MEHTA & MEHTA
Corporate Legal Firm

VEDANAM वेदनम्



October 2026

Why Vedanam?

Mehta & Mehta proudly presents VEDANAM, our monthly newsletter designed to equip legal professionals, Company Secretaries, Chartered Accountants, and all Stakeholders navigating complex regulatory and legal environments. VEDANAM delivers meticulously curated:

- Timely Regulatory Updates
- Comprehensive Case Law Analysis
- Strategic Knowledge Article

With the release of our October 2026 issue, we reaffirm our commitment to providing you with the actionable knowledge needed to proactively navigate and thrive in today's dynamic business and legal landscapes.

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Find the latest updates about our Webinars and Circulars, Notifications and Updates published by SEBI, MCA, RBI, IBBI and other official government site.

MCA UPDATE- MCA GENERAL CIRCULAR NO. 05/2026 – EXTENSION FOR ANNUAL FILINGS (FY 2025-26)

Sr.No	Particulars	Extended Deadline
1	Financial Statements — e-Forms AOC-4, AOC-4 (CFS), AOC-4 (XBRL), AOC-4 NBFC (Ind AS), AOC-4 CFS NBFC (Ind AS) for FY 2025–26	31st December, 2026
2	Annual Returns — e-Forms MGT-7 and MGT-7A for FY 2025–26	31st January, 2027

All the above filings can be made without payment of additional fees up to the respective extended deadlines.

Important Notes

- This extension applies only to the filing of forms it does not extend the statutory time limit for holding the AGM. Companies that have missed the AGM deadline remain liable under the relevant provisions of the Companies Act, 2013.
- Any filings made after the extended deadlines mentioned above will attract normal fees plus additional fees from the original due date under the Companies (Registration Offices and Fees) Rules, 2014.

We advise all our clients to take note of the above and endeavour to complete their annual statutory filings at the earliest, well within the extended timelines, to avoid any last-minute complications.

MCA UPDATE- MCA GENERAL CIRCULAR NO. 05/2026 – EXTENSION FOR ANNUAL FILINGS (FY 2025-26)

SEBI UPDATE - SEBI (LODR) (THIRD AMENDMENT) REGULATIONS, 2026 – MANDATORY LISTING OF NON-CONVERTIBLE DEBT SECURITIES (NCDS)



1. Overview & Applicability

- Notification Reference: SEBI Notification No. SEBI/LAD-DOP/2026/329 dated October 12, 2026.
- Regulation Title: Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2026.
- Effective Date: Immediate (w.e.f. October 14, 2026, upon publication in the Official **Gazette).**

2. Key Regulatory Amendments

1. Mandatory Listing of Subsequent NCD Issuances [Regulation 62A(1)]:
    - Any listed entity whose non-convertible debt securities are listed on or after October 14, 2026, must list all subsequent non-convertible debt securities issued by it on the recognized stock exchange(s).
    - The requirement applies automatically to all future NCD issuances following the initial debt listing.

