule –V of the CA 2013</u></b></p> <p>The Central Government has made certain amendments in Schedule V of the Companies Act, 2013.</p> <p>Source: <a href="http://www.mca.gov.in/Ministry/pdf/SchedduleVCompAct_13092018.pdf">http://www.mca.gov.in/Ministry/pdf/SchedduleVCompAct_13092018.pdf</a></p>
<p>Sep 28, 2018</p>	<p>Updates on MCA Circular</p>	<p><b><u>Clarification with regard to provisions under section 135 (5) of the Companies Act, 2013</u></b></p> <p>1 MCA directed to say that concern have been raised some shareholders regarding noncompliance of the first proviso to sub-section (5) of section 135 of the companies Act 2013, which lays down that the company shall give preference to the local area around it where it operate, for spending the amount embarked for CSR activities</p> <p>2 It is reiterated that the above provision to be followed in the letter and spirit.</p> <p>Source: <a href="http://www.mca.gov.in/Ministry/pdf/GeneralCircular2805_29052018.pdf">http://www.mca.gov.in/Ministry/pdf/GeneralCircular2805_29052018.pdf</a></p>

RBI UPDATES

DATE	SOURCE	DESCRIPTION
September 7, 2018	Updates on RBI	<p>• <b><u>Amendments to Reserve Bank of India (Note Refund) Rules, 2009</u></b></p> <p>Reserve Bank of India has made amendments to the Reserve Bank of India (Note Refund) Rules, 2009 to enable the public to exchange mutilated notes in Mahatma Gandhi (New) series at bank branches and RBI offices, which are smaller in size compared to the earlier series. Whereas all the branches of banks have been delegated powers for exchange of mutilated / defective notes.</p>
September 19, 2018	Updates on RBI	<p>• <b>External Commercial Borrowings (ECB) Policy – Liberalization</b></p> <p>As per the extant norms, ECB up to USD 50 million or its equivalent can be raised by eligible borrowers with minimum average maturity period of 3 years. It has been decided to allow eligible ECB borrowers who are into manufacturing sector to raise ECB up to USD 50 million or its equivalent with minimum average maturity period of 1 year.</p>

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