

**SKYZ & Co.**

CHARTERED  
ACCOUNTANTS



# **News Letter**

Volume-5, October' 2023

## 1. Angel tax: New norms to strike balance between FEMA, IT rules'

The new valuation rules prescribed by the government for equity shares held by non-resident investors in India unlisted companies, including start-ups, are meant to strike a balance between FEMA (Foreign Exchange Management Act) related valuation and IT-based rule.

According to the new rules notified for angel tax, five new valuation methods of unquoted equity shares are prescribed for non-resident investors—Comparable Company Multiple Method, Probability Weighted Expected Return Method, Option Pricing Method, Milestone Analysis Method, and Replacement Cost Method—in addition to the Discounted Free Cash Flow (DFCF) method and Net Asset Value (NAV) methods.

## 2. Tax waiver for ETF capital gains on GIFT exchange

To further the objective of making the GIFT International Financial Services Centre (IFSC) in Gujarat a hub for financial services in the world, the Centre has exempted tax on capital gains arising from the transfer of units of investment trusts and exchange-traded funds (ETFs) on exchanges in the IFSC.

The Central Board of Direct Taxes (CBDT) notified the exemption under the International Financial Services Centres Authority (Fund Management) Regulations, 2022.

## 3. Salaried employees living in rent-free accommodation to save more now

The Income Tax Department has notified rules for valuing rent-free accommodation provided by employers. The notification will help employees who are drawing substantial salaries and living in rent-free accommodation provided by their employers to save more.

As the tax department has revised norms for valuing such houses, such salaried ITR filers will be able to get a higher take-home salary, according to experts

#### **4. Income Tax exemption on money received from Life Insurance policy: CBDT issues new guidelines**

The Central Board of Direct Taxes (CBDT) has issued fresh guidelines under clause (10D) of Section 10 of the Income Tax Act 1961. Clause 10(D) of Section 10 of the IT Act provides for income-tax exemption on any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy. However, such an exemption is subject to certain exclusions.

The CBDT guidelines have come after the Finance Act 2023 removed tax exemption on any sum received from life insurance policies for which the aggregate annual premium is more than Rs 5 lakh.

#### **5. Govt clarifies how TCS will be applicable on flight tickets, hotel bookings during international trips, hostel expenses, other foreign remittances**

Clarifying how tax collection at source (TCS) will be applicable on various foreign remittances through Liberalised Remittance Scheme (LRS), the Ministry of Finance released a detailed guidelines on June 30, 2023. Earlier this week, the ministry said that there will be TCS on foreign remittances of up to Rs 7 lakh per financial year. Further, it also added that the increased rates TCS will come into effect from October 1, 2023.

"Sub-section (1-I) of section 206C of the Act provides that if any difficulty arises in giving effect to the provisions of sub-section (1G) of this section, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty. Accordingly, the following guideline is issued under this provision," the ministry said on June 30, 2023.

- 6.** (a) CBDT, vide Notification No. 43/2023 dated 21.06.2023, notifies amendments in Rule 2BB (Allowance) and Rule 3 (Prequisites) in the Light of Section 115 BAC i.e. new tax regime : Also amends and Rule 5 ( Depreciation ) for restricting depreciation to 40% of the block of assets for the person opting to get taxed under Section 115BAC or 115BAE ( applicable to manufacturing co – operative societies):

(b) Further introduces Rule 21AGA and Form 10 – IEA (applicable Assessment year 2024-25 onwards) to opt for or withdraw from the new tax regime for the person having income from business or profession: The rule also provides that the person not having income from business or profession can opt for new regime through the return of income furnished under Section 139(1): DGIT (Systems) is required to specify the digital procedure for furnishing from 10IEA.

