# Editor’s Note

# This edition of our Corporate and Commercial Law Bulletin brings to the reader major judgments from commercial courts/tribunals of India and the recent notifications from regulatory bodies such as the Ministry of Corporate Affairs (MCA) and Securities and Exchange Board of India (SEBI) to better equip the reader with the current corporate & commercial legal scenario.

# Regulating the regulators - from the Supreme Court deciding on a dispute between the Regulator (SEBI) and Reliance Industries, to a power struggle in the Delhi High Court between Estonian ‘Bolt Technology OU’ and Indian ‘Ujoy Technology’ over rights for the word ‘BOLT’ on their products.

# To dissecting the recently amended guidelines for usage of unused funding in the Corporate Social Responsibility (CSR) Policy and a plethora of other judgements, we have attempted to compile and put forward the recent updates in the domain of corporate law and decisions from various tribunals like National Company Law Tribunal (NCLT) and Income Tax Appellate Tribunal (ITAT) across the nation.

We hope that you find the following read insightful in enhancing your knowledge of the corporate law domain. Happy and meaningful reading!

# Supreme Court (SC) Judgements

1. **"Regulator Has To Act Fairly": Supreme Court** [**orders**](https://www.livelaw.in/top-stories/sebi-reliance-supreme-court-directs-disclose-complaint-securities-exhange-board-india-205842) **SEBI to disclose fact-finding documents to Reliance Industries with complaint-filing materials**

In the case of[**Reliance Industries Limited** (hereinafter referred as RIL) **v. Securities and Exchange Board of India** (hereinafter referred as SEBI) **& Ors**](https://main.sci.gov.in/pdf/jud/05082022_125723.pdf)**[[1]](#footnote-1)**, a division bench of the Supreme Court observes that the SEBI is bound to act fairly and in a transparent manner which is in line with the Principles of natural justice. SEBI was asked to share a copy of certain opinion documents to RIL which it was reluctant to share, as those opinions were in regard to certain fraudulent share transactions of RIL in 1994.

**Brief facts**

The issue relates back to 1994 when around 12 crore equity shares of RIL were allotted fraudulently to entities allegedly connected with the promoters of RIL. SEBI initiated a probe into these share transactions and sought the opinion of former Supreme Court Justice BN Srikrishna (Retd.) twice and a reputed Chartered Accountant, YH Malegam.

RIL filed for disclosure of these documents which the SEBI turned down. Consecutively, a writ petition was filed before the High Court of Bombay which was dismissed in February 2019. A Special Leave Petition (SLP) was filed before the Supreme Court to take up the matter.

Subsequently, SEBI filed a complaint in the Court of SEBI Special Judge, Mumbai for violation of Companies Act, 1957 and SEBI Regulations. The Special Court dismissed the complaint as being barred by limitation. This order was challenged by SEBI in a Criminal Revision Application before the High Court of Bombay.

Through an interim application, RIL filed for disclosure of the reports by Justice BN Srikrishna (Retd.) and Sh.YH Malegam. The HC refused to adjudicate on this application stating that it cannot be decided without hearing the main revision application. RIL challenged this order through an SLP before the Supreme Court.

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**SEBI’s arguments**

The argument of SEBI is that the documents can be sought only under [Section 207 of the Code of Criminal Procedure, 1973](https://indiankanoon.org/doc/1613898/) after the criminal court takes cognizance of the complaint.

The SEBI also placed reliance on [Section 129 of the Indian Evidence Act,1872](https://indiankanoon.org/doc/1912727/) which prohibits compulsion to disclose confidential communications with legal advisors.

**Reasoning of the Apex Court**

The Bench after hearing the arguments stressed on the fact that it is the duty of the Regulator to act fairly. The role of a Regulator is to deal with complaints and parties in a fair manner, and not to circumvent the rule of law for getting successful convictions. Keeping a party abreast of the information that influenced the decision promotes transparency of the judicial process, the Court added.

The Court also opined that legal privilege is not applicable in the instant case, as the legal opinion was part and parcel of the investigation.

**Case referred**

The court referred to the recent decision of [**S.P. Velumani v. Arappor Iyakkam and Ors. (Criminal appeal no. 867 of 2022)**](https://main.sci.gov.in/supremecourt/2021/28774/28774_2021_1_1502_36050_Judgement_20-May-2022.pdf) in which the court directed to share the preliminary investigation report with the accused. Relying on the judgement, it rejected the contention of SEBI.

The court referred to the law laid down in T. Takano v. Securities and Exchange Board of India[[2]](#footnote-2), which establishes a general obligation of disclosure on part of SEBI. The court held in the Takano case that there are three fundamental purposes of disclosure of information: (i) reliability, (ii) fair trial and (iii) transparency and accountability. The purpose of disclosure of information is towards fulfilling a larger institutional purpose of fair trial and transparency.

**Judgement**

The court allowed the appeal and directed SEBI to furnish a copy of the following documents to RIL:

First opinion of Justice B.N. Srikrishna (Retd.).

Second opinion of Justice B.N. Srikrishna (Retd.).

Report of Y.H. Malegam.

