

MCA UPDATES

1. Report of Insolvency Law Committee on Pre- Packaged Insolvency Resolution Process

On **July 16, 2021** Insolvency Law Committee (ILC) presented its 4th part of report on Pre-Packaged Insolvency Resolution Process (PPIRP), to Ministry of Finance and Corporate Affairs which has constituted it. ILC Report was given under the Chairmanship of Mr. Rajesh Verma.

ILC was constituted on November 16, 2017 and reconstituted on March 06, 2019 to make recommendations to the Government for PPIRP. The Committee recommended that PPIRP should be available to MSME Corporate Debtors. The Committee also suggested that the Insolvency and Bankruptcy Code (IBC) should have a separate Chapter for PPIRP.

The recommendation of ILC was seek to provide PPIRP for MSMEs which is voluntary in nature. The business and viability of corporate MSMEs is best understood by their promoters and original management. Given this, PPIRP adopts a hybrid model debtors in possession and creditor in control features. Such debtor participation will incentivize timely detection and resolution of stress and cause minimum disruption to business operations. In order to address the issues relating to debtors moral hazard and balancing creditor- debtor interest, the legal design for PPIRP retain the core element of CIRP and provide certain additional safeguards

The ILC Report covers various issues like (a) Need for PPIRP (b) Eligibility and Pre-initiation process for PPIRP (c) Initiation of PPIRP (d) Conduct of PPIRP (e) Consideration and approval of Resolution Plan (f) Closure of PPIRP. ILC Report also covers summary of the key recommendations for PPIRP.

The link for the aforesaid Report is as below:

<https://www.mca.gov.in/bin/dms/getdocument?mds=sH%252BYF3NiLhB3DJ8pkcjutg%253D%253D&type=open>

Amita Desai & Co. Company Secretaries, Mumbai

2. Notification of Section 4 of the Companies Amendment Act, 2020—commencement date as Sept 01, 2021 --Rectification of Name of the Company

On **July 22, 2021** MCA notified date of commencement September 01, 2021, of Section 4 of the Companies Amendment Act, 2020, which is Section 16 of the Companies Act, 2013 regarding Rectification of Name of the Company. Amendments are made under Sub-section 1 (b) of Section 16 by alteration and sub-section 3 of Section 16 is substituted. Both these amendments will be effective from September 01, 2021.

1. If through inadvertence or otherwise, a company is registered or its new name is registered by a name which is identical with or too nearly resembles the name by which a company is already in existence, then Central Government [Powers are delegated to Regional Director (RD)] may direct such new company to change its name in **three months**. (Sub Section (1) (a) of Section 16)
2. Any Registered Proprietor of a Trade Mark can make an application to Central Government [Powers are delegated to Regional Director (RD)] if it finds that the name of any company is identical with or too nearly resembles to a Registered Trade Mark of such Proprietor under the Trade Marks Act, 1999. Such application to be made within three years of incorporation or registration or change of name of such company or if in the opinion of the Central Government, it is identical with or too nearly resembles to an existing trade mark, it may direct that company to change its name and that company shall change its name or new name, as the case may be, within a period of **three months (earlier it was six months)** from the issue of such direction, after adopting an ordinary resolution for the purpose. (Sub Section 1 (b) of Section 16)
3. If a company makes default in complying with any direction **given by Central Government as mentioned above (as per Sub-sections (1) of Section 16)**, then the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter, Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13.

The link for the aforesaid Notification is as below:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=%252BrVndsNHmju%252FOHCLaLZgVA%253D%253D&type=open>

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3. The Companies (Incorporation) Fifth Amendment Rules, 2021

On **July 22, 2021** MCA notified the Companies (Incorporation) Fifth Amendment Rules, 2021. The said notification shall come into force from September 01, 2021. Through this Notification MCA has amended the Companies (Incorporation) Rules, 2014 by inserting a new Rule 33A regarding allotment of new name to the existing Company by Central Government pursuant to section 16 of the Act.

Rule 33A

(1) It reads that, in case a company fails to change its name or new name, as the case may be, in accordance with the direction issued under sub-section (1) of section 16 of the Act within a period of **three months** from the date of issue of such direction, the letters **"ORDNC"** (which is an abbreviation of the words **"Order of Regional Director Not Complied"**), the year of passing of the direction, the serial number and the existing Corporate Identity Number (CIN) of the company shall become the new name of the company without any further act or deed by the company, and the Registrar shall accordingly make entry of the new name in the register of companies and issue a fresh certificate of incorporation in Form No. INC-11C (format is given in this Notification)

Provided that nothing contained in sub-rule (1) shall apply in case application for Change of Name is filed in e-form INC-24 by the company is pending for disposal at the expiry of three months from the date of issue of direction by Regional Director, unless the said e-form is subsequently rejected.

(2) A company whose name has been changed under sub-rule (1) shall at once make necessary compliance with the provisions of section 12 of the Act by changing its name and the statement, **"Order of Regional Director Not Complied (under section 16 of the Companies Act, 2013)" shall be mentioned in brackets below the name of company,** wherever its name is printed, affixed or engraved:

Provided that no such statement shall be required to be mentioned in case the company subsequently changes its name in accordance with the provisions of section 13 of the Act.

The link for the aforesaid Notification is as below:

<https://www.mca.gov.in/bin/dms/getdocument?mds=xBAsF0oY7R3foZZqFw4y0A%253D%253D&type=open>

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4. Circular No.13/2021 dated 30 July 2021- Clarification regarding spending of CSR Funds for Covid-19 Vaccination

MCA vide **Circular No.13/ 2021** dated 30th July 2021 had once again clarified that spending of CSR Funds by Corporate on **Covid-19 vaccination** for persons other than employees and their families, is an eligible CSR activity. The same can be covered under item (i) Promotion of Health care including preventive health care and also under item (xii) Disaster Management of Schedule VII to the Companies Act, 2013.

The above clarification is simply communication and appeal to the Corporate to spend on Covid-19 vaccination.

Earlier on **23rd March, 2020**, MCA vide **Circular No. 10 / 2020** had clarified that considering the spread of Covid-19 in India and its declaration as Pandemic by WHO and decision of Government of India to treat this as a notified **Disaster**, any spend of CSR funds by corporate on various activities related to Covid-19 relating to promotion of health care including preventive health care, sanitation and disaster management is eligible as CSR activity. In this circular, MCA also confirmed that as mentioned under **Circular No.21/ 2014 dated 18 June 2014**, all items mentioned under Schedule VII are broad based and to be interpreted liberally.

In past one year many such clarifications were issued by MCA clarifying any CSR funds spent by the corporates on following activities are eligible as CSR activity and the same to be interpreted liberally.

- sanitization
- contribution to specified Research and Development projects
- setting up makeshift hospitals and temporary COVID Care Facilities
- creating health infrastructure for COVID care
- establishment of medical oxygen generation and storage plants
- manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19 or
- similar such activities for countering COVID-19.

Government is taking extremely cautious approach keeping medical infrastructure ready, communicating and collaborating with corporates. Most companies have vaccinated their employees and now it can help Government for vaccination of communities and under privileged, to have better sense of preparedness for Third Wave of Covid-19 this time.

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The economy depends on the health of society at large and aggressive vaccination initiative should prevent damaging third wave. Government and Industry to do partnering and speed up vaccination and Government to ensure better vaccination availability.

Our Nation and the World continue to suffer from Covid-19 and increasing variants, all citizens should be vaccinated and for the purpose Government and Corporate to take aggressive vaccination drive.

The link for the aforesaid Circular is as below:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzEwMTU=&docCategory=Circulars&type=open>

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