**7. In the Income Tax Rules, 1962, in rule 3,-**

- (i) for sub-rule (1), the following shall be substituted, namely: -
- (1) The value of residential accommodation provided by the employer, for the purpose of sub-clauses (i) and (ii) of sub-section (2) of section 17, during the previous year shall be determined on the basis provided in the table I given below

<b>S. No.</b>	<b>Circumstances</b>	<b>Where accommodation is Unfurnished</b>	<b>Where accommodation is furnished</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
(1)	Where the accommodation is provided by the Central Government or any State Government to the employees either holding office or post in connection with the affairs of the Union or of such State.	License fee determined by the Central Government or any State Government in respect of accommodation in accordance with the rules framed by such Government as reduced by the rent actually paid by the employee.	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment) or if such furniture is hired from a third party, the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.
(2)			



S. No.	Circumstances	Where accommodation is Unfurnished	Where accommodation is furnished
(2)	Where the accommodation is provided by any other employer and—		
	(a) where the accommodation is owned by the employer, or	(i) 10% of salary in cities having population exceeding 40 lakhs as per 2011 census;	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.
		(ii) 7.5% of salary in cities having population exceeding 15 lakhs but not exceeding 40 lakhs as per 2011 census; (iii) 5% of salary in other areas, in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee.	
	(b) where the accommodation is taken on lease or rent by the employer.	Actual amount of lease rental paid or payable by the employer or 10% of salary, whichever is lower, as reduced by the rent, if any, actually paid by the employee.	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.

<b>S. No.</b>	<b>Circumstances</b>	<b>Where accommodation is Unfurnished</b>	<b>Where accommodation is furnished</b>
(3)	Where the accommodation is provided by the employer specified in serial number (1) or (2) in a hotel (except where the employee is provided such accommodation for a period not exceeding in aggregate fifteen days on his transfer from one place to another).	Not applicable	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.

**Provided** that nothing contained in this sub-rule shall apply to any accommodation temporarily provided to an employee working at a mining site or an on-shore oil exploration site or a project execution site, or a dam site or a power generation site or an off-shore site—

- (i) which, having plinth area not exceeding 1000 square feet, is located not less than eight kilometres away from the local limits of any municipality or a cantonment board; or
- (ii) which is located in a remote area:

**Provided further** that where on account of his transfer from one place to another, the employee is provided with accommodation at the new place of posting while retaining the accommodation at the other place, the value of perquisite shall be determined with reference to only one such accommodation which has the lower value with reference to the Table above for a period not exceeding ninety days and thereafter the value of perquisite shall be charged for both such accommodations in accordance with the Table:

**Provided also** that where the accommodation is owned by the employer and the same accommodation is continued to be provided to the same employee for more than one previous year, the amount calculated in accordance with SL. No.2(a) or 2(b) shall not exceed the amount so calculated for the first previous year, as multiplied by the amount which is a ratio of the Cost Inflation Index for the previous year for which the amount is calculated and the Cost Inflation Index for the previous year in which the accommodation was initially provided to the employee.



## **Key Legislative Changes to CGST Act: To Take Effect from Date of Enactment of Finance Act, 2023 [Except for Change Discussed in Paragraph (vi)]**

1. Transporters will not be required to file declaration for paying GST under forward charge every year
2. No RCM on services supplied by a director of a company to the company in his private or personal capacity such as supplying services by way of renting of immovable property to the company
3. System-based intimation to the taxpayers in respect of the excess availment of ITC in FORM GSTR-3B vis a Vis that made available in FORM GSTR-2B
4. Supply of food and beverages in cinema halls is taxable at 5%
5. If the sale of cinema ticket and supply of food and beverages clubbed together then GST rate of cinema ticket will apply
6. 28% GST on the value of the chips purchased in casinos
7. 28% GST on the full value of the bets placed in Online Gaming
8. GST Appellate tribunal will be started in a phased manner
9. Relaxations provided in FY 2021-22 in respect of various tables of FORM GSTR-9 and FORM GSTR-9C be continued for FY 2022-23
10. No GSTR-9 for turnover upto 2 crores
11. Input Services Distributor (ISD) mechanism is not mandatory for distribution of input tax credit of common input services procured from third parties to the distinct persons as per the present provisions of GST law. Amendment may be made in GST law to make ISD mechanism mandatory prospectively
12. Detailed Circular to be issued to provide clarity on liability to reverse input tax credit in cases involving warranty replacement of parts and repair services during warranty period
13. Refund of accumulated input tax credit (ITC) to be restricted to ITC appearing in FORM GSTR-2B.