**Analysis**

Regulators like SEBI should avoid unnecessary criminal actions against large corporations as such conduct can cause adverse economic consequences in the country.

Also, the regulatory bodies need to act in a fair and transparent manner as their actions are tied to the Principles of Natural Justice.

**2.** [**Court cannot modify the award passed by the Arbitrator under Section 34 or Section 37 of the Arbitration and Conciliation Act: Supreme Court reiterated**](https://www.livelaw.in/top-stories/supreme-court-arbitration-section-34-modify-award-remand-national-highways-authority-of-india-vs-p-nagaraju-cheluvaiah-2022-livelaw-sc-584-203587#:~:text=The%20Supreme%20Court%20observed%20that,Banerjee%20and%20AS%20Bopanna%20said.)

In the case of [**National Highway Authority of India v. Sri P. Nagaraju @ Cheluvaiah & Anr**](https://main.sci.gov.in/supremecourt/2021/26866/26866_2021_4_1502_36260_Judgement_11-Jul-2022.pdf)[[3]](#footnote-3), a division bench of the Supreme Court held that a Court can only set aside the award passed by the Arbitrator and remand the matter but cannot modify the award.

**Facts**

The Supreme Court was considering appeals filed by the National Highways Authority of India ('NHAI') against the decision of the High Court of Karnataka which upheld the award passed by Deputy Commissioner and Arbitrator, National Highway – 275 (land acquisition), and Deputy Commissioner-1 and Arbitrator Bengaluru Urban District, to enhance the compensation from Rs.2026/- per sq. mtr and Rs.17,200/- determined by the Special Land Acquisition Officer ('SLAO' for short) to Rs.15,400/- per sq. mtr and Rs.25,800/- respectively.

**Issues Raised:**

Whether an appropriate consideration has been made by the Arbitrator in the matter of applying the market value notified as a guideline value under the notification dated 28.03.2016.

Whether the guideline value fixed in respect of 'City Greens' and 'Zunadu' being applied automatically to the land in question was justified**.**

**Observations of the Apex Court:**

The Arbitrator has not indicated sufficient reasons which indicate patent illegality in the award being contrary to [Section 28(2)](https://indiankanoon.org/doc/279624/#:~:text=Free%20for%20one%20month%20and%20pay%20only%20if%20you%20like%20it.&text=(2)%20The%20arbitral%20tribunal%20shall,authorised%20it%20to%20do%20so.) and [31(3)](https://indiankanoon.org/doc/193987/) of [Arbitration and Conciliation Act, 1996](https://www.indiacode.nic.in/bitstream/123456789/1978/1/AAA1996__26.pdf).

Reliance placed on the guideline value notification dated 28.03.2016 for reckoning the market value of the property acquired under the preliminary notification dated 01.02.2016 by itself cannot be accepted to be a patent illegality committed by the Arbitrator.

Appropriate reasons have not been indicated by the Arbitrator to arrive at the conclusion to uniformly adopt the value of Rs.15,400/- per sq.mtr fixed in respect of lands in a layout which was separately indicated in the notification.

The Hon’ble Supreme Court thus allowed the appeal and stated:

*"That being the fact situation and also the position of law being clear that* ***it would not be open for the court in the proceedings under*** [***Section 34***](https://indiankanoon.org/doc/536284/) ***or in the appeal under*** [***Section 37***](https://indiankanoon.org/doc/772406/) ***to modify the award, the appropriate course to be adopted in such event is to set aside the award and remit the matter to the learned Arbitrator*** *in terms of* [*Section 34(4)*](https://indiankanoon.org/doc/982095/) *to keep in view these aspects of the matter and even if the notification dated 28.03.2016 relied upon is justified since we have indicated that the same could be relied upon, the further aspects with regard to the appropriate market value fixed under the said notification for the lands which is the subject matter of the acquisition or comparable lands is to be made based on appropriate evidence available before it and on assigning reasons for the conclusion to be reached by the learned Arbitrator. In that regard, all contentions of the parties are left open to be put forth before the learned Arbitrator."*

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# High Court (HC) Judgements

1. [**Section 2(31) the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014 are not applicable retrospectively : Delhi High Court**](https://www.livelaw.in/news-updates/s231-companies-act-2013-which-defines-deposit-does-not-operate-retrospectively-delhi-high-court-204444)

In the case of [Nitin Rekhan v. Union of India & Ors](https://delhicourts.nic.in/High%20Court%20Judgements/July22/NITIN%20REKHAN%20%20vs.%20uoi.pdf).[[4]](#footnote-4), a single judge bench of Justice Chandra Dhari Singh held that the Companies Act, 2013 (hereinafter referred to as “The Act”) and the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter “2014 Rules”) cannot have retrospective application with respect to a Share Purchase Agreement (SPA) in 2010.

**Facts**

The Petitioners paid Rs. 40,00,000 to the Respondent Company for the issuance of shares in the said company, but the Respondent failed to allot the shares and returned the amount to Petitioners. The Petitioner filed an online complaint before the Registrar of Companies alleging that the Respondent has failed to repay the interest accrued on the amount as per [Rule 17 of the Companies (Acceptance of Deposits) Rules, 2014](https://ca2013.com/wp-content/uploads/2016/08/The-Companies-Acceptance-of-deposits-rules-2014-dated-31032014.pdf). The Petitioner prayed to prosecute the Respondent under [Section 73](https://indiankanoon.org/doc/1353758/) and [Section 76A](https://indiankanoon.org/doc/477725/) of the Act.

