



## NEWSLETTER

### Legal, Compliance and ESG

06 April 2021

Dear Readers,

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#### A. LEGAL AND REGULATORY UPDATES:

~ Anand Asawa

##### I. Establishment of a Central Scrutiny Centre (CSC)<sup>1</sup>

MCA vide its notification dated March 18, 2021 established a Central Scrutiny Centre (CSC) for carrying out scrutiny of Straight Through Processes (STP) e-forms filed by the companies under the Act and the rules made thereunder. The CSC shall function under the administrative control of the e-governance Cell of the Ministry of Corporate Affairs.

The CSC shall carry out scrutiny of the aforesaid forms and forward findings thereon, wherever required, to the concerned jurisdictional Registrar of Companies for further necessary action under the provisions of the Act and the rules made thereunder.

<sup>1</sup><http://ebook.mca.gov.in/notificationdetail.aspx?acurl=6CoJDC4uKVUR7C9FI4rZdatyDbeJTqg3mARderbboyGgx97hn0IFfa==>

The CSC shall be located at the Indian Institute of Corporate Affairs (IICA), Plot No. 6, 7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code- 122050.

##### II. Amendments to Schedule V of the Companies Act, 2013<sup>2</sup>

MCA vide its notification dated March 18, 2021 notified amendments to Schedule V of the Companies Act, 2013.

Schedule V provides for the conditions to be fulfilled for the appointment of a managing or whole-time director or a manager without the

<sup>2</sup>[http://www.mca.gov.in/Ministry/pdf/AmendmentNotification\\_19032021.pdf](http://www.mca.gov.in/Ministry/pdf/AmendmentNotification_19032021.pdf)

approval of the central government appointments.

As per the amendment, in case the Board of Directors of a company are willing to further increase the remuneration of both the non-executive and executive directors beyond the upper limit, special resolution will have to be passed for the same.

### III. Amendments to Schedule III of the Companies Act, 2013<sup>3</sup>

MCA vide its notification dated March 24, 2021 amended the Schedule III of the Companies Act, 2013.

Schedule III provides for general instructions for preparation of balance sheet and statement of profit and loss of a company.

Key highlights of the amendments are:

- Companies are now required to round off the figures appearing in the financial statements.
- Criteria for rounding off shall be based on “total income” in place of “turnover”.
- All Companies now have to disclose shareholding of promoters, current maturities of long term borrowings, trade payables & trade receivables ageing schedule to be given, details of all the immovable whose title deeds are not held in the name of the company, disclosures to be made where loans or advances in the nature of loans are granted to promoters, directors, KMPs and related parties, capital-work-in progress & intangible assets under development ageing schedule shall also be given, disclosure of any proceedings initiated or pending against the company for holding any Benami property under the Benami Transactions (Prohibition) Act, 1988.
- Balance sheet to mention if a company is a declared willful defaulter by any bank or financial Institution or other lenders, Disclosure of any transactions with companies struck-off, and where any charges or satisfaction yet to be registered with Registrar of Companies beyond

<sup>3</sup>[http://www.mca.gov.in/Ministry/pdf/ScheduleIIIAmendmentNotification\\_24032021.pdf](http://www.mca.gov.in/Ministry/pdf/ScheduleIIIAmendmentNotification_24032021.pdf)

<sup>4</sup>[http://www.mca.gov.in/Ministry/pdf/AccountsAmendmentRules\\_24032021.pdf](http://www.mca.gov.in/Ministry/pdf/AccountsAmendmentRules_24032021.pdf)

the statutory period, details and reasons thereof.

### IV. The Companies (Accounts) Amendment Rules, 2021<sup>4</sup>

MCA vide its notification dated March 24, 2021 notified the Companies (Accounts) Amendment Rules, 2021.

Key highlights of the amendments are:

1. For the financial year commencing on or after the 1st day of April 2021, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.
2. The Report of the Board shall contain the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) during the year along with their status as at the end of the financial year.
3. The Report of the Board shall also contain details of difference between amount of the valuation done at the time of one-time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.

### V. Cognizance for Extension of Limitation under Insolvency and Bankruptcy Code.<sup>5</sup>

The Hon'ble Supreme Court of India vide its order dated March 08, 2021 has lifted the extension of the limitation period for filing of cases granted by the Court in March last year on account of COVID-19 pandemic and the national lockdown.

