

Info Capsule

Tuesday
November 03, 2020

President : CS Ashish Garg

Vice President : CS Nagendra D. Rao

❖ **Insolvency and Restructuring**

- **Serving of copy of the application to the Board, as mandated under Rules 4, 6 and 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.**

The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 requires an applicant to provide a copy of the application for initiating corporate insolvency resolution process against a corporate debtor, inter alia, to the Board, before filing the same with the Adjudicating Authority. For convenience of applicants, the Board has made available a facility on its website at <https://www.ibbi.gov.in/intimation-applications/iaaa> for serving a copy of the application online to the Board. The format for submission is at Annexure A. A step-by-step guide for submission of the application is at Annexure B.

For details:

<https://ibbi.gov.in/uploads/legalframework/5d5792eab74d44db2a58e184abd65ab7.pdf>



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

❖ **Latest @ ICSI**

• **International Live Webinar (November 02, 2020)**

The ICSI is conducting International Live Webinar on Convergence & Divergence of the Role of a Company Secretary in various Jurisdictions on November 06, 2020.

For details:

https://www.icsi.edu/media/webmodules/ICSI_Convergence_&_Divergence_of_the_Role_of_a_Company_Secretary_in_various_jurisdictions.pdf

• **Crash Courses, on Labour Laws and Company Formation & Compliances (November 02, 2020)**

The ICSI has launched Two Crash Courses, on Labour Laws and Company Formation and Compliances for ICSI Members. The Registrations open from November 02, 2020.

For details:

https://www.icsi.edu/media/webmodules/ICSI_Flyer_combined_Company_Law_CFC.pdf

• **The ICSI signs MOU with Hemchand Yadav Vishwavidyalaya, Durg (C.G.) (November 02, 2020)**

The ICSI signed a Memorandum of Understanding for academic collaboration with Hemchand Yadav Vishwavidyalaya, Durg, Chhattisgarh.

For details:

https://www.icsi.edu/media/webmodules/PR_ICSI_signs_MoU_with_HemchandraYadavVishwavidyalaya_Chhattisgarh.pdf

❖ **Securities Law & Capital Market**

SEBI Regulations

- **SEBI (Prohibition of Insider Trading) (Second Amendment) Regulations, 2020 (October 29, 2020)**

SEBI vide its notification dated October 29, 2020 amends the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 which shall come into force on the date of their publication in the Official Gazette. The amended provisions, inter-alia, inserted an explanation in regulation 7A, in sub-regulation (1), in clause (h), after sub-clause (iii), which prescribed as-

***“Explanation** – Information shall be considered timely, only if as on the date of receipt of the duly completed Voluntary Information Disclosure Form by the Board, a period of not more than three years has elapsed since the date on which the first alleged trade constituting violation of insider trading laws was executed.”*

For details: <http://egazette.nic.in/WriteReadData/2020/222818.pdf>

- **SEBI (Mutual Funds) (Second Amendment) Regulations, 2020 (October 29, 2020)**

SEBI vide its notification dated October 29, 2020 amends the provisions of SEBI (Mutual Funds) Regulations, 1996 which shall come into force on the date of their publication in the Official Gazette. The amended provisions, inter-alia, have prescribed that *Chief Executive Officer (whatever be the designation) shall also ensure that the Asset Management Company has adequate systems in place to ensure that the Code of Conduct for Fund Managers and Dealers specified in PART - B of the Fifth Schedule of these regulations are adhered to in letter and spirit. Any breach of the said Code of Conduct shall be brought to the attention of the Board of Directors of the Asset Management Company and Trustees.*

For details:

<http://egazette.nic.in/WriteReadData/2020/222848.pdf>

SEBI Order

- **In the matter of Siya-Ram Agro Industries Ltd (SRAIL) (SEBI Order dated November 2, 2020)**

SEBI issued directions to SRAIL and its directors which inter-alia provides that the company 'SRAIL' shall cease to mobilize fresh funds from investors through the offer and allotment of any securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly and further SRAIL and its directors shall not dispose of, alienate or encumber any of its/their assets or divert any funds raised from public either through the offer and allotment of Non-Convertible Redeemable Debentures (NCD's). SRAIL allegedly made public issues of NCD's without following the public issue and listing norms, the same is detrimental to the interest of investors.

