

MONTHLY CORPORATE NEWSLETTER

FEBRUARY 2025

Dear Readers,

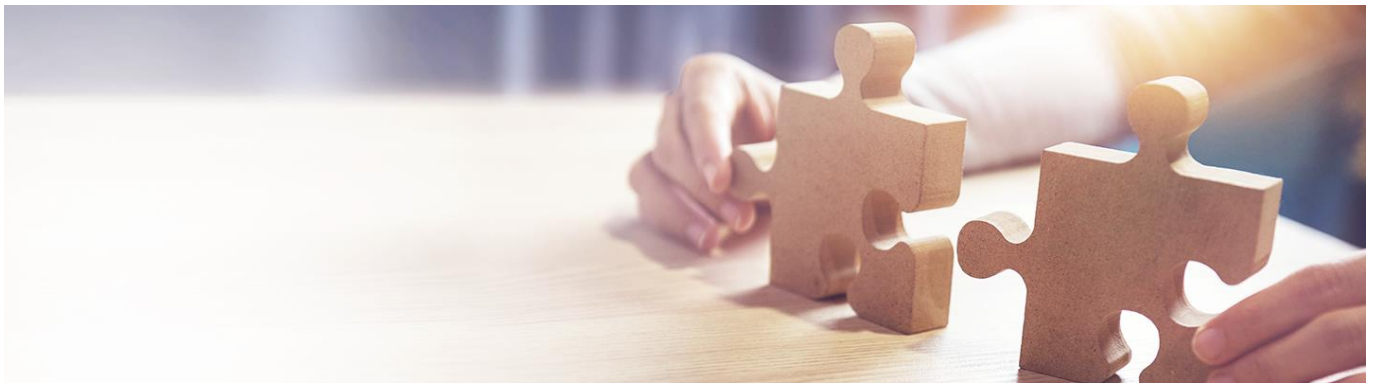
We bring you a concise analysis of important developments, recent publications and judgements and noteworthy regulatory amendments in the corporate and financial sectors on a monthly basis.

In this issue, we bring you the most recent updates and important notifications from key regulatory bodies including SEBI, RBI, and CCI. Stay informed with our comprehensive coverage on the latest circulars, notifications and orders that impact the corporate landscape.

Perceiving the significance of these updates and the need to keep track of the same, we have prepared this newsletter providing a concise overview of the various changes brought in by our proactive regulatory authorities and the Courts!

Feedback and suggestions from our readers would be appreciated. Please feel free to write to us at mail@lexport.in.

Regards,
Team Lexport



ABOUT US

Lexport is a full-service Indian law firm offering consulting, litigation and representation services to a range of clients.

The core competencies of our firm's practice *inter alia* are Trade Laws (Customs, GST & Foreign Trade Policy), Corporate and Commercial Laws and Intellectual Property Rights.

The firm also provides Transaction, Regulatory and Compliance Services. Our detailed profile can be seen at our website www.lexport.in.

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PART A: LATEST CIRCULARS / NOTIFICATIONS**1. SC: CCI Approval Mandatory Before CoC Can Examine Resolution Plan Involving Mergers (CIVIL APPEAL NO. 6071 OF 2023)**

In a landmark ruling, the Supreme Court has held by a 2:1 majority that a resolution plan under the Insolvency and Bankruptcy Code (IBC), which involves a proposed combination (merger or amalgamation), must receive prior approval from the Competition Commission of India (CCI) before being placed before the Committee of Creditors (CoC).

Referring to Section 31(4) of the IBC, the Court emphasized that the term "prior approval" was intentional, making it a mandatory requirement. Justices Hrishikesh Roy and Sudhanshu Dhulia ruled that allowing CoC to review a plan without prior CCI approval would undermine the legal framework. However, Justice SVN Bhatti dissented, stating that prior approval was directory, not mandatory, and could be obtained before final adjudication.

The ruling came in the case concerning Hindustan National Glass and Industries Ltd. (HNGIL), where the CoC approved AGI Greenpac’s resolution plan before CCI’s approval. The Court found this in violation of Section 6(1) of the Competition Act, rendering the plan unsustainable. It quashed the plan and directed the CoC to reconsider all resolution plans with requisite CCI clearance..

2. Pre-Existing Dispute No Bar for Section 7 IBC Petition: NCLT

The National Company Law Tribunal (NCLT), New Delhi, has ruled that a pre-existing dispute between a Financial Creditor and a Corporate Debtor does not prevent the admission of a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC).

In a case involving MBL Infrastructure Ltd. and its subsidiary, the tribunal clarified that insolvency proceedings under Section 7 focus solely on the existence of "debt" and "default," unlike Section 9, where disputes can be a valid defense. The Financial Creditor, Punjab National Bank International Limited, had extended a loan of USD 8.06 million to the Corporate Debtor, which was classified as a Non-Performing Asset (NPA) due to non-payment. Despite arbitration proceedings and claims of a breach of the Escrow Agreement, the tribunal upheld that these disputes did not bar the initiation of insolvency proceedings.

The tribunal further held that the non-inclusion of the Financial Creditor's claim in the Resolution Plan of the Holding Company did not extinguish its rights, as there was no default by the Corporate Debtor at the relevant time. The petition was admitted, a moratorium imposed, and an Interim Resolution Professional (IRP) was appointed.

3. IBBI Introduces New Process for Winding Up Bankrupt Companies

On February 3, 2025, the Insolvency and Bankruptcy Board of India (IBBI) amended the Insolvency and Bankruptcy Code, 2016, to enhance the efficiency and transparency of corporate insolvency resolution, particularly in real estate and large creditor cases.

