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## BEYOND GOVERNANCE

### Case Study

In order to make the Chartered Secretary Journal (CSJ) more interactive for the members and students, the Case Study section has been introduced from April issue. Each Case Study is followed by question(s) which are to be solved by member(s)/student(s). The answer(s) are to be sent to [cs.journal@icsi.edu](mailto:cs.journal@icsi.edu) latest by 25<sup>th</sup> of each month.

The answer(s) will be reviewed by a Panel of reviewer(s). The winner will be given:

- (i) Certificate of Appreciation.
- (ii) His/Her name will be published in the next issue of the Journal.
- (iii) He/She will be awarded cash award of ₹ 2,500.

### Crossword

A new section 'Crossword' containing terminologies/concepts from Companies Act, IBC, NCLT and such related areas of profession is introduced. Members/students are to send the answers of Crossword to [cs.journal@icsi.edu](mailto:cs.journal@icsi.edu) latest by 25<sup>th</sup> of each month.

- The answer(s) will be published in the next issue of CSJ.
- The winners will be selected randomly.
- The name of three winners will be published in the next issue of CSJ.



## CASE STUDY

### BEFORE THE SECURITIES APPELLATE TRIBUNAL

#### Parties to the Dispute

**FRP Limited ,Mr X , Mr. Y the director of FRP Limited and other noticees.....Appellants**

**Vs**

**SEBI..... the Respondents**

All these appeals are against a common order dated February 3, 2021 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') restraining the appellants from accessing the securities market for a specified period and to disgorge the unlawful gains and has also imposed penalties of different amounts on the ground that the term "generally available information" must only mean information which has been disseminated on the platform of the stock exchange.

FRP Limited (hereinafter referred as "the company") is engaged in the business of retail trading or various branded products, including grocery, fruits and vegetables, general merchandise, staples, fashion and accessories products. Mr. X is the chairman and Managing Director of the company.

One of the retail store formats operated by FRP was the "HomeTown" format which was a store for furniture, decor and home improvement ("HomeTown Business"). Bluerock e-Services Pvt. Ltd. (hereinafter referred to as 'BSPL') which was promoted by another listed company i.e. Future Enterprises Limited ("FEL"), operated an online home store, selling furniture, wood products and other home solutions-oriented decor products through a website i.e. [www.fabfurnish.com](http://www.fabfurnish.com) (such business, hereinafter referred to as the "FabFurnish Business").

#### Facts of the case

**The facts leading to the filing of the present appeals are:**

1. SEBI conducted an investigation in the scrip of the company to ascertain whether certain entities had traded in the aforesaid scrip during the period March 10, 2017 to April 20, 2017 on the basis of Unpublished Price Sensitive Information (hereinafter referred to as 'UPSI') in contravention to the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations').
2. Investigation revealed that preliminary discussion for the proposed scheme of arrangement was carried out

on March 10, 2017 and finally the company made an announcement on April 20, 2017 regarding a scheme of arrangement between the company and LST Home Retail Pvt. Ltd. This scheme of arrangement resulted in the de-merger of certain business of the company and that the said announcement had a positive impact on the price of the scrip of the company.

3. The investigation further revealed that during the UPSI period the appellants being insiders had traded in the scrip in question which was violative of the PIT Regulations.
4. Accordingly, three show cause notices were issued to the appellants to show cause as to why suitable directions including debarment and disgorgement should not be issued under Section 11 and 11B of the SEBI Act for violation of Section 12A(d) and (e) of the SEBI Act and Regulation 4(1) of the PIT Regulations. The show cause notice also directed why appropriate direction for imposition of penalty should not be issued under Section 11B(2) read with Section 15G of the SEBI Act.
5. The show cause notice alleged that the UPSI period was from March 10, 2017 when the first discussion about the merger took place and April 20, 2017 when a corporate announcement was made by the company before the stock exchange. The show cause notice further alleged that noticees had traded during the UPSI period by buying shares of the company.

#### Submission by the Appellants

1. The appellants denied the allegations made in the show cause notice and contended that they did not trade during the UPSI period and that the information about the transaction was “generally available” and did not constitute UPSI.
2. It was contended that the information about the merger had been widely reported across numerous media platforms much before the dates on which the trades were undertaken.
3. The company had specifically clarified to the stock exchanges on March 7, 2017 that its board had authorized to consider various options in relation to the HomeTown business and that the announcement on April 17, 2017 was only a follow up announcement in respect of information about the transaction which was already in the public domain.
4. It was also urged that the HomeTown business and the FabFurnish business constituted a significantly small and miniscule portion of the

company’s over all business and, thus, did not have any significant impact to the price movement of the shares.

5. Contention of one of the notices was that he was involved in the project relating to the scheme of arrangement but had no access to any financial information at the point of time when he had traded and, therefore, he had no inside information nor had traded during the UPSI period.