- **Omission of Sub-regulations 62A(2) and 62A(3):**

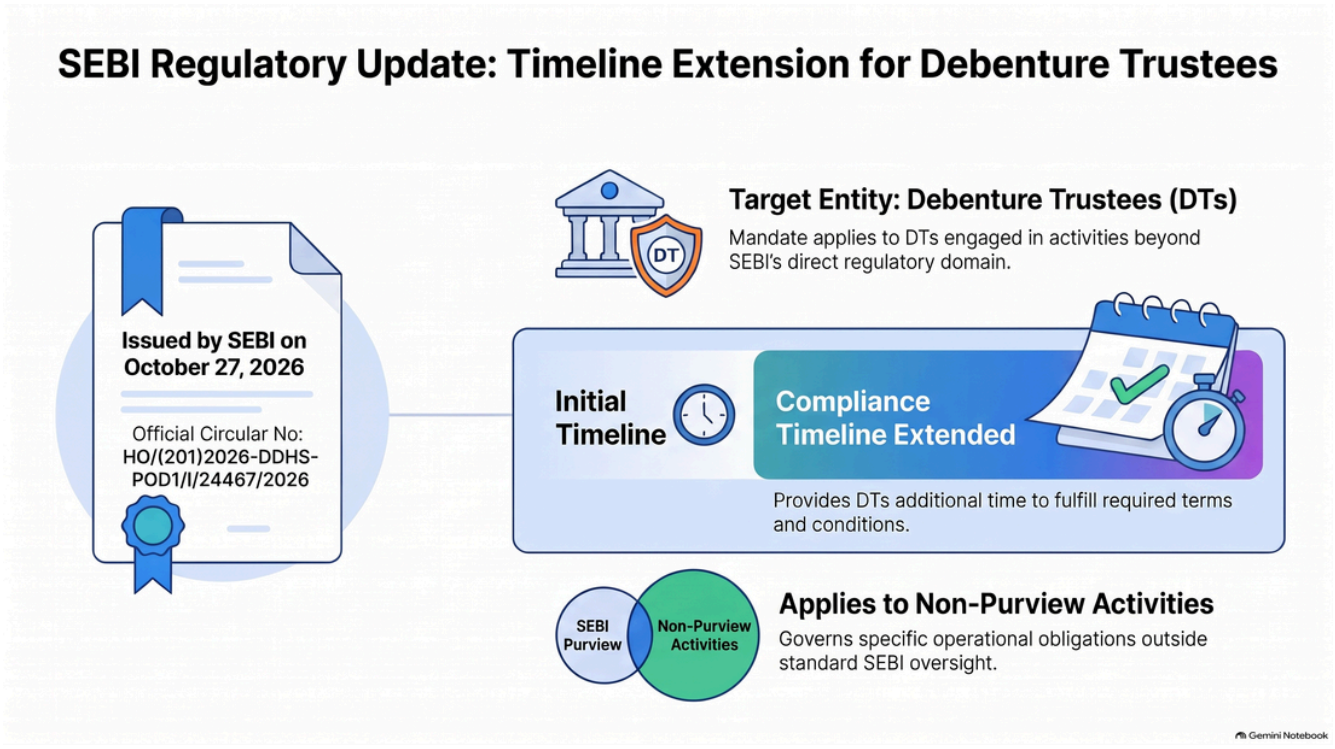
    - Sub-regulation (2) Omitted: Removes provisions concerning unlisted NCDs issued on or before December 31, 2023.
    - Sub-regulation (3) Omitted: Eliminates the specific three-month compliance timeline for listing previously unlisted outstanding NCDs.

3. Action Points for the Board / Management

- Debt Capital Raising Strategy: Ensure that all future planned issuances of Non-Convertible Debt Securities (NCDs) factor in the mandatory stock exchange listing obligation prior to execution.
- Procedural Compliance: Coordinate with legal advisers, debenture trustees, and market intermediaries to incorporate mandatory exchange listing requirements into draft offer documents and issuance documentation for subsequent NCD tranches.

SEBI UPDATE - SEBI (LODR) (THIRD AMENDMENT) REGULATIONS, 2026 – MANDATORY LISTING OF NON-CONVERTIBLE DEBT SECURITIES (NCDS)

SEBI UPDATE - EXTENSION OF TIMELINE FOR COMPLIANCE WITH TERMS AND CONDITIONS BY DEBENTURE TRUSTEES (DTS) FOR CARRYING OUT ACTIVITIES OUTSIDE THE PURVIEW OF SEBI



Extension of SBU Compliance Timeline for Debenture Trustees

1. Background & Regulatory Context

In October 2025, SEBI amended the SEBI (Debenture Trustees) Regulations, 1993 ("DT Regulations") introducing Regulation 9C, which requires Debenture Trustees (DTs) holding a valid certificate of registration to transfer activities not regulated by SEBI to Separate Business Units (SBUs). The original deadline for compliance was six months from the date of notification of the Amendment Regulations in the Official Gazette.

2. Operational Framework
The detailed terms and conditions governing DT activities under the SBU framework were specified vide SEBI Circular dated November 25, 2025 (Circular No. HO/17/11/12(3)2025-DDHS-POD1/I/146/2025). This circular laid down the operational mechanics for implementing Regulation 9C.

3. First Extension — April 2026
Following representations from the industry highlighting operational challenges in establishing the requisite systems and processes, SEBI vide Circular dated April 28, 2026 granted DTs an additional six months, extending the compliance deadline to October 27, 2026.

