

# CS NEWS

## Connecting Statutes

OCTOBER 2019

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**2019 – “Year of Conflicts” - Overtly or Covertly**

**“Governance is not what you conceive; it is what others perceive”**

## HEADS UP ON EVENTS THAT LED TO HEADS TURN IN SEPTEMBER 2019

### **Cognizant CEO plans surgical strike with job cuts by October:**

Cognizant could see a slew of job cuts as early as end-October, CEO Brian Humphries indicated at an investor event in New York, to ensure that the ongoing restructuring at the company does not drag out over time. “I do not believe in death by a thousand cuts, I would rather pull the Band-Aid off and get it behind us and set the context as to why this is critical and fast forward to the future,” Humphries said. The announcements would be made along with the company’s third quarter results, expected next month, and to the employees ahead of that, he said. “We need to be draconian with the cost structure and use those savings to fund the future,” he said. Humphries, who joined Cognizant in April, said earlier it planned to reduce costs to ‘self-fund’ some investments and make the IT services exporter ‘fit-for-growth.’ The Teaneck, New Jersey-headquartered company had grown strongly over the past 25 years even though growth has been disappointing over the last few years, he said, but it was in the process of ‘ripping out cost.’ “It’s almost like having lived in a house for 20 years, having never moved and having not done spring cleaning.

When you do move, you tend to find a lot of stuff you don’t really need anymore,” Humphries said. “At Cognizant, we need new eyes, a new perspective and to hone in on what we have that are hobbies and what is critical.” ET earlier reported about potential job cuts at Cognizant. A key focus will be changing the compensation structure. One of the measures being considered is raising the variable pay component of employee salaries, ET reported, and this is particularly expected to impact the company’s sales force. Humphries said changes to sales compensation will be made in January. Lowering costs will also help the company better compete for deals, the CEO said, as the company had lost contracts to Tata Consultancy Services and Infosys because it did not have the cost structure to bid efficiently. “Already, I am having more pricing dialogue with the cost structure we expect to have,” Humphries said.

**Source:**[//economictimes.indiatimes.com/articleshow/71002171.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/71002171.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

### **IL&FS Engineering and Construction Co defaults on redemption of preference shares**

L&FS Engineering and Construction Company said it has defaulted on redemption of preference shares worth ₹39.5 crore in favour of Vistra ITCL (India) Ltd. The due date of redemption was September 30. “Due to the present circumstances in relation to the company...the company is unable to redeem the preference shares on the due date,” it said

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in a filing to stock exchanges. Default on the redemption is with respect of non-convertible redeemable cumulative preference shares and optionally convertible preference shares. The debt crisis at the infrastructure lender IL&FS, which created a turmoil in the Indian financial market and led to a situation of liquidity tightening in the system, came into light following a series of defaults by its group companies beginning September 2018. The company's shares closed at ₹3.87 apiece on the BSE, down 3.25 per cent as compared to the previous close.

**Source:** <https://www.thehindubusinessline.com/companies/ilfs-engineering-and-construction-co-defaults-on-redemption-of-preference-shares/article29615899.ece>

### **Sonia Dhawan rejoins Paytm group:**

Sonia Dhawan, a former Paytm executive and the prime accused in an alleged extortion case involving the company's founder Vijay Shekhar Sharma, has joined Paytm First Games, the company said in a statement. Gamepind Entertainment, which owns Paytm First Games, is a joint venture between Alibaba's AGTech and Paytm's parent One97 Communications. In March, ET reported that Dhawan was likely to rejoin the company. However, the company denied that at the time, saying "no accused is joining back the company till the time the court matter is concluded." The case against Dhawan is still pending, multiple people told ET. Sharma did not respond to an email till press-time. Dhawan, a former vice president of communications and public relations at Paytm, had spent nearly five months in jail after Ajay Shekhar Sharma, senior vice-president of the company and the founder's brother, lodged an FIR against her.