#### Order by SEBI

The WTM after considering the material evidence on record held that all the appellants were insiders and were privy to the information relating to merger / de-merger of certain businesses of the company. The WTM further found that the appellants had traded during the UPSI period which was violative of Regulation 4(1) of the PIT Regulations. The WTM rejected the contention of the appellants that the information relating to merger was in the public domain and, therefore, was not a UPSI. The WTM came to the conclusion that the articles and interviews that was published did not give the particulars about the de-merger of the HomeTown business and the information was not specific in nature and, therefore, since the articles and interviews did not contain concrete information as specified that in the public announcement, therefore, it cannot be held that the information was in the public domain and, therefore, not a UPSI. The WTM accordingly, issued direction debarring the appellants for specified period under Section 11 and 11B of the SEBI Act. Further, the WTM directed the appellants to disgorge the unlawful gains and also imposed penalties.

#### Queries

**Q. Whether the stand of SEBI w.r.t. definition of UPSI pertaining to “generally available information” is justified?**

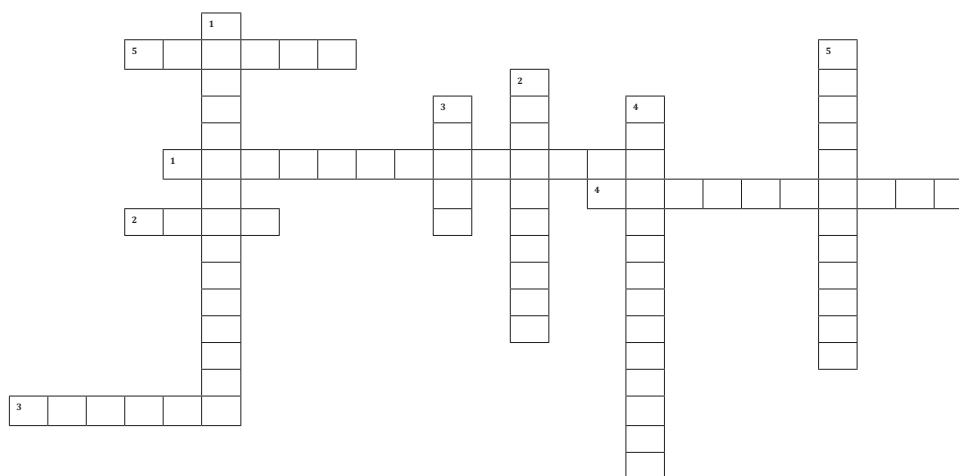
*Disclaimer: The case study has been framed from the facts and figures available in the public domain with some modifications/assumptions so as to enable members to apply their professional skills to answer the same and hide the identity of the case. Author is not to be held liable for any resemblance of the facts and figures with any case.*

### Winners of Case Study – June 2024

**CS Ashish Mehta**  
ACS 15469

**CS Vaishali Agarwal**  
ACS 58347

# CROSSWORD PUZZLE – COMPANY LAW - JULY 2024



## ACROSS

1. A Nidhi shall be a public company and shall have a minimum paid up equity share capital of \_\_\_\_\_.
2. Under Companies Act, 2013, The application to the Central Government for removal of auditor shall be made in Form \_\_\_\_\_.
3. Under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. A liquidator, who fails to deposit any amount into the Corporate Liquidation Account under this regulation, shall deposit the same along with interest thereon at the rate of \_\_\_\_\_ percent per annum from the due date of deposit till the date of deposit.
4. Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within \_\_\_\_\_ hours of the said meeting.
5. Voluntary relinquishment of a legal right is termed as 'Doctrine of \_\_\_\_\_'.

## DOWNWARDS

1. An enterprise where the investment in plant and machinery or equipment does not exceed Rs.1

crore and turnover does not exceed Rs.5 crore is \_\_\_\_\_.

2. Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, The financial creditors in the class, representing not less than \_\_\_\_\_ voting share may seek replacement of the authorised representative with an insolvency professional of their choice by making a request to the interim resolution professional or resolution professional.
3. Under the Companies Act, 2013, Where a director resigns from his office, he may within a period of thirty days from the date of resignation, forward to the Registrar a copy of his resignation along with reasons for the resignation in Form \_\_\_\_\_.
4. Under Insolvency and Bankruptcy Code, an undischarged insolvent shall not be eligible to submit \_\_\_\_\_.
5. Under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. the liquidator shall not commence \_\_\_\_\_ before the list of stakeholders and the asset memorandum has been filed with the Adjudicating Authority.

## Winners - Crossword June 2024

**1<sup>ST</sup>** CS Meenu Gupta ACS-34932

**2<sup>ND</sup>** CS Shradha Agarwal ACS-68520

**3<sup>RD</sup>** CS Namita Singla ACS-70881

## Crossword Puzzle – June 2024 Answers

### ACROSS

1. SIXTY-SIX
2. MGT.11
3. FORM J
4. FORM CA
5. ASBA

### DOWNWARDS

1. AFFIDAVIT
2. ROLL CALL
3. FIVE LAKH RUPEES
4. ONE YEAR
5. ADT-3