4. Expert Working Group (EWG) — June 2026
In June 2026, SEBI constituted an Expert Working Group (EWG) to comprehensively review the extant regulatory framework applicable to debenture trusteeship activities, including matters related to the SBU framework and other incidental aspects.

5. Second Extension — Present Circular
Considering:

- The EWG's ongoing comprehensive review of the DT regulatory framework including SBU-related guidelines; and
- Further representations received from DT Associations citing implementation challenges

SEBI has granted a further extension of six months, revising the compliance deadline to April 27, 2027. All other provisions of the November 25, 2025 circular remain unchanged.

6. Legal Basis
Issued under Section 11(1) of the SEBI Act, 1992 and Regulation 2A of the SEBI (Debenture Trustees) Regulations, 1993.

SEBI UPDATE - EXTENSION OF TIMELINE FOR COMPLIANCE WITH TERMS AND CONDITIONS BY DEBENTURE TRUSTEES (DTS) FOR CARRYING OUT ACTIVITIES OUTSIDE THE PURVIEW OF SEBI

RBI UPDATE- SECTION 42(1) OF THE RESERVE BANK OF INDIA ACT, 1934 - CHANGE IN DAILY MINIMUM CASH RESERVE MAINTENANCE REQUIREMENT

RBI issued directing all Scheduled Banks to increase the minimum daily maintenance of the CRR from 90 per cent of the requirement to 99 per cent, effective from the fortnight beginning October 16, 2026. The overall average CRR maintained
daily must still not be less than the prescribed CRR over the fortnight. This change has been made in view of current liquidity conditions.

RBI UPDATE- SECTION 42(1) OF THE RESERVE BANK OF INDIA ACT, 1934 - CHANGE IN DAILY MINIMUM CASH RESERVE MAINTENANCE REQUIREMENT

RBI UPDATE- RISK MANAGEMENT AND INTER-BANK DEALINGS - CANCELLATION/REBOOKING, THRESHOLD LIMITS AND ADDITIONAL DOCUMENTATION

RBI issued RBI/2026-27/291 (A.P. (DIR Series) Circular No. 25) amending the Master Direction on Risk Management and Inter-Bank Dealings (July 5, 2016) covering three areas: (a) Cancellation and rebooking/rollovers:Authorised Dealers (ADs) shall not permit users to rebook any cancelled foreign exchange derivative contract involving the INR (deliverable or non-deliverable). Rollovers on maturity remain permitted. (b) Threshold limit reduced: The limit for taking positions without establishing existence of underlying exposure is reduced from USD 100 million to USD 5 million equivalent of notional value (outstanding at any point of time) across OTC and exchange-traded derivatives. (c) Additional documentation: ADs must obtain and retain an undertaking from users that the underlying exposure has not been hedged with any other AD. Documents must be retained for not less than two years.

RBI UPDATE- RISK MANAGEMENT AND INTER-BANK DEALINGS - CANCELLATION/REBOOKING, THRESHOLD LIMITS AND ADDITIONAL DOCUMENTATION

RBI UPDATE- RISK MANAGEMENT AND INTER-BANK DEALINGS - NON-DELIVERABLE DERIVATIVE CONTRACTS AND FOREIGN EXCHANGE RISK RESERVE

RBI issued RBI/2026-27/293 (A.P. (DIR Series) Circular No. 27) further amending the Master Direction on Risk Management and Inter-Bank Dealings with two changes: (a) NDDCs restricted to hedging: ADs (including AD Cat-I banks with IFSC Banking Units and Standalone Primary Dealers authorised as AD Cat-III) may henceforth offer non-deliverable derivative contracts (NDDCs) involving INR to non-resident users only for the purpose of hedging. The earlier facility permitting NDDCs without purpose restriction stands discontinued. (b) Foreign Exchange Risk Reserve (FERR) introduced:

ADs must maintain a FERR equal to 20 per cent of the INR equivalent of the notional amount of each INR FX derivative contract undertaken to hedge the AD's own currency risk. FERR applies to all INR FX derivative contracts where the AD is purchasing foreign currency against INR. FERR must be deposited as cash with the RBI on a daily basis and maintained until contract termination.

