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23rd May 2025

Securities and Exchange Board of India vide circular dated May 14, 2025, has issued composition of the Internal Audit team for CRAs

- Securities and Exchange Board of India vide circular dated May 14, 2025, has issued Composition of the Internal Audit team for CRAs.
- Para 33.1.3 of the Master Circular for Credit Rating Agencies (CRAs)dated May 16, 2024, in respect of requirements related to Internal Audit of CRAs, specifies as under: "*The audit team must be composed of, at least, a Chartered Accountant (ACA/ FCA) and a Certified Information Systems Auditor/ Diploma in Information Systems Auditor (CISA/ DISA).*"
- In order to provide CRAs with a larger pool of eligible professionals with the relevant experience/ qualifications for conducting the internal audit, it has been decided to include Cost Accountant (ACMA/ FCMA) and Diploma in Information System Security Audit (DISSA)qualifications from the Institute of Cost Accounts of India (ICMAI)to the audit team. Accordingly, Para 33.1.3 of the Master Circular for CRAs stands modified as under:

  "*The audit team must be composed of at least a Chartered Accountant (ACA/ FCA) or a Cost Accountant (ACMA/ FCMA) and a Certified Information Systems Auditor/ Diploma in Information System Auditor/ Diploma in Information System Security Audit (CISA/ DISA/ DISSA).*"
- The circular shall be applicable with immediate effect.
- The circular is attached herein.

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Securities and Exchange Board of India vide circular dated May 13, 2025, has provided extension of timeline for complying with the certification requirement for the key investment team of the Manager of AIF

- Securities and Exchange Board of India vide circular dated May 13, 2025, has provided for extension of timeline for complying with the certification requirement for the key investment team of the Manager of AIF.
- In terms of Regulation 4(g)(i)of SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations"), the key investment team of the Manager of an Alternative Investment Fund(AIF)shall have at least one key personnel with relevant certification as may be specified by SEBI from time to time. The said Regulation has come into force with effect from May 10, 2024.
- Subsequently, SEBI vide circular dated May 13, 2024 has, inter alia, specified that schemes of AIFs as on May 13, 2024and schemes of AIFs whose application for launch of scheme were pending with SEBI as on May 10, 2024,may comply with the aforesaid certification requirement by May 9, 2025.
- Further, notification issued under SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 on May 10, 2024 prescribed 'NISM Series-XIX-C: Alternative Investment Fund Managers Certification Examination' for the compliance with Regulation 4(g)(i) of AIF Regulations.
- In this regard, based on representation received from the AIF industry, and with the objective of providing ease of compliance to the AIF industry, it has been decided to extend the said timeline from May 9, 2025 to July 31, 2025 to obtain the requisite NISM certification.
- The provisions of this circular shall come into force with immediate effect.
- The circular is attached herein.

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Reserve Bank of India vide circular dated May 08, 2025, has issued Reserve Bank of India (Digital Lending) Directions, 2025

- Reserve Bank of India vide circular dated May 08, 2025, has issued Reserve Bank of India (Digital Lending) Directions, 2025.
- These Directions consolidate the earlier instructions along with certain new measures for arrangements involving Lending Service Providers partnering with multiple regulated entities as mentioned under para 6, and for creation of a directory of digital lending apps as mentioned under para 17 of these Directions.
- These Directions shall be applicable to all digital lending activities of the following entities: All Commercial Banks; All Primary (Urban) Co-operative Banks, State Co-operative Banks, Central Co-operative Banks; All Non-Banking Financial Companies (including Housing Finance Companies), and All All-India Financial Institutions.
- These Directions consolidate the earlier instructions along with certain new measures for arrangements involving Lending Service Providers partnering with multiple regulated entities as mentioned under para 6, and for creation of a directory of digital lending apps as mentioned under para 17 of these Directions.
- These Directions shall come into force immediately except for para 6, which shall come into effect from November 1, 2025, and para 17, which shall come into effect from June 15, 2025.
- The circular is attached herein.

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Execution of Fresh Personal Guarantee After Debt Restructuring Prevents Insolvency Proceedings Under Section 95 IBC Against Personal Guarantor: NCLAT

The New Delhi Bench of the National Company Law Appellate Tribunal (NCLAT), comprising Justice Ashok Bhushan (Judicial Member), Mr. Arun Baroka, and Mr. Barun Mitra (Technical Members), has ruled that once lenders restructure debt and accept a new personal guarantee from the guarantor, they cannot initiate insolvency proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016, based on a prior guarantee. This is particularly applicable when the personal guarantor is also the resolution applicant whose plan has been approved and upheld by the Supreme Court.

Case Background:

M/s MBL Infrastructure Limited received several financial facilities from the erstwhile Allahabad Bank starting in 2010, later managed by a consortium led by State Bank of Mysore. On 17.02.2016, the Appellant provided a personal guarantee in favor of the lead bank.

During the Corporate Insolvency Resolution Process (CIRP), Anjanee Kumar Lakhotia (Respondent No.1 and a suspended director) submitted a Resolution Plan dated 22.11.2017, which was approved by 78.50% of the Committee of Creditors.

As per the plan, lender debts were to be restructured and repaid in phases. The plan required Respondent No.1 to execute a new personal guarantee, which he did on 04.07.2024, in favor of SBICAP Trustee Company Limited.

The Appellant, a dissenting financial creditor who voted against the plan, was still entitled to receive liquidation value in priority under the approved resolution.