Key changes include:

- **Handing Over Possession:** Resolution Professionals (RPs) must transfer real estate assets to allottees if they fulfill their contractual obligations, following approval from the Committee of Creditors (CoC). RPs must also facilitate the registration process.
- **Facilitators for Large Creditor Groups:** In cases where creditor classes exceed 1,000 members, up to five facilitators can be appointed to assist communication between creditors and their authorized representatives.
- **Real Estate Oversight:** Competent authorities under RERA can now attend CoC meetings (without voting rights), improving real estate project decision-making.
- **Reporting Requirements:** RPs must submit reports on development rights and permissions for real estate projects to ensure informed decision-making by the CoC.

These amendments aim to streamline insolvency proceedings, enhance transparency, and ensure better management of large creditor groups and real estate projects.

4. MCA Extends Dematerialisation Deadline for Private Companies to June 30, 2025

The Ministry of Corporate Affairs (MCA) has extended the deadline for private companies (excluding small companies) to comply with the dematerialisation of securities until June 30, 2025.

Initially mandated in October 2023 under Rule 9B of the Companies (Prospectus and Allotment of Securities) Rules, 2014, private companies were required to facilitate dematerialisation and issue new

securities only in electronic form by September 30, 2024. The new amendment provides companies with additional time to comply.

The extension follows concerns raised by the Institute of Company Secretaries of India (ICSI) regarding delays in ISIN allotment by NSDL and CDSL, which reportedly took 30-45 days after submission of documents and payments.

This extension does not apply to producer companies, which were previously granted time until March 31, 2028, to meet dematerialisation requirements.

5. CCI Draft Regulations Remove “Market Value,” Introduce ATC for Predatory Pricing Cases

The Competition Commission of India (CCI) has released the Draft CCI (Determination of Cost of Production) Regulations, 2025, revising the methodology for assessing production costs in predatory pricing cases.

Key Changes:

- "Market Value" Definition Removed: Previously criticized for being vague, the definition is now excluded from the regulations.
- Introduction of "Average Total Cost" (ATC): Aligns with global standards, making predatory pricing assessments more precise.

Why It Matters:

Predatory pricing—where a dominant firm sets prices below cost to eliminate competitors—is prohibited under Section 4(2)(a)(ii) of the Competition Act, 2002. The rise of digital markets and platform-based economies has made distinguishing predatory tactics from competitive pricing more complex.

Industry Concerns & Responses:

- E-commerce giants like Amazon & Flipkart have faced scrutiny for pricing strategies that allegedly harm competition.
- Quick commerce firms have been accused of aggressive discounting that pressures small retailers.
- CAIT & AICPDF have raised concerns about unfair pricing practices affecting traditional businesses.

Next Steps:

The CCI has invited public comments on the draft regulations until March 19, 2025, via its online portal.

6. SEBI Holds Regulated Entities Accountable for AI/ML Usage

The Securities and Exchange Board of India (SEBI) has introduced amendments holding regulated entities fully accountable for the privacy of investor data and the output generated by AI/ML tools they use. Under these changes, stock exchanges, clearing corporations, depositories, and other SEBI-regulated entities must ensure data security, output integrity, and legal compliance when deploying AI/ML tools, whether developed in-house or sourced from third parties. The amendments aim to enhance accountability in AI usage and protect investor interests.

The Intermediaries Amendment Regulations and SECC Amendment Regulations came into effect on February 10, 2025, while the DP Amendment Regulations, which also revise the timeline for annual fee payments and penalties for depositories, will take effect from April 1, 2025. Additionally, SEBI has notified amendments to the Investor Charter Regulations, making it mandatory for stock brokers, asset management companies, investment advisors, and research analysts to comply with investor protection provisions. These changes reflect SEBI's commitment to ensuring responsible AI adoption while safeguarding market integrity.

7. FSSAI Cracks Down on Food Adulteration with Stricter Measures

February 11, 2025 – The Food Safety and Standards Authority of India (FSSAI) is intensifying its efforts to curb food adulteration through stricter surveillance, mobile testing labs, and streamlined complaint mechanisms.

Nationwide Monitoring: Regular inspections and random sampling of food products are being conducted, with penal action against violators under the Food Safety and Standards Act.

Mobile Testing Expansion: "Food Safety on Wheels" (FSWs) are now deployed to improve food testing accessibility, especially in remote areas.

Consumer Complaints: The public can report food adulteration via the **FSSAI helpline or Food Safety Connect app**, ensuring swift action.

Key Enforcement Data (2023-24):

- 1.7 lakh+ samples tested
- 33,808 found non-compliant
- 38,487 legal cases initiated

Licensing & Compliance: All food businesses must register through the FoSCoS portal, ensuring regulatory compliance and food safety.

FSSAI's multi-pronged approach, combining enforcement, testing, and public awareness, underscores its commitment to strengthening food safety standards across the country.

8. SEBI Allows Demat Account Opening in AoP's Name

SEBI has allowed Associations of Persons (AoPs) to open demat accounts in their own names, enabling them to hold mutual fund units, corporate bonds, and government securities in

dematerialised form. This move is expected to streamline securities management for AoPs, which were previously restricted from holding such assets in demat accounts.

While AoPs are not juristic persons and cannot be company members, SEBI recognised that they can hold securities other than equities under applicable laws. To ensure compliance, AoPs must provide PAN details of both the entity and its principal officer. They must also confirm that the demat account will not be used for equity shares. In case of disputes, the principal officer will act as the legal representative, and members will be jointly and severally liable.

These regulations will come into effect on June 2, 2025.

9. IBBI Introduces New Process for Winding Up Bankrupt Companies

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