According to the case, Dhawan, along with three other accused, were alleged to have stolen private data belonging to Sharma and had allegedly tried to extort Rs 10 crore. Dhawan was granted bail by the Allahabad High Court in March. In her plea before the high court, Dhawan claimed innocence, saying nothing concrete had emerged against her. She had never indulged in any illegal activity, or secretly obtained data from any laptop or indulged in blackmail, Dhawan said in her submission before the court. In June, Dhawan joined as director of corporate communications at Sheroes, an online community and job portal for women, where Paytm's chief Sharma is also an investor and a board member. "We are inducting new leaders who will help us to achieve the milestones and become the favorite gaming destination," Sudhanshu Gupta, COO of Paytm First Games said in a statement. Utopia's Fayyaz Hussain joined Paytm First Games as head of growth, while Dream 11's Harshit Kashiv has joined as product marketing head.

**Source:** [https://economictimes.indiatimes.com/articleshow/71015601.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/articleshow/71015601.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

### **IL&FS case: Court relief for Deloitte, BSR & Associates**

The Bombay High Court has granted interim relief to audit firms Deloitte and BSR & Associates and has restrained the Ministry of Corporate Affairs from continuing its proceedings seeking a ban on the two companies before NCLT. The Court has deferred the hearing till October 3. On August 9, the NCLT had rejected the plea made by Deloitte and BSR & Associates, who had challenged the tribunal's jurisdiction to ban them for five years for their omissions and commissions in the IL&FS Group fraud. The matter was then taken to the National Company Law Appellate Tribunal (NCLAT) which also refused to give any interim relief to Deloitte and BSR Associates. The auditors had challenged the NCLT's jurisdiction to ban them, pointing out that Section 140(5) of the Companies Act was applicable only to auditors who are still auditing the company in question. They cited that they had already resigned from auditing services. The NCLT argued that it had jurisdiction over the matter and a fresh plea was heard on September 5. The reason to ban the auditors follows the Serious Fraud Investigation Office (SFIO) probe, which in its investigation found them guilty of not taking action despite being aware of the poor financial health of IL&FS.

The Division Bench of Justice Ranjit More and Justice NJ Jamadar from the Bombay HC directed the Serious Fraud Investigation Office (SFIO) not to take any coercive action against BSR. Legal experts agreed with the decision. "The (interim) relief was given on the basis of principle of natural justice and non-applicability of certain provisions due to technical reasons," said Krrishan Singhania, Partner at Singhania and Company, a law firm. The non-applicability of provisions refers to the fact that the decision to punish the auditors cannot be taken by the NCLT. The Ministry of Corporate Affairs had sought disqualification of five years for both Deloitte and BSR due to alleged violations of accounting standards while auditing IL&FS subsidiary IFIN. Deloitte was the only auditor of IFIN for a decade from 2007 to 2017 and from the 2017-18 financial year, BSR was appointed as a joint statutory auditor of IFIN. In May 2019, IFIN sought the removal of BSR as its auditor. In June, BSR resigned and filed an application before the NCLT challenging the petition filed by MCA. Senior Advocates Mukul Rohatgi and Navroz Seervai, who appeared on behalf of the auditors, argued that since BSR resigned in June, which was accepted by IFIN, the proceedings under Section 140 (5) are not applicable.

**Source:** <https://www.thehindubusinessline.com/money-and-banking/ilfs-case-court-relief-for-deloitte-bsr-associates/article29343393.ece?homepage=true>