For details : https://www.sebi.gov.in/enforcement/orders/nov-2020/final-order-in-the-matter-of-siya-ram-agro-industries-ltd_48060.html

❖ Pronouncements

October 19, 2020	Volkswagen Finance Private Limited (Appellant) vs. Shree Balaji Printopack Pvt. Ltd & Ors.(Respondents)	NCLAT
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‘Charge’ was not registered as per the provisions of Section 77 (1) of the Companies Act 2013 and as envisaged under the Insolvency and Bankruptcy Code, 2016, hence the Creditor cannot be treated as a ‘Secured Creditor’

Fact of the Case

The Respondent Company (under Liquidation) namely Shree Balaji Printopack Pvt. Ltd. executed a Loan and Hypothecation Agreement on November 25, 2013, for an amount of Rs. 36,00,000/- payable in 84 monthly instalments of Rs. 61,964/- each from December 15, 2013 to November 15, 2020, for the purchase of an AUDI Q3 TDI 2.0 vehicle. The Appellant claimed that they have security of the vehicle in terms of Sections 52 and 53 of the Insolvency and Bankruptcy Code, 2016 and a demand of Rs. 21,83,819.18/- was made which was not paid by Respondent and hence there was a ‘default’ giving rise to a legitimate claim.

The Appellant filed its claim on 22.07.2019 with the Liquidator and had informed the Liquidator that the ‘Charge’ was duly registered by way of hypothecation registration with the Regional Transport Office (RTO) in terms of Section 51 of the Motor Vehicles Act, 1988 and there was no requirement of registration of ‘Charge’ with the ROC. The Liquidator, dismissed the Claim made by the Appellant. Being aggrieved with the decision the Appellant approached the NCLT, New Delhi Bench, but the appeal was further rejected by NCLT and they upheld the order of Liquidator.

The main issue which falls for consideration in this Appeal is:

- whether the Liquidator was justified in rejecting the Application filed by the Appellant on the ground that the Appellant was not a ‘Secured Financial Creditor’ in the absence of the ‘Charge’ being registered with the ROC under Section 77 (1) of the Companies Act 2013.
- that the Registration of Hypothecation by way of ‘Charge’ under Section 51 of Motor Vehicles Act, 1988 would stand nullified, if the ‘Charge’ was not registered under the Companies Act, 1956/2013.

NCLAT observed from the documentary evidence on record that no ‘Charge’ has been registered under Section 77(1) of the Companies Act 2013 and Appellant ‘Claim’ was not supported by the provisions under Regulation 21 of IBBI (Liquidation Process) Regulation, 2016. Further, the contentions of the Appellant that Registration with Motor Vehicle Authority under Section 51 of the Motor Vehicles Act, 1988 would suffice, cannot be sustained.

Judgment

Hence, it is held that when ‘Charge’ was not registered as per the provisions of Section 77 (1) of the Companies Act 2013 and as envisaged under the Insolvency and Bankruptcy Code, 2016, the Creditor cannot be treated as a ‘Secured Creditor’. Thus, this Appeal is accordingly dismissed.

For details: <https://nclat.nic.in/Useradmin/upload/3897795695f8d688800f7c.pdf>

❖ **Economic Law**

- **Extension of period for Modification of License by existing FSSAI Licensed Manufacturers without modification fee (October 29, 2020)**

Previous order dated 28th May, 2020 Food Authority had issued the order that “all the manufacturers of food products shall modify their existing license upon migrating to new system i.e. FoSCos up to 31st December, 2020 without modification fee.”

It is informed that the Period for Modification of License by Existing FSSAI Licensed Manufacturers is extended till 30th June, 2021 without any modification fee.

For details:

https://fssai.gov.in/upload/advisories/2020/10/5f9a86ca30338Order_License_FoSCoS_29_10_2020.pdf

❖ **Terminology for Today**

- **What is the Purchasing Managers' Index?**

The Purchasing Managers' Index (PMI) is an index of the prevailing direction of economic trends in the manufacturing and service sectors.

❖ **Market Watch**

Capital Market	
S & P BSE Sensex	40256.20 (+498.62)
Nifty 50	11810.95 (+141.80)

Reference Rate (https://www.fbil.org.in/#/home)			
INR / 1 USD	INR / 1 EUR	INR / 1 GBP	INR / 1 JPY
74.322	86.487	95.862	.7096

Prepared by Directorate of Academics

For any suggestions, please write to academics@icsi.edu, or call at 01204082269

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