14. Only Name of state on tax invoice, not the name and full address of the recipient, in cases of supply of taxable services by or through an ECO.
15. WEF from 01.10.2023, ITC availed is required to be reverse if supplier has not filed GSTR3B on or before 30.09.2023 (Rule 37A read with Section 41): Reversal of ITC if the supplier has not filed GSTR 3B until September 30, 2023, and the buyer has availed of the ITC, then from October 1, 2023, the buyer is required to reverse the ITC availed earlier. Once the supplier files 3B for the same, the buyer may re-avail such an ITC. No interest is payable if the buyer reverses the credit before November 30, 2023.
16. CBIC has issued circulars and notifications pursuant to 50th GST council meeting held on 11th July, 2023

CBIC has issued various circulars and notifications pursuant to the recommendations made by the GST Council in its 50th meeting.

Circulars provide clarification on the following issues:

- In respect of common input services produced by the head office (HO), which are attributable to another branch office (BOs), HO has an option to distribute input tax credit (ITC) by following the input services distributor (ISD) mechanism or by issuing tax invoices to the concerned Bos.
- In case of internally generated services by HO where full ITC is available to BOs, and HO has not issued a tax invoice, the deemed Nil value may be considered as open market value of such services in term of the second proviso to rule 28 of the Central Good & Services Tax Rules,2017.
- Further the valuation of internally generated services, the salary cost of employees is not mandatorily required to be included, whether or not BO is entitled to full ITC.
- In a case where multiple e-commerce operators (ECOs) are involved in a single transaction, compliance under section 562 of the Central Goods & Services Tax Act,2017 is to be done by the ECO making final payment to the supplier.
- Warranty replacement of parts by dealers against a credit note issued by the manufacturer is not eligible for GST.



**Companies (Incorporation) second amendment, 2023**

MINISTRY OF CORPORATE AFFAIRS

(Notification Dated 2nd August, 2023)

G.S.R.\_\_\_\_ (E). – In exercise of the power conferred by Section 3, Section 4, sub sections (5) and (6) of Section 5, Section 6 , sub section (1) and (2) of Section 7 , sub section (1) and (2) of Section 8, sub section (2),(3),(4),(5) and (9) of Section 12, sub section (3),(4) and proviso of sub-section (5) of section 13, sub section (2) of Section 14, sub section (1) of Section 17, Section 20 read with sub section (1) and (2) of Section 469 of the Companies Act, 2013 (18 of 2013), Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Incorporation) Second Amendment Rules, 2023.  
(2) They shall come into force on the date of their publication in the Official Gazzete.
2. In the Companies (Incorporation) Rules, 2014, Form No. RD-1 is substituted.

**Note:** The Principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 250(E), dated the 31st March, 2014 and last amended, vide number G.S.R. 42(E), dated the 19th January, 2023.

S.O. 4321(E).—WHEREAS, the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment were adopted under the joint auspices of International Civil Aviation Organization and the International Institute for the Unification of Private Law concluded at Cape Town on 16th November, 2001;

**S.O. 4321(E)-Notification under Section  
14 of Insolvency and Bankruptcy Code, 2016:**

MINISTRY OF CORPORATE AFFAIRS

(Notification Dated 3rd October, 2023)

AND WHEREAS, India, being a signatory to and having acceded the Convention and the Protocol by depositing with the International Institute for the Unification of Private Law the instruments of accession on 31.03.2008;

Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (3) of section 14 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby notifies that the provisions of sub-section (1) of section 14 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), shall not apply to transactions, arrangements or agreements, under the Convention and the Protocol, relating to aircraft, aircraft engines, airframes and helicopters.