 **Petitioner’s Contentions**

The counsel for the Petitioner stated that according to the definition of the term “deposit” as per [Section 2(31) of the Act](https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf) includes any receipt of money by way of deposit or loan or in any other form by a company.

[Rule 2(1)(C) of the 2014 Rules](https://ca2013.com/rule/rule-21c-companies-acceptance-of-deposits-rules2014/), defines the term "deposit" and excludes various amounts received by a Company from the ambit of Deposit which shall not be considered as deposits.

He further submits that under the provisions of [Rule 2(1)(c)(vii) of the 2014 Rules](https://ca2013.com/rule-2-companies-acceptance-of-deposits-rules-2014/), the money paid towards the share application for allotment was to be treated as deposits if the said money was not refunded within 60 days from acceptance.

 **Respondent’s Arguments**

The counsel for the Respondent stated that the payments made by the Petitioner for allotment of shares in the Respondent Company were done in 2010, which falls under the Companies Act, 1956 r/w the Companies (Acceptance of Deposits) Rules, 1975 and not under the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014 respectively.

A [General Circular](https://www.mca.gov.in/Ministry/pdf/General_Circular_5-2015.pdf) issued by the Ministry of Corporate Affairs on 30th March 2015 stated that the amount received by a private company prior to 1st April 2014 shall be governed by the Act of 1956, and not the Companies Act, 2013.

**Judgement**

The definition of “deposit” under [Section 2(31) of the Companies Act, 2013](https://ca2013.com/section-231-deposit/) which came into force from 1st April 2014 could not be applied retrospectively as the Share Purchase Agreement (SPA) was entered into by the parties in 2010. Thus, the Act of 1956 and the Rules of 1975 were applicable here.

**Analysis**

The aforementioned 2014 Rules cannot be applied to the sum in question. Additionally, it was observed that the share application money provided by the Petitioner for the allotment of shares cannot be classified as "deposits" in accordance with Rule 2(b)(vii) of the Companies (Acceptance of Deposits) Rules, 1975 read in conjunction with [General Circular No. 15/2015.](https://www.mca.gov.in/Ministry/pdf/General_Circular_5-2015.pdf)

1. [**A Single Judge Bench is established by the Karnataka High Court to hear appeals of International Commercial Arbitral awards**](https://www.livelaw.in/news-updates/karnataka-high-court-arbitration-and-conciliation-act-international-arbitration-commercial-courts-act-international-commercial-arbitral-award-section-37-of-the-ac-act-200613)

In the case of [ITI Limited v. Alphion Corporation & Anr](https://karnatakajudiciary.kar.nic.in/judgements/Comm-Ap-No-32-2022.pdf)[[5]](#footnote-5), the Karnataka High Court has held that a Commercial Division must be constituted even with regard to a High Court that does not exercise an Ordinary Original Civil Jurisdiction in order to examine applications and appeals resulting from an International Commercial Arbitration.

**Brief Facts**

ITI Ltd. and Alphion Corporation had conflicts over a Technology Collaboration Agreement (TCA). An Arbitration was requested to resolve the conflict. The award was in Alphion's favour and ITI appealed the decision under [Section 34 of the](https://indiankanoon.org/doc/536284/) [Arbitration and Conciliation Act](https://indiankanoon.org/doc/772406/)[, 1996](https://indiankanoon.org/doc/536284/) to the Commercial Appellate Division of the Karnataka High Court.

**Contention of Appellant**

The Chief Justice of the High Court may establish Commercial Division for this purpose in all High Courts with Ordinary Original Civil Jurisdiction, according to Sr. Adv C.K. Nandakumar, appearing on behalf of ITI Ltd. The Chief Justice of the High Court, he said, has the authority to create a Commercial Appellate Division with Division Benches in accordance with [Section 5 of Commercial Courts Act, 2015.](https://legislative.gov.in/sites/default/files/A2016-4_1.pdf)

He argues that the complexity arises because [Section 10 of the Commercial Courts Act, 2015](https://legislative.gov.in/sites/default/files/A2016-4_1.pdf) does not provide for a case where a Commercial Division is not established in the High Court.

He further argued that [Section 37 of the Arbitration and Conciliation Act,1996](https://indiankanoon.org/doc/772406/) begins with a non-abstaining provision, "Notwithstanding anything contained in any other law for the time being", thus providing that an appeal "shall" be against an order set aside or a refusal to set aside an arbitration award under [Section 34](https://indiankanoon.org/doc/536284/) to a Court authorized by law to hear appeals from the Court's original orders Issue Order.