Subsequently, Indian Bank (the Appellant) filed an application under Section 95(1) of the IBC to initiate insolvency proceedings against the personal guarantor.

The Adjudicating Authority dismissed the application on 24.01.2025, leading to the present appeal.

Arguments:

The Appellant argued that the 2017 resolution plan did not nullify the earlier personal guarantee and that obtaining a new guarantee did not retrospectively extinguish the earlier one.

In response, the State Bank of India contended that the personal guarantor, being the resolution applicant, had submitted the approved plan and provided a new guarantee accordingly. Therefore, the dissenting creditor could not proceed under Section 95 using the old guarantee.

Tribunal's Observations:

The NCLAT observed that the debt restructuring and requirement of a fresh guarantee meant the earlier guarantee could not be relied upon to initiate insolvency against the guarantor. It noted that the resolution plan involved a comprehensive restructuring of debt, modification of security interests, and issuance of securities, addressing all related obligations.

The Tribunal referred to the Supreme Court's ruling in *Lalit Kumar Jain v. Union of India*, which clarified that approval of a resolution plan doesn't automatically extinguish a personal guarantee. However, in this case, the fresh guarantee was part of the plan submitted by the personal guarantor himself.

It also acknowledged the precedent in *Maharashtra State Electricity Board v. Official Liquidator (1982)* regarding co-extensive liability of guarantors but clarified that this case involved specific consequences arising from a new, court-approved resolution plan.

Conclusion:

The NCLAT upheld the Adjudicating Authority's decision, confirming that the initiation of proceedings under Section 95 was not permissible given the fresh personal guarantee executed under the approved resolution plan. Accordingly, the appeal was dismissed.

Case Title: Indian Bank Vs Anjanee Kumar Lakhotia and Another
Case Number: Company Appeal (AT) (Insolvency) No. 458 of 2025

MSME Cannot Seek Interim Relief Under Section 9 of Arbitration Act During Conciliation: Calcutta High Court

The Calcutta High Court, in a judgment delivered by Justice Shampa Sarkar, has ruled that a Micro, Small and Medium Enterprise (MSME) cannot invoke Section 9 of the Arbitration and Conciliation Act, 1996 to seek interim measures while statutory conciliation proceedings under the MSME Development Act, 2006 are still ongoing. The Court clarified that the provisions of the Arbitration Act only come into play once conciliation fails and the matter is formally referred to arbitration. Therefore, any attempt to seek relief under Section 9 during the conciliation phase is barred under Section 77 of the Arbitration Act.

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Background:

The petitioner, a registered MSME engaged in manufacturing textiles and apparel, entered into an oral agreement with the respondent for the supply of garments. The petitioner supplied goods as per purchase orders and issued invoices, which the respondent accepted without dispute but failed to pay.

Fearing that the respondent might dispose of its assets or empty its bank accounts—especially after a cheque issued by the respondent was dishonoured—the petitioner filed for interim protection under Section 9 of the Arbitration Act, claiming that such measures were necessary to prevent irreparable harm.

Petitioner's Arguments:

The petitioner argued that:

- As an MSME, it was entitled to all protections under the MSME Act.
- Since arbitration was contemplated under Section 18 of the MSME Act, interim reliefs under Section 9 of the Arbitration Act should be made available even before arbitration formally commenced.
- Denying interim protection during conciliation would defeat the beneficial purpose of the MSME Act, as it would allow the buyer to siphon off assets before any effective remedy could be granted.

Respondent's Arguments:

The respondent contended that:

- In the absence of an arbitration agreement, judicial intervention under the Arbitration Act was impermissible.
- Section 18(3) of the MSME Act explicitly states that the Arbitration Act applies only after conciliation fails and the dispute is taken up for arbitration—either by the MSME Council or a designated institution.
- Interim measures under Section 9 can only be sought after this stage.

Court's Observations:

The Court made several key findings:

- Section 9 of the Arbitration Act permits interim measures only when an arbitration agreement exists and arbitration is either contemplated, underway, or concluded but not yet enforced. Since no such agreement was in place, Section 9 was inapplicable in this case.

- Section 77 of the Arbitration Act restricts parties from initiating arbitration or judicial proceedings during conciliation, except in rare situations where proceedings are necessary to preserve rights.
- The petitioner had already issued a notice under the Negotiable Instruments Act, suggesting that it was pursuing parallel legal avenues.
- The Court emphasized that the MSME Act mandates conciliation before arbitration. Only after conciliation fails and arbitration commences do the provisions of the Arbitration Act, including Section 9, apply.
- It warned against judicial overreach, noting that entertaining interim applications during conciliation would amount to judicial legislation, contrary to the express will of the legislature.
- Relying on Nathi Devi v. Radha Devi Gupta (2005), the Court reaffirmed that when statutory language is clear and unambiguous, courts must adhere to its plain meaning without resorting to purposive or expansive interpretations.

Conclusion:

The High Court concluded that:

- The Arbitration Act is not applicable during ongoing conciliation proceedings under the MSME framework.
- Interim relief under Section 9 cannot be granted at this stage.
- The legislative intent behind the MSME and Arbitration Acts is clear: to minimize adversarial proceedings and judicial interference during conciliation.

Accordingly, the petition was dismissed as not maintainable.

Case Title: *Dhananjai Lifestyle Limited v. Sanvie Retail Private Limited*
Case Number: AP-COM/980/2024

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