### Periodic Disclosures:

#### 1. Report on compliance with the Corporate Governance provisions specified in the LODR Regulations:

- The applicability of the corporate governance provisions of the LODR Regulations i.e., regulations 17 to 27 and certain provisions of regulation 46 and Schedule V, is specified in regulation 15(2) of the LODR Regulations.
- In terms of regulation 27(2) of LODR Regulations, the listed entity is required to submit a quarterly compliance report on corporate governance in the format specified by the Board from time to time, to Recognised Stock Exchange(s).
- Accordingly, the submission of compliance report on Corporate Governance shall be as under:
  - a) Annexure3 – on quarterly basis
  - b) Annexure 4 – at the end of the financial year
  - c) Annexure 5 – at the end of 6 months from the close of financial year
  - d) Annexure6 – on a half yearly basis.
- Listed entities shall submit the compliance report on corporate governance as per the formats specified above. In case of non-applicability of the corporate governance provisions, the listed entity shall submit a declaration to that effect, duly signed by the compliance officer or the chief executive officer accompanied by a certificate from a PCA or a PCS, to the Stock Exchange(s), at the beginning of every financial year.

**Financial Disclosures:**

1. Disclosures and other obligations of listed entities in relation to Related Party Transactions:
  - Regulation 23(9) of the LODR Regulations inter-alia requires listed entities to disclose Related Party Transactions (RPTs), on a half-yearly basis, in the format specified by the Board and within the timelines specified in the regulations.
  - Accordingly, listed entities shall make RPT disclosures in the format specified in Annexure 13 to this circular.
  - Further, it has been decided to specify the information to be placed before the audit committee and the shareholders for consideration of RPTs. The same is detailed in the following paragraphs.

**(A) Information to be reviewed by the Audit Committee for approval of RPTs:**

- The listed entity shall provide the following information, for review of the audit committee for approval of a proposed RPT:
  - a. Type, material terms and particulars of the proposed transaction;
  - b. Name of the related party and its relationship with the listed entity or its subsidiary, including nature of its concern or interest (financial or otherwise);
  - c. Tenure of the proposed transaction (particular tenure shall be specified);
  - d. Value of the proposed transaction;
  - e. The percentage of the listed entity's annual consolidated turnover, for the immediately preceding financial year, that is represented by the value of the proposed transaction (and for a RPT involving a subsidiary, such percentage calculated on the basis of the subsidiary's annual turnover on a standalone basis shall be additionally provided);

- f. If the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary: i. details of the source of funds in connection with the proposed transaction; ii. where any financial indebtedness is incurred to make or give loans, interoperate deposits, advances or investments, nature of indebtedness; cost of funds; and tenure; iii. applicable terms, including covenants, tenure, interest rate and repayment schedule, whether secured or unsecured; if secured, the nature of security; and iv. the purpose for which the funds will be utilized by the ultimate beneficiary of such funds pursuant to the RPT.
- g. Justification as to why the RPT is in the interest of the listed entity;
- h. A copy of the valuation or other external party report, if any such report has been relied upon; i. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT on a voluntary basis; j. Any other information that may be relevant.
- The audit committee shall also review the status of long-term (more than one year) or recurring RPTs on an annual basis. Further, an RPT for which the audit committee has granted omnibus approval shall continue to be placed before the shareholders if it is material in terms of regulation 23(1) of the LODR Regulations.

**(B) Information to be provided to shareholders for consideration of RPTs:**

- The notice being sent to the shareholders seeking approval for any proposed RPT shall, in addition to the requirements under the Companies Act, 2013, include the following information as a part of the explanatory statement:
  - a. A summary of the information provided by the management of the listed entity to the audit committee as specified in paragraph 4 of this Section;

- b. Justification for why the proposed transaction is in the interest of the listed entity;
  - c. Where the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary, the details specified under para 4 (f) above; (The requirement of disclosing source of funds and cost of funds shall not be applicable to listed banks/NBFCs.)
  - d. A statement that the valuation or other external report, if any, relied upon by the listed entity in relation to the proposed transaction will be made available through the registered email address of the shareholders;
  - e. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT, on a voluntary basis;
  - f. Any other information that may be relevant.
- The explanatory statement contained in the notice sent to the shareholders for seeking approval for an RPT shall provide relevant information so as to enable the shareholders to take a view whether the terms and conditions of the proposed RPT are not unfavourable to the listed entity, compared to the terms and conditions, had similar transaction been entered into between two unrelated parties. The information so provided shall include but not be limited to the information specified above.
  - Transparency, accountability and shareholder empowerment are the bedrock of robust corporate governance, therefore listed entities shall ensure compliance with the spirit of the law and endeavor to provide relevant and detailed information to the shareholders in order to enable and empower the latter for taking an informed decision.