## **Naresh Goyal questioned by ED in FEMA violation case:**

The Enforcement Directorate (ED) probing foreign investment in the defunct carrier's loyalty programme is questioning Jet Airways founder Naresh Goyal at the agency's Ballard Pier office. Goyal's questioning follows the recent multi-city searches at about 10 properties linked to Jet, Goyal and his close associates carried out by the federal agency. This is the first time the federal agency probing the airline under FEMA is questioning the embattled founder. Last week, beside Goyal, ED carried out raids at the premises of Hasmukh Gardi, who allegedly invested in Goyal's Isle of Man-based Tail Winds Corporation that controls all financial activities of Jet Airways, the agency said. "Gardi's name was also revealed in Panama papers for holding fraudulent companies, (and) the source of the money invested in Tail Winds was from illegal activities. He now stays in Dubai," added the agency. As reported earlier by ET, the ED is also probing the possibility of an offence under the stringent Prevention of Money Laundering Act (PMLA) over alleged suspicious transactions found on the books of the airline. Other than the Jet Privilege Pvt Ltd (JPPL) deal, the agency is also studying a tax evasion case of more than Rs 650 crore. "The searches follow the recent meeting ED officials had with the tax department," said one of the above cited persons.

Further, ED is probing the lease agreements of Jet Airways and is specifically looking at the alleged misappropriation in the transactions between Jet Airways and an Ireland-based company. "It was gathered that his companies executed several transactions under the guise of selling and distribution expenses. Commission and other fictitious expenses were booked at an unrealistically high price, thereby projecting losses," said ED. "Jet Airways executed shady aircraft lease transactions with ghost offshore entities and has made payments toward lease rents to ghost companies, which in turn diverted said monies to personal fiefdom of Goyal." Earlier in May, senior executives of the airline were questioned by the ED in the JPPL deal case. The \$150-million (over Rs 900 crore) deal with its strategic partner Etihad Airways PJSC's in JPPL, the frequent-flyer programme of Jet Airways (India) Ltd, is under scanner. In 2012, Jet Airways incorporated JPPL as a wholly-owned unit. However, in 2014 after Etihad bought a 50.1 percent stake it was hived off as an independent entity. At present, Etihad holds a 50.1% stake in JPPL, while .. In 2012, Jet Airways incorporated JPPL as a wholly-owned unit. However, in 2014 after Etihad bought a 50.1 percent stake it was hived off as an independent entity. At present, Etihad holds a 50.1% stake in JPPL, while Jet Airways holds 49.9%.

**Source:**[//economictimes.indiatimes.com/articleshow/71009048.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/71009048.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

### **'PwC India to challenge ED's Rs 230-crore penalty:**

PriceWaterhouseCoopers (PwC) India is challenging Rs 230-crore fine slapped by Enforcement Directorate for allegedly violating various provisions of Foreign Exchange Management Act (FEMA), two people with direct knowledge of the matter said. PwC would file an appeal at the tribunal level in the next few days that would challenge the basis on which ED has interpreted the law and levied the fine. ED said investigations had found that the firm and some of its functionaries allegedly received huge foreign investments from abroad disguised as 'grants.' According to sources, many Indian multinationals have been receiving such amounts from foreign arms which are invested in the Indian business. In most cases, the companies pay an income tax on such an amount. The ED's claim to not treat such a transaction as a grant would mean that the company will not be required to pay any income tax on such an amount. Industry trackers said most multinational professional services firms had taken a stand to treat transactions as grants based on a 2018 committee of experts report by MCA. The report goes on to define how such grants can be received by Indian arms of foreign firms. The report, which ET has accessed, had also taken comments from RBI on the issue.

**Source:**[//economictimes.indiatimes.com/articleshow/71268571.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/articleshow/71268571.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

### **WeWork's Adam Neumann gives up control, CEO role following investor revolt:**

WeWork co-founder Adam Neumann agreed on Tuesday to resign as chief executive and give up majority voting control, after SoftBank Group and other shareholders turned on him over a plunge in the U.S. office-sharing start-up's estimated valuation. The decision came after WeWork parent We Company postponed its initial public offering last week following push-back from perspective stock market investors, not just over its widening losses, but also over Neumann's unusually firm grip on the company. This was a blow for SoftBank, which was hoping for We Company's IPO to bolster its fortunes as it seeks to woo investors for its second \$108 billion Vision Fund. SoftBank invested in We Company at a \$47 billion valuation in January. But investor skepticism led to it earlier this month considering a potential IPO valuation of as low as \$10 billion, Reuters reported. We Company had vowed to press ahead with an IPO by the end of the year. But there was little sign that IPO investor sentiment would change, threatening the value of the stakes held not just by outside investors, but by Neumann as well.