RBI UPDATE- RISK MANAGEMENT AND INTER-BANK DEALINGS - NON-DELIVERABLE DERIVATIVE CONTRACTS AND FOREIGN EXCHANGE RISK RESERVE

RBI UPDATE- RESERVE BANK OF INDIA (SMALL FINANCE BANKS - MISCELLANEOUS) AMENDMENT DIRECTIONS, 2026

RBI issued deleting Section Con Limits for Non-Option Derivative Contracts (paragraph 37) from Chapter IV of the Reserve Bank of India (Small Finance Banks - Miscellaneous) Directions, 2025. The deletion removes the previously prescribed limits applicable to Small Finance Banks on non-option derivative contracts.

RBI UPDATE- RESERVE BANK OF INDIA (SMALL FINANCE BANKS - MISCELLANEOUS) AMENDMENT DIRECTIONS, 2026

RBI UPDATE- RESERVE BANK OF INDIA (COMMERCIAL BANKS - PRUDENTIAL NORMS ON CAPITAL ADEQUACY) ELEVENTH AMENDMENT DIRECTIONS, 2026

RBI issued amending Chapter VII (Leverage Ratio Framework) of the Capital Adequacy Directions, 2025 to align with the Basel Committees leverage ratio 2017 standard. Key changes: (i) Minimum leverage ratio: D-SIBs - 4%; other banks - 3.5%; G-SIB branches in India - 3.5% plus applicable G-SIB leverage ratio buffer. (ii) Capital distribution constraints applicable to G-SIB branches not meeting leverage ratio buffer requirements, with conservation ratios linked to CET1 risk- based ratio and Tier 1 leverage ratio. (iii) Revised exposure measure rules for on-balance sheet exposures, derivative exposures (SA- CCR framework introduced alongside existing CEM), SFT exposures, and off-balance sheet items. (iv) Updated Pillar 3 disclosure requirements: quarterly disclosure via Template LR1 (reconciliation of accounting assets to leverage ratio exposure measure) and Template LR2 (detailed breakdown of leverage ratio components).

RBI UPDATE- RESERVE BANK OF INDIA (COMMERCIAL BANKS - PRUDENTIAL NORMS ON CAPITAL ADEQUACY) ELEVENTH AMENDMENT DIRECTIONS, 2026

SHRUTI LOHIA RP OF ARIHANT RETAIL PVT. LTD - NCLT-CHENNAI BENCH

Whether, while considering an application under Sections 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 for approval of a resolution plan approved by the Committee of Creditors, the Adjudicating Authority can examine the commercial wisdom of the CoC beyond the limited parameters of Section 30(2) and the CIRP Regulations?

Facts:

The Corporate Debtor, Arihant Retail Private Limited, an MSME engaged in the textile retail business, underwent CIRP pursuant to admission of a Section 10 application. After the CoC initially rejected the resolution plans and approved liquidation under Section 33(2) of the IBC, the NCLT restored the CIRP for 60 days to consider improved resolution plans. Subsequently, the CoC approved the resolution plan submitted by the Successful Resolution Applicant (SRA) with 100% voting share. The Resolution Professional filed an application under Section 30(6) read with Section 60(5) seeking approval of the resolution plan.

Issues:

Whether the Adjudicating Authority can interfere with the commercial wisdom of the CoC while approving a resolution plan under Sections 30 and 31 of the IBC.

Whether the resolution plan complied with the requirements of Sections 30 and 31 of the IBC and Regulations 38 and 39 of the CIRP Regulations.

Whether the SRA could be granted the benefit of carry forward and set-off of losses under Section 79 of the Income-tax Act, 1961.

Conclusion:

The NCLT held that the Adjudicating Authority's jurisdiction while approving a resolution plan is limited to examining compliance with Section 30(2) and Section 31 of the IBC and the applicable CIRP Regulations. It cannot interfere with or substitute the commercial wisdom of the CoC. Having found that the SRA was eligible under Section 29A and that the plan complied with the statutory requirements.

the Tribunal approved the resolution plan, which had received 100% CoC approval, and directed constitution of a Monitoring Committee with quarterly reporting obligations.

Regarding carry forward and set-off of losses under Section 79 of the Income-tax Act, the Tribunal held that the SRA may approach the competent Income-tax authorities, who shall examine the claim in accordance with the applicable tax laws. The NCLT itself did not grant the tax benefit.