**(C) Validity of omnibus approval for RPTs granted by shareholders:**

- Regulation 23(3)(e) of the LODR Regulations specifies that omnibus approval granted by the audit committee shall be valid for a period not exceeding one year and shall require fresh approvals after expiry of one year. Regulation 23(4) of the LODR Regulations requires shareholder approval for material RPTs.
- Section 96(1) of the Companies Act, 2013 specifies that the time gap between two Annual General Meetings (AGMs) cannot be more than fifteen months.
- In order to facilitate listed entities to align their processes to conduct AGMs and obtain omnibus shareholders' approval for material RPTs, it has been decided to specify that the shareholders' approval of omnibus RPTs approved in an AGM shall be valid upto the date of the next AGM for a period not exceeding fifteen months. In case of omnibus approvals for material RPTs, obtained from shareholders in general meetings other than AGMs, the validity of such omnibus approvals shall not exceed one year.

**Event Based Disclosures:****1. Disclosures by listed entities of defaults on payment of interest/ repayment of principal amount on loans from banks / financial institutions and unlisted debt securities:**

- The LODR Regulations requires disclosure of material events / information by listed entities to Stock Exchanges. Specific disclosures are required under the LODR Regulations in certain matters such as delay / default in payment of interest / principal on debt securities such as Non-Convertible Debentures (NCDs), Non-Convertible Redeemable Preference Shares (NCRPS) etc. Similarly, default on loans taken from banks / financial institutions and on unlisted debt securities are also material information to the investors.

- Therefore, in order to ensure availability of information to investors on default by listed entities with respect to default on loans taken from banks / financial institutions or unlisted debt securities, the following requirements are being specified.
- **Applicability:**
  - 3.1. These provisions shall be applicable to all listed entities which have listed their specified securities (equity and convertible securities).
  - 3.2. The disclosures shall be made to the stock exchanges when the entity has defaulted in payment of interest / instalment obligations on loans, including revolving facilities like cash credit, from banks / financial institutions and unlisted debt securities.
  - 3.3. 'Default' for the purpose of this Section shall mean non-payment of the interest or principal amount in full on the date when the debt has become due and payable ('pre-agreed payment date').

Provided that for revolving facilities like cash credit, an entity would be considered to be in 'default' if the outstanding balance remains continuously in excess of the sanctioned limit or drawing power, whichever is lower, for more than 30 days.
- **Timing of disclosures:**
  - 4.1. Listed entities shall make disclosure of any default on loans, including revolving facilities like cash credit, from banks / financial institutions which continues beyond 30 days. Such disclosure shall be made promptly, but not later than 24 hours from the 30th day of such default.
  - 4.2. In case of unlisted debt securities i.e. NCDs and NCRPS, the disclosure shall be made promptly but not later than 24 hours from the occurrence of the default. This is in line with the existing disclosure requirements specified for listed debt instruments. Disclosures shall be made in the format(s) specified in paragraph 5 below.



## Insolvency and Bankruptcy Board of India

(Insolvency Resolution Process for Corporate Persons)  
(Second Amendment) Regulation, 2023

In exercise of the powers conferred under Section 196(1)(1) read with section 240 of the Insolvency and Bankruptcy Code, 2016, the Insolvency and Bankruptcy Board of India made the following amendment to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, namely:-

- i. These amendment shall come into effect from 18th September, 2023.
- ii. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, after regulation 2C, the following regulation shall be inserted namely:-

### **Regulation 2D: Details of debt, default and limitation in respect of applications under section 7 or section 9:**

While filing an application under section 7 or 9, the financial creditor or the operational creditor, as the case may be, shall also submit along with evidence:

- chronology of the debt and default including the date when the debt became due,
  - date of default,
  - dates of part payments, if any,
  - date of last acknowledgment of debt and
  - the limitation applicable.
- iii. After regulation 3, the following shall be inserted namely: -