For the purpose of computation of period of limitation for any suit, appeal, application or proceeding, the period from March 15, 2020 till March 14, 2021 shall be excluded. The balance

<sup>5</sup><https://ibbi.gov.in/uploads/order/8cb5eb11db26a2711ee77eaded29d43.pdf>

period of limitation remaining as on March 15, 2020, if any, shall become available with effect from March 15, this year.

With regard to the cases where limitation period would have expired during the period from March 15, 2020 till March 14, 2021, the actual balance period of limitation remaining,

all persons shall have a limitation period of 90 days from March 15, 2021 and in the event the actual balance period of limitation remaining, with effect from March 15, 2021, is greater than 90 days, that longer period shall apply.

**B. Case Study: Person who has not drawn the cheque cannot be prosecuted u/s 138 NI Act even in case of joint liability: Supreme Court.**

***Alka Khandu Avhad vs. Amar Syamprasad Mishra [LL 2021 SC 146]***

~ Pramod Sonawane

**Case Background:**

That respondent No. 1 herein has filed a criminal complaint against the appellant and her husband for the offences punishable under Section 138 r/w Section 141 of the NI Act in the Court of the learned Metropolitan Magistrate, 43rd Court at Borivali, Mumbai, which has been numbered as C.C. No. 2802/SS/2016.

That respondent No. 1 – original complainant (hereinafter referred to as ‘the original complainant’) is a practicing advocate and partner in a solicitor firm in Mumbai. As per the case of the complainant, both the accused who are husband and wife, approached the original complainant in a legal matter. That the original complainant assisted accused Nos. 1 and 2 in preparing replies and notice of motion, conference, coordinating with counsel, filing Vakalatnamas and appearing through advocates’ office and also as counsel in Summary Suit. That the original complainant raised a professional bill for the legal work done by him to represent accused Nos. 1 and 2 in the legal proceedings. That, thereafter, original accused No. 1 – husband of the appellant herein handed over to the complainant a post-dated cheque dated 15.03.2016 bearing No.227050 drawn on Union Bank of India for Rs.8,62,000/-. The said cheque was presented for encashment and the same came to be returned unpaid with the endorsement “funds insufficient”. That, thereafter, the original complainant served a legal notice dated 21.05.2016 calling upon the accused to pay the amount of Rs.8,62,000/- within 15 days from the date of receipt of the said notice. That the said notice was duly served upon the 3 accused, however, the accused neither replied the said notice nor made the payment of the aforesaid dishonoured cheque. Therefore, the complainant filed a complaint against both the accused – husband and wife for the offence punishable under Section 138 of the NI Act. That the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai directed to issue process against both the accused for the offence punishable under Sections 138 r/w Section 141 of the NI Act.

**Bombay High Court Observations:**

In the present case also, Respondent No.1 Complainant in his affidavit in reply has specifically stated that though the order of the learned Magistrate served upon the Petitioner, she did not appear before the trial Court, but since the bailable warrant was issued by the trial court against the Petitioner, then

the Petitioner appeared before the trial court to obtain the bail, and her plea was recorded. It is also specifically stated that at the time of recording of plea, there was no defence raised by the Petitioner before the trial court to prove her innocence. It is informed that the matter is fixed for recording of evidence. This court is of the considered view that filing of present Petition is nothing but an attempt to prolong the matter.

In the light of aforesaid discussion and considering the allegations made in the complaint, the material placed on record, no case is made out to cause interference in the order of issuance of process. The Writ Petition stands rejected. Rule stands discharged.

**Supreme Court Observation:**

The Supreme Court observed that, even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the Negotiable Instruments Act.

*"A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque."*, the bench comprising Justices DY Chandrachud and MR Shah observed.

In this case, the original complainant, a lawyer, raised a professional bill for the legal work done by him to represent a couple in the legal proceedings. The cheque issued by the husband got dishonoured. The lawyer filed a complaint against both the accused – husband and wife for the offence punishable under Section 138 of the NI Act.

According to him, it was the joint liability of both the accused to pay the professional bill as the original complainant represented both the accused. The accused wife approached the High Court seeking to quash the criminal complaint filed against her mainly on the ground that she was neither a signatory to the cheque dishonoured nor there was a joint bank account. This petition was dismissed by the High Court.