MAVENT RESTRUCTURING SERVICES LLP (RP) V. GUJARAT ENERGY TRANSMISSION CORPORATION LTD NCLT-AHMEDABAD BENCH

Whether transmission and wheeling services required for operation of the Corporate Debtor's wind project could be discontinued during CIRP on the basis of a post-CIRP termination notice for non-payment, and whether such CIRP-period dues and allied contractual claims were enforceable under Sections 14(2), 14(2A) and 60(5) of the Insolvency and Bankruptcy Code, 2016?

Facts

The Corporate Debtor, which operated a 3.00 MW wind power project, was admitted into CIRP on 21.01.2026. During CIRP, Gujarat Energy Transmission Corporation Ltd. (GETCO) issued a termination notice dated 04.04.2026 proposing discontinuation of transmission and wheeling services due to non-payment of dues. The Resolution Professional approached the NCLT seeking setting aside of the termination notice, contending that continuation of these services was essential for running the Corporate Debtor as a going concern. GETCO also sought payment of outstanding transmission charges, delayed payment charges and furnishing of a fresh SBLC.

Issues:

Whether transmission and wheeling services essential for operating the Corporate Debtors wind project could be discontinued during CIRP under the moratorium provisions of the IBC.

Whether GETCO was entitled to payment of CIRP-period transmission charges, delayed payment charges and a fresh SBLC.

Whether the Resolution Professional could be directed to ensure timely payment of future transmission charges during CIRP.

Conclusion

The NCLT held that transmission and wheeling services essential for operating the Corporate Debtors wind project were necessary for maintaining it as a going concern and maximising its value. Accordingly, such services could not be discontinued during CIRP in view of Sections 14(2) and 14(2A) of the IBC, subject to payment of current CIRP-period dues.

The Tribunal accordingly set aside GETCOs termination notice dated 04.04.2026 and directed continuation of transmission and wheeling services. It further held that:

- The transmission charges of Rs. 9,20,353/- had already been paid; hence, no further direction was required.
- The claim of Rs. 30,863/- towards delayed payment and other charges was not allowed due to insufficient supporting computation.
- No direction for furnishing a fresh SBLC was issued, as availability of banking facilities during CIRP was not established.
- The Resolution Professional was directed to pay properly raised CIRP-period invoices within the contractual timeline, subject to availability of funds, without preferential or discriminatory treatment to any operational creditor providing essential services.

UV ASSET RECONSTRUCTION COMPANY LTD. V. ABHISHEK AJIT NAKER NCLT-MUMBAI BENCH

Whether the interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 in proceedings initiated by a personal guarantor under Section 94 extends to a secured immovable property owned and mortgaged by the corporate debtor, and whether after insertion of Section 96(4) such moratorium remains available in continuing personal guarantor proceedings?

Facts:

The personal guarantor of Aztek Processors Pvt. Ltd. filed an application under Section 94 of the IBC seeking initiation of insolvency resolution proceedings against himself. Meanwhile, the financial creditor, whose debt had been assigned by ICICI Bank, initiated SARFAESI proceedings against an immovable property mortgaged as security for the corporate debtors financial facilities. The creditor approached the NCLT seeking a declaration that the interim moratorium under Section 96 did not apply to the property, as it was owned and mortgaged by the corporate debtor and not by the personal guarantor.

Issues:

Whether the interim moratorium under Section 96 of the IBC extended to a secured property owned and mortgaged by the corporate debtor and not by the personal guarantor.

Whether the interim moratorium under Section 96 continued to apply to personal guarantors to corporate debtors after the 2026 amendment inserting Section 96(4), including in pending proceedings.

Whether the pendency of insolvency proceedings initiated by the personal guarantor under Section 94 could restrain the creditor from continuing SARFAESI enforcement proceedings.

Conclusion

The NCLT held that the interim moratorium under Section 96 applies only to assets owned by, or security interests created by, the personal guarantor and cannot extend to property belonging to the corporate debtor. Since the mortgage documents established that the subject property was owned and mortgaged by the corporate debtor, it did not form part of the personal guarantors estate and was not protected by the moratorium.

Accordingly, the Tribunal allowed the application and held that the pendency of the Section 94 proceedings did not prevent the financial creditor from continuing SARFAESI enforcement against the subject property.