### **Regulation 3A: Assistance and cooperation by the personnel of the corporate debtor:**

1. The interim resolution professional or resolution professional, as the case may be, shall take custody and control as specified under this regulation from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor as the case may be, of the following:-
  - a) the records of information relating to the assets, finances and operations of the corporate debtor referred in clause (a) of section 18 and such other information required under regulation 36;
  - b) the assets recorded in the balance sheet of the corporate debtor or in any other records referred in clause (f) of section 18.
2. The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall provide to the interim resolution professional or resolution professional, as the case may be, a list of assets and records while handing over their custody and control, and the interim resolution professional or resolution professional may, after taking such custody and control, if deemed necessary, identify person(s) in whose possession these assets and records will be held.
3. Where any asset or record has not been handed over or the list has not been provided under sub-regulation (2), the interim resolution professional or resolution professional, as the case may be, **shall himself prepare a list of assets and records** while taking custody and control of assets and records, and the interim resolution professional or resolution professional may, after taking such custody and control, if deemed necessary, identify person(s) in whose possession these assets and records will be held.
4. Each list of assets and records under sub-regulation (2) and (3) shall be signed by the parties present and by at least two individuals who have witnessed the act of taking control and custody of such assets and records.

5. The interim resolution professional or resolution professional, as the case may be, shall requisition from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor as the case maybe, the information relating to the assets, finances and operations of the corporate debtor referred in clause (a) of section 18 and such information required under regulation 36 which were required to be maintained by the corporate debtor but have not yet been handed over.
6. The interim resolution professional or resolution professional, as the 6e may be, shall requisition from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor as the case maybe, the assets which are recorded in the balance sheet or in any other records referred in clause (f) of section 18 and whose custody has not been handed over.
7. An application made under sub-section (2) of section 19 in respect of failure to provide any asset or record as requisitioned under the Code and this regulation, **shall show presence of such asset or record in the notice of requisition and absence of such asset or record in the list of assets and records taken in control and custody under sub-regulation (2) and (3).**

**iv. In Regulation 12** (New Timeline for Submission of Proof of Claim):

**For sub-regulation (1), the following shall be substituted:**

A creditor shall submit claim with proof on or before the last date mentioned in the public announcement.

Provided that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, as the case may be;



- up to the date of issue of request for resolution plans under regulation 36B or
- ninety days from the insolvency commencement date,

**whichever is later:**

Provided further that the creditor shall provide reasons for delay in submitting the claim beyond the period of ninety days from the insolvency commencement.

Sub-regulation (2) of Regulation 12 is omitted now because content of it is already mentioned in sub regulation (1).

**v. In regulation 13: New Categorization of claim as acceptable or non-acceptable after verification:**

After sub-regulation (1), the following shall be inserted namely:-

(1A) Where the interim resolution professional or the resolution professional, as the case maybe, does not collate the claim after verification, he shall provide reasons for the same.

(1B) In the event that claims are received

- **after the period specified under sub-regulation (1) of regulation 12 and**

- **up to seven days before the date of meeting of creditors for voting on the resolution plan or the initiation of liquidation**, as the case may be, the interim resolution professional or resolution professional, as the case may be, shall verify all such claims and categories them as acceptable or non-acceptable for collation.

(1C) The interim resolution professional or resolution professional, as the case may be, shall:-

- a) intimate the creditor within seven days of categorization thereof under sub-regulation (1B) and provide reasons where such claim has been categorized as non-acceptable for collation; and
- b) put up the claims categorised as acceptable under sub-regulation (1B) and collated by him to:-

- **the committee in its next meeting for its recommendation for inclusion in the list of creditors and its treatment in the resolution plan, if any; and**
- **submit such claims before the Adjudicating Authority for condonation of delay and adjudication wherever applicable.**

**iv. In regulation 16A:**

After sub-regulation (3), the following shall be inserted, namely: -

**Regulation 3A (New Provision for Replacement of Authorised Representative):** The financial creditors in the class, representing not less than ten per cent. 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 who shall circulate such request to the creditors in that class and announce a voting window open for at least twenty-four hours.