**Judgment**

The Court, after hearing arguments, ordered that a challenge to an award made in an International Commercial Arbitration could be brought before the High Court of Karnataka under [Section 2(e)(ii) of the Arbitration and Conciliation Act,1996.](https://www.indiacode.nic.in/bitstream/123456789/1978/1/AAA1996__26.pdf) He further noted that under [Section 10(1) of the Commercial Courts Act](https://legislative.gov.in/sites/default/files/A2016-4_1.pdf), a challenge to the award have to be considered by a Commercial Division established in the High Court consisting of a Single Judge, thereby the court directed the registry place the order before the Chief Justice in the administrative side to pass orders in this regard.

In response, the Chief Justice issued a circular establishing a single-judge bench to hear appeals of verdicts in International Commercial Arbitration.

**Analysis**

Although it might not have ordinary original jurisdiction, a challenge to an International Commercial award will be heard by a Single Judge of the Commercial Division of a High Court.

3. [**Satisfaction of pre-litigation mediation is necessary for issuance of correspondence for amicable resolution of disputes**](https://www.livelaw.in/news-updates/urgent-interim-relief-ipr-cases-delhi-high-court-208076) **under Section 12A the** [**Commercial Courts Act, 2015**](https://www.livelaw.in/news-updates/urgent-interim-relief-ipr-cases-delhi-high-court-208076) **- Delhi HC**

A Single Judge Bench of the Delhi High Court in case of [Bolt Technology OU. v. Ujoy Technology Private limited](http://livelaw.in/pdf_upload/pms29082022sc5822022152940-433129.pdf)[[6]](#footnote-6),held that urgent interim relief is important in Intellectual Property Rights (IPR) since it not merely protects the rights of the party, but also of the customer and services involved.

**Facts**

A suit was filed by Bolt Technology OU (“Bolt") seeking permanent injunction against the Ujoy Technology for the infringement of trademark and copyright. They used the identical mark ‘BOLT’, along with the logo, in relation to the identical business of the provision of charging points for Electric Vehicles (EVs). An application was filed by Bolt Technology seeking exemption from [Section 12A of the Commercial Courts Act, 2015 (](https://legislative.gov.in/sites/default/files/A2016-4_1.pdf)hereinafter CCA’) for instituting pre-litigation mediation.

**Defendant’s Arguments**

Defendant relied on the judgement [Patil Automation Private Limited & Ors. V. Rakheja Engineers Private Limited](https://indiankanoon.org/doc/164693074/)[[7]](#footnote-7), wherein it was held by the Supreme Court that [Section 12A of the CCA](https://legislative.gov.in/sites/default/files/A2016-4_1.pdf), [2015](https://legislative.gov.in/sites/default/files/A2016-4_1.pdf) is mandatory and no suit can be instituted without exhausting the pre-litigation mediation first. Further, the Supreme Court held that it is not merely a procedural law and if [Section 12A](https://legislative.gov.in/sites/default/files/A2016-4_1.pdf) is violated in any case then through O[rder VII Rule 11 of the Code of Civil Procedure](http://tnsja.tn.gov.in/article/order_vii_rule11.pdf) , the suit will be rejected.

**Contentions of Plaintiff**

Plaintiffs argued that the same judgement also stated that a lawsuit might be filed without using pre-litigation mediation if an urgent interim relief was required. Plaintiffs claimed that if a resolution could be proposed, the dispute might be resolved peacefully in the cease-and-desist notification sent to Defendants.

**Judgement**

The Court observed that by the defendant using an identical mark ‘BOLT’ which is available on both Google Play and Apple App Store, consumers could download ‘Bolt’ and ‘BOLT’ which infringe the rights of the petitioner. The Court further noted that the Defendant has termed the legal notice as a “frivolous notice” when Bolt submits an amicable resolution.

The court was yet to observe the application seeking interim injunction, however the Defendant willing to ascertain the amicable resolution of the dispute, matter was referred to the Delhi High Court Mediation and Conciliation Centre.

**Analysis**

[Section 12A of the Commercial Courts Act, 2015](https://legislative.gov.in/sites/default/files/A2016-4_1.pdf)  provides a remedy when the mediation process is misused by the Defendants to delay the Plaintiffs from obtaining any relief Further, the Court’s aim is to avoid confusion, deception, unfair and fraudulent practices in the marketplace.

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# NCLAT Judgments

**1.** [**Debtors' status arrived at finality cannot be modified: NCLAT Delhi**](https://www.livelaw.in/news-updates/nclat-delhi-section-7-of-insolvency-and-bankruptcy-code-corporate-debtor-financial-creditor-207834)

In the case of [**Raghavendra G Kundangar & Ors v. Shashi Agarwal & Anr**](https://ibbi.gov.in//uploads/order/431abc51735762435f5f893a37b675f0.pdf)[[8]](#footnote-8) dated August 24, 2022, the NCLAT bench comprising of Ashok Bhushan, J., M Satyanarayana Murthy, J.and Mr. Barun Mitra(TM), applied the *Doctrine of Prospective Overruling* while observing that when the quality of a debtor becomes final, it cannot be modified on the basis of a subsequent judgement in different proceedings.