No reasons for replacement are required to be given, and the existing RP has no statutory right to be heard before such replacement.

The Adjudicating Authority cannot substitute its own wisdom for that of the CoC merely because the replacement was sought 2½ years after approval of the resolution plan.

The adverse remarks against Indian Bank's officers were expunged. The impugned orders were accordingly modified, and the appeals were disposed of with directions regarding the sequence for considering the pending applications.

NATIONAL ASSET RECONSTRUCTION COMPANY LTD. V. WEST HARYANA HIGHWAYS PROJECT PVT. LTD. - NCLT-NEW DELHI BENCH.

Whether a Section 7 application under the IBC must be admitted when the financial creditor establishes financial debt and default through a balance confirmation letter and balance sheet acknowledgments, and the corporate debtor produces no material showing lawful discharge of liability?

Facts:

National Asset Reconstruction Company Ltd. (NARCL), as assignee of senior and subordinate loan facilities originally granted by a consortium of banks, filed an application under Section 7 of the IBC seeking initiation of CIRP against West Haryana Highways Project Pvt. Ltd. The Corporate Debtor opposed the application contending that its debt had already been dealt with under the approved resolution plan of its parent company, Era Infra Engineering Ltd. (EIEL), and that the present proceedings were barred by res judicata. However, the Corporate Debtor had acknowledged the outstanding principal liability of Rs. 385.90 crore, along with interest, through a balance confirmation letter dated 04.11.2024 and its financial statements.

Issues:

Whether NARCL had established the existence of financial debt and default for admission of the application under Section 7 of the IBC.

Whether the liability of the Corporate Debtor stood legally discharged or extinguished pursuant to the approved resolution plan of its parent company, EIEL.

Whether the Adjudicating Authority is required to undertake a detailed examination of disputes while considering admission of a Section 7 application.

Conclusion

The NCLT held that the scope of inquiry under Section 7 is limited to ascertaining the existence of financial debt and occurrence of default through summary adjudication. Once debt and default are established, the Adjudicating Authority has limited discretion to refuse admission.

The Tribunal observed that the Corporate Debtor had not disputed the execution of the principal loan and security documents, nor produced any evidence of repayment or lawful discharge of its liability. Further, the balance confirmation letter dated 04.11.2024 and the financial statements for FY 2024–25 acknowledged the outstanding principal liability of Rs. 385.90 crore, along with interest.

Accordingly, the Tribunal held that the existence of financial debt and default stood established and admitted the Section 7 application, initiating CIRP against the Corporate Debtor, declaring moratorium under Section 14 and appointing an Interim Resolution Professional (IRP).

REFUND OF SHARE APPLICATION MONEY WITHIN THE STIPULATED TIME - CONSEQUENCES OF NON-REFUND

A brief on share application / allotment under the provisions of Companies Act 2013

1. As per the provisions of Companies Act 2013, the shares are required to be allotted after the company has received share application money. The Companies Act 2013 also provides for time limits within which shares are to be allotted and in case of non-allotment of shares, the share application money is required to be refunded within the stipulated time by the Act.

As per the provisions of section 179 of the Companies Act 2013, the power to issue securities have been vested on the board of directors of the company by way of passing resolution at the board meetings duly convened by the board.

Let us look into the time limits for allotment of securities and refund of money which are summarized as under:-

Allotment of securities

Sr. No	Particulars	Details
1	Allotment of securities within 60 days	Allotment shall be done within 60 days of receipt of application money.
2	If not allotted within 60 days, refund in next 15 days	If allotment is not done within 60 days then refund of the whole application money within to be made in next 15 days' time.
3	If not refunded within 15 days	Refund of application money along with interest @12% p.a. after the expiry of 15 days.

Provision under the Companies Act 2013 for refunding the money

2. As per requirements of section 74 of the Companies Act 2013,the share allotment is required to be made by the company within 60 days from the date of receipt of share application money.

The section further reads that if the company could not allot the shares within the prescribed time limit, then the share application money is to be refunded within sixty days. Beyond the expiry of stipulated time of 15 days, the refund of application money is required to be made along with interest @12% p.a.