**Regulation 3B:** Subject to clauses (a) and (b) of sub-regulation (2) of regulation 4A, the interim resolution professional or resolution professional, as the case may be, shall offer **choice of at least three insolvency professionals to the financial creditors in the class including such insolvency professional(s) proposed under sub-regulation (3A) along with the existing authorised representative.**

**Regulation 3C:** The resolution professional shall apply to the Adjudicating Authority for appointment of the authorised representative who receives the highest percentage of voting share of financial creditors in that class".

**vii. In sub-regulation (8) of Regulation 16A: Newly Added provision of fees to AR of COC Meeting & Meeting of Class of Creditor**

The following shall be substituted: -

(a) The authorised representative of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in the following manner, namely: -

Number of creditors in the class	Fee per meeting of the committee(Rs.)
10-100	30,000
101-1000	40,000
More than 1000	50,000

(b) The authorised representative shall be entitled to receive fee for every meeting of the class of creditors convened by him in the following manner, namely: -

Number of creditors in the class	Fee per meeting of the committee(Rs.)
10-100	30,000
101-1000	40,000
More than 1000	50,000

© The payment of fee to authorised representative shall be part of insolvency resolution process cost in respect of two meeting with the creditors he represents corresponding to a meeting of the committee of creditors.

(d) The fee for any additional meeting beyond two meetings corresponding to a meeting of the committee of creditors shall be part of insolvency resolution process cost subject to approval of committee of creditors.

(viii) After sub-regulation (9) of Regulation 16A, three sub regulation has been inserted:

### Sub-regulation 10 (Enhanced Role Of Authorized Representative):

The authorised representative shall: -

- assist the creditors in a class he represents in understanding the discussions and considerations of the committee meetings and facilitate informed decision-making;
- review the contents of minutes prepared by the resolution professional and provide his comments to the resolution professional, if any;
- help the creditors in a class he represents during the consultations made by the resolution professional to prepare a strategy for marketing of the assets of the corporate debtor in terms of sub-regulation (1) of regulation 36C;
- work in collaboration with the creditors in a class he represents to enhance the marketability of the assets of the corporate debtor in terms of sub-regulation (3) of regulation 36C;
- assist the creditors in a class he represents in evaluating the resolution plans submitted by resolution applicants;
- ensure that the creditors in a class he represents have access to any information or documents required to form an opinion on issues discussed in the committee meetings;
- update regularly the creditors in a class he represents on the progress of the corporate insolvency resolution process;
- make suggestions for modifications of the resolution plan as may be required by the creditors in class he represents;
- record proceedings and prepare the minutes of the meeting with the creditors in a class he represents; and
- act as a representative for the creditors in a class he represents in representations before the Adjudicating Authority, National Company Law Appellate Tribunal, and other regulatory authorities.

**Sub-regulation 11: The provisions regarding minutes of meetings in this regulation shall apply mutatis mutandis for clause (i) of sub-regulation (10).**

**Sub-regulation 12: The creditors in a class may propose any additional responsibility upon the authorised representative in relation to the representation of their interest in the committee.**

**(ix) In regulation 28, the sub-regulation (1) shall be substituted:**

**Timeline for providing information regarding transfer of debt:**

In the event a creditor assigns or transfers the debt due to such creditor to any other person during the insolvency resolution process period, both parties shall, within seven days of such assignment or transfer, provide the interim resolution professional or the resolution professional, as the case may be, the terms of such assignment or transfer and the identity of the assignee or transferee.

**(x) After regulation 30A, the following regulation shall be inserted, namely: -**

**Regulation 30B: Audit of corporate debtor**

- (1) Any member(s) of the committee may propose an audit of the corporate debtor along with the objectives, scope, estimate of the costs, timeframe and name(s) of the proposed auditor(s).
- (2) A proposal made under sub-regulation (1) shall be considered as per sub-regulation (3) of regulation 18 and an audit shall be conducted if such proposal is approved by the committee.
- (3) The audit shall be conducted by an insolvency professional having qualifications required for such audit.
- (4) The auditor shall prepare a report detailing his findings and the same shall be presented before the committee along with the comments of the interim resolution professional or the resolution professional, as the case may be.
- (5) The expenses of such audit shall be treated as insolvency resolution process costs.