**Facts of the Case**

* Jindal Steel & Power Ltd. claiming to be Financial Creditor of Bharat NRE Coke Ltd. filed an application under [Section 7 of the Insolvency and Bankruptcy Code, 2016](https://ibbi.gov.in/webadmin/pdf/legalframwork/2019/Mar/Application_to_Adjudicating_Authority_Rules-upto%2019.03.2019_2019-03-28%2013%3A12%3A13.pdf) for the commencement of Corporate Insolvency Resolution Process (CIRP) against the debtor company, claiming that there was an ongoing financial debt relating to the supply of equipment to the company.
* Thereafter, various appeals which were preferred by the appellants along with other appeals in the matters of [**Arun Kumar Jagatramka v. Jindal Steel**](https://www.livelaw.in/pdf_upload/arun-kumar-jagatramka-vs-jindal-steel-and-power-ltd-ll-2021-sc-160-390582.pdf) **&** [**Power Limited**](https://cdn.ibclaw.online/insolvency/nclat/2019/July/Suraksha%2BAsset%2BReconstruction%2BPvt.%2BLtd.%2BVs.%2BJindal%2BSteel%2Band%2BPower%2BLimited%2B%26%2BAnr.%2B-%2BNCLAT%2BNew%2BDelhi.pdf)**[[9]](#footnote-9)** [**and Suraksha Asset Reconstruction Limited v. Jindal Steel & Power Limited**](https://cdn.ibclaw.online/insolvency/nclat/2019/July/Suraksha%2BAsset%2BReconstruction%2BPvt.%2BLtd.%2BVs.%2BJindal%2BSteel%2Band%2BPower%2BLimited%2B%26%2BAnr.%2B-%2BNCLAT%2BNew%2BDelhi.pdf)**[[10]](#footnote-10)**, and were dismissed by the Apex Court.
* However, in the case of[**Anuj Jain v. Axis Bank Limited**](https://main.sci.gov.in/supremecourt/2019/35907/35907_2019_7_1501_20906_Judgement_26-Feb-2020.pdf)**[[11]](#footnote-11)**the Supreme Court ruled that the person who supplied material is not a financial creditor but an operational creditor.
* Based on the decision in the Anuj Jain case, the appellants filed an application for recalling the order of the NCLT.

**The Matter in Question**

Whether the order passed by NCLT can be set aside on the ground of the decision taken by the Supreme Court in [**Anuj Jain v. Axis Bank Limited**](https://main.sci.gov.in/supremecourt/2019/35907/35907_2019_7_1501_20906_Judgement_26-Feb-2020.pdf)[[12]](#footnote-12).

**Contentions of the Appellant**

The plaintiff argued that once the NCLAT decision which was upheld by the Supreme Court is reversed in the subsequent judgement, then the order passed by the NCLT for initiation of Corporate Insolvency Resolution Process (CIRP) becomes bad in law. It was held that when an argument is set aside it will have retrospective effect and that NCLT also has no inherent jurisdiction.

**Judgement Cited**

The Supreme Court's ruling in [**Sri Budhia Swain v. Gopinath Deb & Ors**](https://main.sci.gov.in/jonew/judis/16838.pdf).[[13]](#footnote-13) was cited in the present case where it was held that an order can be cancelled only under the following four instances:

1. The proceedings result in an order suffering from an inherent lack of jurisdiction and this lack of jurisdiction is manifest.

2. There is fraud or collusion;

3. There has been an error by the court;

4. A judgement was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

The Bench concluded that in the present case, none of the four instances outlined in above mentioned case were satisfied since the appellants did not establish that the NCLT manifestly lacked inherent jurisdiction or that the order was acquired through fraud or collusion.

**Conclusion**

The Hon'ble NCLAT emphasised that the law as stated by the Apex Court shall be implemented by the subordinate courts and tribunals as of the day it was determined and that any judgement that has reached finality based on the law in effect at the time, as well as any rights and liabilities decided in a prior judgement, would not be impacted by a subsequent judgement.

**2.** [**NCLAT Delhi rescinded liquidation order, giving additional opportunity for inviting resolution plans**](https://www.livelaw.in/news-updates/nclat-delhi-section-7-of-the-insolvency-and-bankruptcy-code-corporate-insolvency-resolution-process-cirp-committee-of-creditors-208957)

In the case of [**Nikhil Tandon v Sanjeev Bindal & ors**](https://ibbi.gov.in/uploads/order/1738b5cb04ce2d7701e72cbb65544721.pdf),[[14]](#footnote-14) the Principal Bench of the NCLAT comprising of Justice Ashok Bhushan and Mr. Brun Mitra cancelled a winding-up order of the debtor company and gave an additional opportunity for the Committee of Creditors (CoC) and the Resolution Professional to check whether there may be a resolution plan to revive the debtor company.