Whether share application money falls under "Deposit"

3. As seen in the earlier paragraphs, as per the provisions of section 74, either the company needs to allot the shares to the subscriber or need to refund the share application money in the absence of allotment of shares as per the provisions of section 74 of the Companies Act 2013 or else the share application money should be construed as deposits within the meaning of "deposit".

Non-repayment of application money, in the absence of share allotment, within prescribed duration would be considered as deposit and from the 76 th day, the whole application money held by the company will be treated as deposit.

Provisions as per Companies (Acceptance of Deposit) Rules 2014

4. As per the provision of Companies (Acceptance of Deposit) Rules 2014also, non-repayment of application money, in the absence of share allotment within prescribed duration would be considered as deposit.

The relevant provision as per the provisions of Rule 2(1) (c) (vii) of Companies (Acceptance of Deposit) Rules 2014, it is clear that share application money shall not be treated as a deposit. However, the Companies (Acceptance of Deposit) Rules 2014 spells out that if the securities for which application money was received cannot be allotted within sixty days from the date of receipt of the application money and such application money is not refunded to the subscribers within fifteen days from the date of completion of sixty days, such amount shall be treated as deposit under these rules.

The gist of the above paragraphs 1 to 4 above

5. Whenever the company receives share application money, the company is obliged to:-

(a) Allot the shares within sixty days from the date of share application money.
(b) If the company could not allot the shares within the prescribed time limit then such application money is required to be refunded to the subscribers within fifteen days from the date of completion of sixty days.

(c) In the event of non-refund of such share application money, shall be treated as deposit under the provisions of Companies Act 2013 and as well as under the provisions of Companies (Acceptance of Deposits) Rules 2014 as discussed in the earlier paragraphs.

Consequences of non- refund of deposit by a company

6. If the company contravenes the requirement of section 74 of the Companies Act 2013, by not refunding the share application money within the stipulated time, in the event of non-allotment shares, the same would amount to non-compliance. In case of non-compliance which is a violation of the provisions of the Companies Act 2013, the company and is directors are liable for penal actions.

The Penal provisions as per the Companies Act 2013 in case of default

7. As per sub-section (3) of section 74 of the Companies Act 2013, the penal provision is that if a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (1) or such further time as may be allowed by the Tribunal under sub-section (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

In case of default – what follows next?

8. As per sub-section (5) of section 206 of the Companies Act 2013, the Central Government can carry out the inspection of the books of accounts and going through the books of accounts and minutes of board meetings relating to a particular financial year by appointing an inspection officer. If the inspecting officer, during such inspection notices and come across that the violation of section 74 of the Companies Act 2013, had taken place, then the inspecting officer would recommend taking the penal action against the company and its defaulting officer for the violation.

Even if the inspection is not taking place, the Registrar of Companies (RoC) could go through the documents submitted (i.e. financial statements along with the Board Report) by the company via e-filing and information could be

gathered and where required the Registrar of Companies could call for further information from the company in order to ascertain the facts.

However, the regulator also interested in safeguarding the interest of the investor and hence the regulator, while issuing the show cause notice, initially would advise the company to refund the share application money within a specified time provided by them – say 15 days or so - and confirm the same to them so that, the regulator would not be taking any further action if the company acts on the advice and make refund of the deposit to the investor.

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Option available to the company

9. Upon receipt of the show cause notice, the company can initiate action in refunding the share application money lying with the company by way of deposit and ensure that the refund is effected within the stipulated time frame prescribed by the show cause notice issued by the regulator.

This is the best way of resolving the issue once and for all and communicate the same to the regulator. Once the company refunds the money, the matter stand closed once and for all and no further action from the regulator's side and the issue comes to an end.

It may also be noted that in case of share application money received from the overseas investor, the company would be in a position to refund the money after obtaining the necessary permission from the Reserve Bank of India (RBI) through its Authorized Dealer (AD) for repatriating the money outside India beyond the prescribed time which is 180 days as per the provisions under

Foreign Exchange Management (Transfer or Issue of Security by A Person Resident Outside India) (Third Amendment) Regulations,2007. Without the permission granted by RBI, the company would not be in a position to refund the share application money.