**(xi) In regulation 36B (Request for Resolution Plan):**

For sub-regulation (1), following shall be substituted, namely: -

The resolution professional shall, within five days of the date of issue of the final list(earlier within 5 days of issue of Provisional List) under sub-regulation (12) of regulation 36A, issue:

- the information memorandum,
- evaluation matrix and
- a request for resolution plans

**to every resolution applicant in the final list:**

Provided that where such documents are available, the same may also be provided to every prospective resolution applicant in the provisional list.

**(xii) In regulation 40A (Model Timeline for CIRP):**

In the table, for the row relating to Regulation 36B, the following shall be substituted, namely: -

Section / Regulation	Description of Activity	Norm	Latest Timeline
Regulation 36B	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the final list	T+105
	Receipt of Resolution Plans	At least 30 days from issue of RFRP (Assume 30 days)	T+135

**xiii) In Regulation 40B:**

In sub-regulation (1A) of Regulation 40B, in the table, for row at SL. 3 & 4, the following shall be substituted as under, namely:-

Sl.	Activity requiring filing of Form CIRP 7, if not completed by the specified date	Timeline for filing Form CIRP 7 for the first time	Timeline for subsequent filing of Form CIRP 7
3	Information memorandum is not issued within 92 days from the date of public announcement	column (2) + 3 days	X+90th day, and so on, till the activity is completed.
4	RFRP is not issued within 10 days from the date of issue of information memorandum to the committee]		
5	CIRP is not completed by T+180th day		

**(xiv) In Schedule I of the Regulation a new version of FORM G is published.**



## CASE LAW

- **SMBC Aviation Capital Ltd. Vs. Interim Resolution Professional of Go Airlines (India) Ltd. [CA (AT) (Ins.) No. 593, 603, 604 & 615 of 2023]**

The lessors of the aircraft objected to the admission of the application of CD under Section 10 on the ground that no notice to creditors was given and the corporate applicant filed the application with malicious intention. The AA while passing admission orders observed that the Code does not mandate serving notice to the creditors. It also held that Section 65 application can be adjudicated even after admission. Aggrieved by the order of AA, the lessors filed appeal before the NCLAT. The main issues for consideration before NCLAT were whether (a) the service of notice to creditors prior to the orders of admission is mandatory, (b) the opportunity to file an application under Section 65 be afforded before admitting the application, and (c) if the lessors cancel the lease agreement with the CD before passing orders of admission of corporate applicant, will the moratorium under Section 14 apply to the assets of the lessor yet to be transferred from the CD? The appellate Tribunal, while disposing the appeal, observed that neither the Code nor regulations obligate the AA to issue prior notice to creditors; however, AA should hear the objectors at the time of admission before taking appropriate decision.

It held that Section 65 applications can be filed after admission of application of the corporate applicant into CIRP, as no malicious or fraudulent intention can be established in the facts of the present case. Regarding the application of moratorium on the leased assets, the matter was reverted to AA for decision.

## CASE LAW

- **Kapil Wadhawan Vs. Piramal Capital & Housing Finance Ltd. & Ors. [CA (AT) (Ins.) No. 437 of 2023]**

RBI initiated CIRP against Dewan Housing Finance Corporation Limited (DHFL/CD) and appointed an Administrator. During the CIRP, the Administrator filed applications seeking avoidance of certain transactions undertaken by DHFL. Subsequently, Piramal Capital & Housing Finance Ltd. Emerged as SRA. The resolution plan included a clause stating that the SRA would pursue the avoidance applications filed by the Administrator. Thereafter, by the orders of AA, SRA was substituted in the name of Administrator in the avoidance applications. Appellant, the ex-promoter of CD, filed an appeal. The NCLAT, while dismissing the appeal held that the SRA should be permitted to pursue the avoidance applications, which were filed by the erstwhile Administrator and were pending before the AA. It further observed that as per Section 26 of the Code avoidance applications do not affect the proceeding of the CIRP and can continue post completion of CIRP.





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