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The size of Neumann's holding has not been disclosed. What was the venture capital world's biggest upset then morphed into one of corporate America's most high-profile boardroom dramas. SoftBank managed to muster enough opposition to Neumann in a meeting of We Company's seven-member board on Tuesday to convince him to step down. Reuters had reported on Monday that Neumann had engaged in talks about changes to his role. "In recent weeks, the scrutiny directed towards me has become a significant distraction, and I have decided that it is in the best interest of the company to step down as chief executive," Neumann said in a statement. Artie Minson, currently chief financial officer of WeWork parent We Company, and Sebastian Gunningham, a vice chairman for the New York-based start-up, will become co-chief executives, the company said. Neumann will stay on the board as non-executive chairman, the company added. Minson, a former chief financial officer of Time Warner Cable who joined We Company in 2015, will oversee its finance, legal, human resources, real estate and public communications. Gunningham, a former executive at Amazon, Apple and Oracle who joined We Company last year, will take responsibility for product, design, development, sales, marketing, technology and regional teams.

**Source:**[//economictimes.indiatimes.com/articleshow/71286065.cms?utm\\_source=ETTopNews&utm\\_medium=HPTN&utm\\_campaign=AL1&utm\\_content=23&utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/71286065.cms?utm_source=ETTopNews&utm_medium=HPTN&utm_campaign=AL1&utm_content=23&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

**CORPORATE DEVELOPMENT JUDICIAL**

<b>Case law</b>	<i>PR. Commissioner of Income Tax, Delhi v. Registrar of Companies, Delhi &amp; ORS [NCLAT]</i>
<b>Decided on</b>	<i>August 20, 2019</i>
<b>Legislation</b>	<i>Companies Act, 2013</i>
<b>Brief facts</b>	<i>Striking out of Company's name- Fast track Exit Scheme- name of the Company struck off- Revenue did not raise any objection- later revenue objected to the striking of – whether tenable-Held, No.</i>

**Facts:** M/s Nexus Marketing Pvt. Ltd (for short the 'Company') was incorporated in 2007 and in 2011 the Company applied for striking off its name under 'Fast Track Exit Scheme, 2011' [FTE], which was processed by the Respondent - Registrar of Companies, Delhi (for short 'ROC'). ROC issued notice to the Company and forwarded a copy of the notice the appellant Revenue for seeking objections, if any. Since, no objections were received by ROC from any stakeholder within the prescribed period of 30 days, name of the Company was struck off. The Revenue filed an appeal to the NCLT seeking restoration of the name of the company on the ground that the tax dues against the company were not determined, which was dismissed. Against the dismissal, the Revenue is in appeal before NCLAT.

**Decision:** **Appeal dismissed.**

**Source:** [https://taxpublishers.in/Ency\\_CL/CL\\_Judg\\_Show?95775000?a0](https://taxpublishers.in/Ency_CL/CL_Judg_Show?95775000?a0)



<b>Case law</b>	<i>Excel Metal Processors Ltd v. Benteler Trading International GMBH &amp; ANR. [NCLAT]</i>
<b>Decided on</b>	<i>August 21, 2019</i>
<b>Legislation</b>	<i>Insolvency and Bankruptcy Code, 2016</i>
<b>Brief facts</b>	<i>Operational creditor, a German Company- corporate debtor an Indian Company- agreement provides for the jurisdiction of German courts whether it can file the petition before the NCLT-Held, Yes.</i>

**Facts:** The Respondent, a German Company ('Operational Creditor') filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short the 'I&B Code') against Excel Metal Processors Private Limited ('Corporate Debtor') alleging that the 'Corporate Debtor' committed default in making the payment to an extent of US \$1,258,219.42 inclusive of interest @ 15% per annum. The Adjudicating Authority (National Company Law Tribunal), admitted the application. The Appellant has challenged the said order.