For this, the company needs to make an application providing all the details, justifying the reason for delay in repatriating money and seek the approval from the Reserve Bank of India before remitting the money. Upon making the application the Reserve Bank of India may, permit an Indian company to refund the amount of consideration received towards issue of security, if the same is justified for sufficient reasons and if such amount is outstanding beyond a period of 180 days from the date of receipt.

When the company does not refund the share application money (lying with them as deposits) – consequences

10. As discussed in the earlier paragraphs, non-refunding the share application money by the company amounts to violation under section 74 of the Companies Act 2013 read with Company (Deposits) Rules 2014. Since the violation has taken place by way of not refunding the share application money, the company may not be in a position to defend themselves in case of this nature of violation.

Then the company is left out with the only option of going for compounding of offences to get over the non- compliance / violation as per the provisions of section 441 of the Companies Act 2013

Processing the compounding application

11. The company needs to follow the various stages of filing of the compounding applications such as e-filing of compounding application, lodging the physical copies of the application with the concerned Registrar of Companies followed by attending the hearing / hearings as and when called upon and finally getting the order and ensure paying the compounding fees etc. In the process, the company would be spending enormous amount of time coupled with money in getting the matter finally resolved.

Disclosure requirement

12. All the companies have to make disclosures on specified matters in its Board Report and also in the annual return filed by the companies. In case of listed and unlisted public companies, the secretarial auditor is required to certify the compliance and report any non-compliance.

In case of listed companies, the corporate governance report is required to make certain disclosure.

The gist of the disclosures required are as given below:-

(a) In the Board Report of all types of companies, under the headings "Directors Responsibility Statement" of the Board Report of the company, the board of directors have to make a statement that they have devised proper systems to ensure compliance with the provisions of all applicable laws and that these are adequate and are operating effectively. The report may have to make a mention of the non-compliance when default has taken place.

(b) All types of companies, public companies whether listed or unlisted and private companies all are required annex their extract of annual return to the Board Report pursuant to Section 92(3) of the Companies Act, 2013 and Rule 12(1) of the Companies (Management and Administration) Rules, 2014. The extract of annual report is required to disclose the details of compounding of offences under the headings "Penalties / Punishment / Compounding of offences pursuant to Section 92(3) of the Companies Act, 2013 and Rule 12(1) of the Companies (Management and Administration) Rules, 2014.

(c) All the public companies (listed and unlisted both) are required to annex secretarial audit report, pursuant to section 204(1) of the Companies Act, 2013 and rule No.9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 issued by the secretarial auditor. The secretarial audit report would be issued with a qualification highlighting the non- compliance on this head.

(d) Report on Corporate Governance & Management Discussion & Analysis is required to be annexed by a separate section titled Report on Corporate Governance together with a Certificate from the Practicing Company Secretary which forms part of the annual report of the company pursuant to Regulation 34(3) read with Schedule V of the SEBI (Listing Obligations And Disclosure Requirements) Regulations 2015 by all the listed companies. The report issued by the Practicing Company Secretary would be carrying a mention of the non-compliance when default has taken place.

Explanations in response to Auditors' qualifications

13. Besides all the above disclosures, as per sub-section 3(f) of section 134 of the Companies Act 2013, the Board Report is required to include explanations or comments on every qualification, reservation or adverse remark or disclaimer made in the statutory auditors. Similarly as per sub-section (3) of section 204 of the Companies Act 2013 the Board Report is required to explain in full, any qualification or observation or other remarks made by the company secretary in practice in the secretarial auditor's report.

Image and reputation of the company in the market place

14. All the stakeholders of the company, readers, investors, and analyst – all the people who are the recipient of the annual report would know the non-compliance committed by the company and the compounding fees details which are disclosed by the company in its annual report which obviously would affect company's reputation and image in the market place.

Conclusion

15. The company secretary being the principle officer of the company and also a key managerial personal (KMP) of the company under the provisions of Companies Act 2013, it is his prime responsibility to ensure compliance with statutory and regulatory requirements and for ensuring that decisions of the board of directors are implemented by following the required legal procedures. Needless to mention that the company secretary is the company's named representative on legal documents. and it is his responsibility to ensure that the company and its directors operate within the law.

In view of the stringent penal provision under the Companies Act 2013 for violation of the required provisions of the Act, the company secretary needs to take utmost care and act diligently and ensure the absolute compliance by doing the right things all the time.

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