**Facts of The Case**

* A petition was filed by the Small Industries Development Bank of India (SIDBI) under [Section 7 of the Insolvency and Bankruptcy Code, 2016,](https://ibbi.gov.in/webadmin/pdf/legalframwork/2019/Mar/Application_to_Adjudicating_Authority_Rules-upto%2019.03.2019_2019-03-28%2013%3A12%3A13.pdf) for the enforcement of Corporate Insolvency Resolution Process (CIRP) against the Debtor company, and the Debtor company was admitted to the same.
* At the 5th meeting of the CoC, it was decided to liquidate the operation of the debtor company.
* During the 6th meeting of the CoC, the suspended director of the debtor company submitted a resolution plan before CoC claiming to be an MSME and hence eligible to submit a plan.
* In the Agenda Item No. 12, in the 6th meeting, the CoC and Resolution Professional advised the Appellant to file Resolution Plan by August 14, 2020.
* In the 8th meeting, it was found that the appellant is not an MSME and no Resolution Plan was invited. Therefore, CoC has decided that Appellants' plan cannot be deliberated as the Appellant was not entitled to submit the Resolution Plan.
* Subsequently the resolution professional submitted a request for liquidation of the debtor company to the contracting authority and the latter approved the liquidation. The appellant appealed to NCLAT challenging the liquidation order.

**Issue Raised**

Whether the decision taken by the Committee of Creditors (CoC) to liquidate the debtor company is a sustainable decision?

**NCLAT Decision**

It was decided in the 5th meeting of the CoC to liquidate the debtor company and in the 6th meeting, the appellants’ request to submit a resolution plan was approved. It cannot be said that the appellant was not invited to submit a Resolution Plan when the appellant was expressly allowed to do so at the CoC meeting.

The IBA provides for special protection of MSME companies by inserting Section 240A. The non-acceptance of a debtor company as a registered MSME is a material irregularity that has been committed in the CIRP. The Bench also held that the CoC’s decision to liquidate the debtor company cannot be considered sacred. When the CoC allowed the appellant to file a resolution plan, the decision to liquidate the debtor company was not pursued.

**Conclusion**

The Tribunal held unequivocally that it was not passing judgement on the merits of the Resolution Plan that the Appellant previously filed or that may be offered in response to this ruling. The Court noted that the CoC must evaluate the Appellant's Resolution Plan in comparison with other Resolution Plans in accordance with the law. The Resolution Professional and the CoC were directed to complete the whole procedure stated above within 90 days of the order being passed and may also file an appropriate application with the Adjudicating Authority for any subsequent stages in CIRP, which may be considered in accordance with the provisions of the Code.

# Income Tax Appellate Tribunal (ITAT) Judgments

**1.** [**Penalty levied by SEBI for shortfall of margin money eligible for deduction under Section 37 :ITAT**](http://livelaw.in/news-updates/income-tax-appellate-tribunal-itat-securities-and-exchange-board-of-india-sebi-section-371-of-the-income-tax-act-206383#:~:text=ITAT%20Allows%20Deduction%20On%20Penalty%20Levied%20By%20SEBI%20For%20Shortfall%20In%20Margin%20Money,-Mariya%20Paliwala&text=The%20Mumbai%20Bench%20of%20the,a%20shortfall%20in%20margin%20money.)

In the case of [**DJS Stock and Shares Ltd. v DCIT**](https://www.livelaw.in/pdf_upload/1658816761-648-djs-stock-and-shares-2-1-430131.pdf), dated 22nd July, 2022, the Mumbai Bench of the Income Tax Appellate Tribunal (ITAT) comprising of B.R Baskaran (Accountant Member) observed that penalty levied by SEBI for the shortfall in margin money is eligible for Deduction under the [Section 37 of the Income Tax Act](https://incometaxindia.gov.in/_layouts/15/dit/pages/viewer.aspx?grp=act&cname=cmsid&cval=102120000000073607&searchfilter=%5B%7B),1995. The shortfall in margin money cannot be considered a penalty for violation of any other law falling under Section 37(1) of the Income Tax Act.

**Brief Facts**

* DJS Stock and Shares Ltd (Appellant Company) is engaged in the business of share broking and trading of shares and securities.
* During the year under consideration the Assessee Company paid an estimated sum of Rs 3,69,661 as a penalty to the stock exchange.
* The Income Tax Assessing Officer disallowed the claim by stating that the penalty is not allowable as a deduction.

**Issue Raised**

The issue raised here relates to the disallowance of the sum of Rs 3,69,661 being the penalty for maintaining short margins by the stock exchange.

**Contentions of appellant**

The assessee held that the company was required to maintain margin money in the Stock Exchange. Whenever the margin money falls short the appellant company has to keep good on the same immediately otherwise the Stock Exchange will levy a penalty upon the assessee. The Stock Exchange may levy a penalty for the shortfall in margin money for the practice of disciplining its members. Such a penalty is levied as per the terms and conditions entered with the stock exchange by its members.

**Judgment**

The ITAT allowed the appeal of the assessee by quashing the order of the Commissioner of Income Tax (Appeals) [CIT(A)] and directed the assessing officer to delete the disallowance.

**Conclusion**

 The SEBI charges a penalty upon the shortfall in the margin money and not for infraction of law. Accordingly, the said payment cannot be held as a penalty for violation of law under Section 37(1) of the Act. In a similar case of **Stock & Bond Trading Co**.[[15]](#footnote-15)it was held that the amount is allowable as a deduction. Hence, the appeal filed by the assessee is allowed.