**Decision:** **Appeal dismissed.**

**Source:** <https://ibbi.gov.in/uploads/order/4384c6a0705053a3e2cf747a60f6c692.pdf>

## FROM THE GOVERNMENT

### Notification regarding Companies (Amendment) Act, 2019

In exercise of the powers conferred by sub-section (3) of section 1 of the Companies (Amendment) Act, 2019 (22 of 2019), the Central Government hereby appoints the 15th day of August, 2019 as the date on which the provisions of sections 6, 7 and 8, clauses (i), (iii) and clause (iv) of section 14, section 20, section 31, sections 33, 34 and 35 and sections 37 and 38 of the said Act shall come into force.

**Source:** [http://www.mca.gov.in/Ministry/pdf/CommencemntNotification\\_14082019.pdf](http://www.mca.gov.in/Ministry/pdf/CommencemntNotification_14082019.pdf)

### Non-compliance with certain provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR Regulations”)

1. SEBI issued a Circular bearing reference number CIR/CFD/ DIL/57/2017 dated June 15, 2017, specifying the fines to be imposed by the Stock Exchanges for non-compliance with certain provisions of SEBI (ICDR) Regulations, 2009.
2. Present Circular is issued in supersession to the aforesaid Circular bearing reference number CIR/CFD/DIL/57/2017 dated June 15, 2017.
3. Regulation 297 and 298 of SEBI (ICDR) Regulations, 2018, inter alia specify liability of a listed entity or any other person for contravention and actions which can be taken by the respective stock exchange, the revocation of such actions and consequences for failure to pay fine in the manner specified by SEBI.
4. In pursuance of the above, for non-compliance with certain provisions of ICDR Regulations, stock exchanges shall impose [revised fines](#) on the listed entities.

#### Credit of Fine:

The amount of revised fine realized shall continue to be credited to the “Investor Protection Fund” of the concerned stock exchange.

[Read more ....](#)

#### Bonus Issue Delays:

With respect to bonus issue delays, it is clarified that: a) The approvals for the listing and trading of promoters’ bonus shares may be granted by the Stock Exchange, only after

payment of the requisite fine by the listed entity. b) However, the approvals for the listing and trading of bonus shares allotted to persons other than the promoter(s) may be granted in the interest of the investors, subject to compliance with other requirements.

[Read More ...](#)

**Source:**<https://www.sebi.gov.in/legal/circulars/aug-2019/non-compliance-with-certain-provisions-of-sebi-issue-of-capital-and-disclosure-requirements-regulations-2018-icdr-regulations-43941.html>

## SAVE OUR ENVIRONMENT

### The edible plastic!!

India has been moving away from plastics for many years and many cities have already issued plastic bag bans. While legislation like this helps to protect our environment and wildlife, a young entrepreneur, Ashwath Hegde, noticed that it was a hardship for many Indians.

“People were concerned about how they would carry products from the market now. Everyone cannot afford a bag worth Rs. 5 or Rs. 15 to carry a kilogram of sugar,” says Hegde. So he decided to come up with a solution that would be sustainable and affordable.

He eventually landed on a combination of natural starch (from potato and tapioca) and vegetable oils to make a bag that looks and feels just like plastic with none of the negative environmental impacts of a plastic vessel. [EnviGreen](#)'s bags will naturally degrade in 180 days and if they are submerged in water they disappear in a day. Oh and also – these bags are edible. This means that when animals encounter non-degraded bags, they can eat them with no adverse effects.

**Source:**<https://economictimes.indiatimes.com/small-biz/startups/features/ashwath-hegde-goes-green-with-edible-plastic-like-bags/articleshow/62047336.cms?from=mdr>

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