In appeal, the Apex Court bench, referred to Section 138 of the NI Act, and observed that before a person can be prosecuted, the following conditions are required to be satisfied:

- i) that the cheque is drawn by a person and on an account maintained by him with a banker;**
- ii) for the payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability; and**
- iii) the said cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account.**

The bench rejected the contention of the complainant that the complaint against wife accused is maintainable as the cheque was issued towards discharge of legal liability of both the accused. The court observed:

*"Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn*

*the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque."*

Yet another contention was that the accused can be convicted with the aid of Section 141 of the NI Act is concerned. Rejecting the said contention, the court said: Section 141 of the NI Act is relating to the offence by companies, and it cannot be made applicable to the individuals. Learned counsel appearing on behalf of the original complainant has submitted that "Company" means a body corporate and includes, a firm or other association of individuals and therefore in case of a joint liability of two or more persons it will fall within "other association of individuals" and therefore with the aid of Section 141 of the NI Act, the appellant who is jointly liable to pay the debt, can be prosecuted. The aforesaid cannot be accepted. Two private individuals cannot be said to be "other association of individuals".

Therefore, there is no question of invoking Section 141 of the NI Act against the appellant, as the liability is the individual liability (may be a joint liability) but cannot be said to be the offence committed by a company or by corporate or firm or other associations of individuals. The appellant herein is neither a Director nor a partner in any firm who has issued the cheque. Therefore, even the appellant cannot be convicted with the aid of Section 141 of the NI Act.

The bench allowed the appeal and quashed the complaint against the accused (wife).

### **C. ESG: Home Loan Insurance Covers**

~ J. P. Trivedi

What happens if the principal borrower of a home loan is unable to repay the loan EMIs owing to certain unfortunate circumstances? Instances like partial or complete disability or even the death of the primary bread-winner (in this case, the borrower) can put their dependants under a huge debt. If the dependants are unable to repay the loan, the lender may even seize the property and/or the collateral provided, thus putting dependants in a state of financial duress. Yes, home loan borrowers, need to prepare for situations like these in advance.

#### **Home loan insurance cover – a definition**

It is a type of Insurance scheme under which the insurance provider settles the outstanding housing loan amount with the lender, in case of any unfortunate and unforeseen situation. This way, the onus of repaying the loan does not fall on the dependants of the borrower, nor do they have to worry about losing their investment. The home-owner can choose from a wide range of insurance covers.

#### **The importance of the cover for lenders and borrowers**

Every lender wishes to protect their investment. Therefore, the main reason why a lender opts for housing loan insurance cover is to protect the loan from turning into a bad debt. In the unfortunate event of the death of the borrower before the loan is repaid, the lender may lose a lot of money, especially if the borrower is the breadwinner of the family.

The loan insurance plan provides coverage against the outstanding home loan amount if the borrower is unable to repay the debt. The insurance provider repays the EMIs in several circumstances apart from the demise of the borrower, such as a permanent disability. Thus, the house loan insurance ensures the borrower don't become homeless in a crisis situation.

**Things to consider before purchasing insurance cover for your home loan:**

**Two Type of insurance cover required:**

**Term insurance** – Term insurance protects all your liabilities and your debts, including your home loan. The coverage remains the same for all assets insured in case of term insurance. Also, the nominee receives the sum assured in case of the death of the insured party.

**Separate home loan insurance**– This insurance protects you from only your outstanding home loan amount if you are unable to repay it. The size of the coverage you receive depends upon the outstanding home loan amount. As such, the sum insured reduces with every EMI repaid.

**Things to remember before buying the home insurance policy:**

1. You can purchase home loan insurance from either a general insurance provider or a life insurance company.
2. Policies purchased from general insurance providers need to be renewed on an annual basis and the premiums charged are significantly lower.
3. If you purchase a home insurance policy form a life insurance company, you may have to pay higher premiums, but you get long term coverage.

Final word: When you take a home loan, you are taking on a financial responsibility that lasts for several years, depending upon the tenure of your loan. But since you cannot predict what can happen in the more than 20 years tenure of the loan, it is better to insure the loan by investing in home loan insurance.