**2.** [**If no incriminating material is found during search, then no addition can be made under sections 153A and 153C of ITA**](http://livelaw.in/news-updates/delhi-high-court-income-tax-act-income-tax-additions-assessing-officer-itat-205490)**: Delhi High Court**

In the case of **PCIT v. Mamta Agarwal**[[16]](#footnote-16) dated 14th July 2022, a Delhi High Court bench consisting of Justice Manmohan and Justice Manmeet Preetam Singh Arora held that if no incriminating material is found during the course of the search, then no addition can be made in the assessment under Sections 153A and 153C of the Income Tax Act,1995 (ITA).

**Facts in Brief**

* The Investigation Wing of the Income Tax Department carried out a search operation against M/s K. R Pulp & Papers ltd under Section 132(1) of the ITA. The said company was managed by Shri Madho Gopal Agarwal and Shri Gopal Agarwal.
* The statements of Shri Madho Gopal Agarwal and Shri Gopal Agarwal were recorded during a post search inquiry.
* A notice under Section 153A of the ITA was issued by the Assessing Officer and in response to that the assessee filed Income Tax Return containing an income of Rs 5,40,550.
* The Assessing Officer after reference to the recovered documents during the raid, made additions to the income of assessee under Section 69B and Section 68 of the ITA.
* Aggrieved by this, the assessee filed an appeal before the Commissioner of Income Tax.

**Matter in question**

Whether the statement under [Section 132(4)](https://indiankanoon.org/doc/1006941/) constitutes incriminating material for carrying out an assessment under [Section 153(A)](https://indiankanoon.org/doc/581124/) of the Act

**Contentions of appellant**

The counsel for the appellant stated that vide order on 17th July 2018, the Commissioner of Income Tax (Appeals) [CIT(A)] allowed the appeal of the assessee. It deleted the additions and held that in the absence of any incriminating material, the Assessing Officer cannot reappraise and review the already settled and completed assessment issues before the search under Section 153A of the Act.

**Judgment**

The ITAT concluded that additions made by the Assessing Officer for the assessment year was not based on any incriminating material. The ITAT observed that the original return of income was filed by the assessee for the assessment year under appeal. The ITAT therefore, held that any additions over and above the earlier assessed income could not be made in the absence of any incriminating material found during the course of search. The appeal was accordingly dismissed with reference to a group of cases including **ACIT v. Madho Gopal Agarwal[[17]](#footnote-17)** and **ACIT v. Kapis Impex LLP[[18]](#footnote-18)**. The judgment came in favour of the assessee.

**Conclusion**

Based on the decision of Delhi HC in the case of **Kabul Chawla[[19]](#footnote-19)** it was held by the Court that if no incriminating material is found during the course of search in respect of an issue, then no addition in respect of such an issue can be made in the assessment under Sections 153A and 153C of the Act. Accordingly the Court in this case held that no material was placed on record to rebut the findings of the ITAT.

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# Ministry of Corporate Affairs (MCA) Notification

1. [**The**](https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTcyODE0NDc2&docCategory=Notifications&type=open) **Ministry of Corporate Affairs**  [**(MCA) has inducted instructions for physical verification of Companies by Amending the Rules of Companies Act, 2013.**](https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTcyODE0NDc2&docCategory=Notifications&type=open)

“The Companies (Incorporation) Third Amendment Rules, 2022" have been notified by the Ministry of Corporate Affairs (MCA) in a notification dated August 18, 2022. In accordance with the amendment,, rule 25B is added to the Companies (Incorporation) Rules, 2014, requiring the Registrar to physically verify the company's registered office in accordance with [Section 12(9) of the Companies Act, 2013](https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf), in the presence of two independent witnesses from the locality. For purposes of physical verification, the Registrar shall carry the documents as filed on MCA 21 in support of the address of the company's registered office and take a photograph of the same..

Additionally, a report on the physical inspection of the company's registered office is to be prepared as per the guidelines issued. .

A Company’s registered address must be accurate as per the new Companies (Incorporate) Third Amendment Rules, 2022.

1. [**Declaration by Auditors - Companies (Acceptance of Deposits) Amendment, 2022**](https://www.mca.gov.in/bin/dms/getdocument?mds=99KwRbJSkMXjVLv09KTgJg%253D%253D&type=open)

The Ministry of Corporate Affairs (MCA) vide notification G.S.R. 663(E), dated 29 August, 2022 has notified the Companies (Acceptance of Deposits) Rules, 2022 which has amended the Companies (Acceptance of Deposits) Rules, 2014 (“Deposits Rules”).

The MCA has amended rule 16 of the Deposits Rules which requires the company auditors to provide for the additional requirement of declaration (as on March 31 of the concerned financial year) in Form DPT3. This move shall thereby bring transparency and enhance the roles and responsibilities of the statutory auditors.

1. [**CSR Amendment, 2022**](https://www.livemint.com/companies/news/centre-revises-csr-rules-11663842823272.html)

In an official order, the Ministry of Corporate Affairs (MCA) has modified the guidelines for determining how much it costs to conduct social impact assessments of Corporate Social Responsibility (CSR) activities and the process for handling companies' unused CSR funding.

According to the order, residual funds specified for CSR may be kept by businesses in a designated account as long as they use them within three fiscal years. Its utilisation will be regulated by the CSR committee.

**Establishment of CSR Committee**

In the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022, the MCA said that companies with any amount in their "Unspent Corporate Social Responsibility Account" shall establish a CSR committee to supervise the fulfilment of their CSR duties. Companies may keep unused funds set aside for CSR in this designated account as long as they use them within three fiscal years. Its utilisation will be supervised by the CSR committee.

**Change in Expenditure for Social Impact Assessment**

The ministry also changed how businesses can figure out how much it will cost to undertake an impact assessment. Large CSR spenders are required by law to do an independent impact analysis of their operations, enabling businesses and investors to better target and analyse the social impact of their investments. Additionally, this would aid them in developing stronger CSR initiatives. Businesses having a CSR budget of RS 10 crore or more are required to conduct these impact assessments, as are any initiatives with an investment of 1 crore or more.

According to the new regulation, the cost of social impact assessments, which can be counted as CSR spending, cannot be greater than 2.5% of all CSR expenditures for the applicable financial year or 50 lakh, whichever is higher. Prior regulations had authorised up to 5% of overall CSR expenditures, or $50,000, whichever was less. The modification permits greater impact assessment spending in the event of substantial CSR programmes.

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# Security and Exchange Board of India (SEBI) Regulations

1. [**Regulations for foreign investments by Alternative Investment Funds (AIFs) / Venture Capital Funds (VCFs)**](https://www.sebi.gov.in/legal/circulars/aug-2022/guidelines-for-overseas-investment-by-alternative-investment-funds-aifs-venture-capital-funds-vcfs-_62020.html)

AIFs/VCFs may invest in securities of companies incorporated outside of India under the terms of Regulation 12(ba) of the former SEBI (Venture Capital Funds) Regulations 1996 and Regulation 15(1)(a) of the SEBI (Alternative Investment Funds) Regulations, 2012, subject to any conditions or guidelines that may be outlined or issued from time to time by the Reserve Bank of India (RBI) and SEBI.

AIFs and VCFs must invest in foreign companies incorporated in nations whose securities market regulators have signed the Multilateral Memorandum of Understanding between the International Organization of Securities Commissions or the bilateral Memorandum of Understanding with SEBI.

AIFs/VCFs shall not invest in an overseas investee company that is incorporated in a nation listed in the Financial Action Task Force's (FATF) public statement as:-

1. a jurisdiction with strategic deficiencies in anti-money laundering or countering the financing of terrorism that require countermeasures; or
2. a jurisdiction that has not made enough progress in addressing the deficiencies or has not made a commitment to an improvement plan.

The sale proceeds received from the liquidation of investment made by an AIF/VCFs in an overseas investee company previously shall be available for reinvestment by the AIFs/ VCFs to the extent of the investment.

2. [**Sebi joins the RBI's network of account aggregators**](https://economictimes.indiatimes.com/markets/stocks/news/sebi-joins-account-aggregator-ecosystem/articleshow/93663850.cms)

SEBI joined the account aggregator framework, which will help the Reserve Bank of India's financial data sharing system gain more traction. Customers will be able to communicate with financial service providers regarding their stock and mutual fund holdings as a result of the change.

According to the framework, Financial Information Providers (FIPs) in the securities market, such as depositories and Asset Management Companies (AMCs), will give customers and willing Financial Information Users (FIUs) access to financial information about the securities markets through any account aggregators registered with the Reserve Bank of India (RBI). Account Aggregator, often known as AA, is a non banking finance business (NBFC) that is subject to RBI regulation. With the customer's permission, AA enables the collecting of the customer's financial information from financial information providers.

1. MANU/SC/0965/2022 [↑](#footnote-ref-1)
2. 2022 SCC Online SC 210 [↑](#footnote-ref-2)
3. MANU/SC/0850/2022 [↑](#footnote-ref-3)
4. W.P. (Crl.) 559/2020 [↑](#footnote-ref-4)
5. 2022 LiveLaw (Kar) 183 [↑](#footnote-ref-5)
6. CS (COMM) 582/2022 & I.As.13529-32/2022 [↑](#footnote-ref-6)
7. 2022 SCC OnLine SC 1028 [↑](#footnote-ref-7)
8. Company Appeal (AT) (Ins.) No. 886 of 2022 [↑](#footnote-ref-8)
9. Civil Appeal No. 6015 of 2019 [↑](#footnote-ref-9)
10. Civil Appeal No. 7027 of 2019 [↑](#footnote-ref-10)
11. Civil Appeal Nos. 8512-8527 Of 2019 [↑](#footnote-ref-11)
12. *Ibid* [↑](#footnote-ref-12)
13. Budhia Swain v. Gopinath Deb, (1999) 4 SCC 396 [↑](#footnote-ref-13)
14. Comp. App. (AT) (Ins) No. 13 of 2022 [↑](#footnote-ref-14)
15. I.T.A No.6440/ Mum/2009 [↑](#footnote-ref-15)
16. 2022 LiveLaw (Del) 740 [↑](#footnote-ref-16)
17. ITA 5856/DEL/2018 [↑](#footnote-ref-17)
18. ITA 6169/DEL/2018 [↑](#footnote-ref-18)
19. ITA 707/2014 [↑](#footnote-ref-19)