

# National Update

## Implementation of CARO order deferred by one year

The CARO requires companies to comply with stricter disclosure requirements on various issues, including whistle blower complaints and default in repayment of borrowings. The government has deferred implementation of the strict disclosure requirements for auditor reports of companies by one year, a move that comes amid the disruptions caused by the Coronavirus pandemic. Now, the Companies (Auditor's Report) Order, 2020 would come into effect from financial years commencing on or after April 1, 2021, according to a notification issued by the Ministry of Corporate Affairs (MCA). It is implementing the companies law. Earlier, CARO 2020 was to come into force from financial year starting on or after April 1, 2020. The CARO requires companies to comply with stricter disclosure requirements on various issues, including whistle blower complaints and default in repayment of borrowings. "CARO 2020 would necessitate enhanced due diligence and disclosures on the part of auditors of eligible companies, and has been designed to bring in greater transparency in the financial state of affairs of such companies," the MCA had said in February this year. Under this stricter framework, auditors are required to provide detailed disclosures about loan defaults, amount of cash losses and immovable properties as well as other aspects about companies in their annual reports.

(Source: [www.indianexpress.com](http://www.indianexpress.com))

## MCA provides additional relaxations to independent directors for Online Proficiency Test

In further relief to independent directors, the ministry of corporate affairs (MCA) relaxed both the requirements and timelines for the online self-assessment proficiency test such directors must take under the amended Companies (Appointment and Qualification of Directors) Rules, 2014. The ministry also amended the rules regarding the transfer of shares of minority shareholders of a company undergoing a merger or amalgamation, to provide for further checks on intimation and payment to such shareholders. In another notification, the MCA provided further relief to auditors by pushing back until the coming fiscal, the applicability of the Companies (Auditor's Reporting) Order (CARO) 2020 on account of disruptions due to the pandemic. The passing criterion for the test has been reduced to 50% from 60% before, according to a recent notification.

(Source: [www.economictimes.com](http://www.economictimes.com))

## MCA notifies new provision for Extension of Reservation of Name

The Ministry of Corporate Affairs (MCA) notified the new provision namely Rule 9A for the extension of reservation of name in certain cases. The Government notified the Companies (Incorporation) Third Amendment Rules, 2020 which seeks to amend the Companies (Incorporation) Rules, 2014. In the Companies (Incorporation) Rules, 2014, Rule 9A shall be inserted with effect from 26<sup>th</sup> January, 2021. As per the new rule registrar shall extend the period of a name reserved under Rule 9 by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) up to 60 days on Payment of Fees. Firstly, the period shall be extended upto forty days from the date of approval under rule 9, on payment of fees of rupees of one thousand rupees made before the expiry of twenty days from the date of approval under rule 9. Secondly, the period shall be extended upto sixty days from the date of approval under rule 9 on payment of fees of rupees two thousand made before the expiry of forty days. Thirdly, the period shall be extended upto sixty days from the date of approval under rule 9 on payment of fees of rupees three thousand made before the expiry of twenty days from the date of approval under rule 9. However, the Registrar is empowered to cancel the reserved name in accordance with subsection (5) of section 4 of the Act.

(Source: <https://www.taxscan.in>)

## No Service Tax applicable on Liquidated Damages, Forfeiture of Earnest Money Deposit and Penalty

The Customs, Excises, and Service Taxes Appellate Tribunal (CESTAT), New Delhi Bench held that no Service Tax is applicable on Liquidated damages, forfeiture of earnest money deposit and penalty. The appellant, M/s. South Eastern Coalfields Ltd. is a public sector undertaking and is a subsidiary of Coal India Ltd. It is primarily engaged in the business of mining and selling of coal, which is an excisable good. It operates from 18 different mines/offices. In commercial contracts entered during the course of business, certain clauses providing penalty for non-observance/breach of the terms of contract have been stipulated. According to the appellant, these clauses have been provided to safeguard the interest of the appellant. A show-cause notice was issued to the appellant under section 73(1) of the

Finance Act mentioning therein that the appellant had collected an amount towards compensation or penalty from the buyers of coal on the short lifted or un-lifted quantity of coal, collected amount towards penalty from the contractors engaged for breach of terms and conditions, and collected amount in the name of damages from the suppliers of material for breach of the terms and conditions of the contract. According to the Department this amount charged by the appellant during the period from July 2012 to March, 2016 appeared to be taxable as a declared service under section 66E (e) of the Finance Act. The Principal Commissioner confirmed the demand of service tax holding that the amount received by the appellant towards penalty, earnest money deposit forfeiture and liquidated damages would tantamount to a consideration for tolerating an action the part of the buyers of coal/contractors, for which service tax would be levied under section 66 E(e) of the Finance Act. The coram headed by the President, Justice Dilip Gupta while quashing the order of the Principal Commissioner held that the ex-gratia charges made by the M/s Parle to the appellant were towards making good the damages, losses or injuries arising from "unintended" events and does not emanate from any obligation on the part of any of the parties to tolerate an act or a situation and cannot be considered to be the payments for any services.

(Source: <https://www.taxscan.in>)

### **NCLT approves record number of resolution plans between Jan to Sept**

Despite the challenges posed by the pandemic, a record 78 resolution plans were approved by bankruptcy courts in the first 9 months of 2020 according to Insolvency and Bankruptcy Board of India (IBBI) data. This is the highest number of resolution plans approved by National Company Law Tribunal (NCLT) in 9 months, since the inception of Insolvency and Bankruptcy Code (IBC). While 36 resolutions were approved between January to March period this year, 20 resolution plans were approved in the June quarter amidst Covid-19. The July to September period registered approval of 22 resolution plans in 2020. A total 228 out of 464 cases were closed by liquidation in

the current year, as per data till September, 2020. Last year, a total 76 resolutions were approved between January to September, 2019. Similarly, only 42 resolution plans were approved by the court during the same period in 2018. A total 277 resolution plans have been approved by IBC till date, as on September, 2020. Experts are of view that some changes should be brought in the IBC.

(Source: <https://www.financialexpress.com>)

### **RBI: Bank credit to MSEs up 6.8% in October even as deployment to manufacturing units climb out of red**

The deployment of gross bank credit to micro and small enterprises (MSEs) remained steady in October as well. As of March 27, 2020, bank credit to MSEs stood at ₹ 11.49 lakh crore. Importantly, while the overall year-on-year credit growth to MSEs showed continued growth, credit deployment to manufacturing MSEs was finally out of red in the current FY with a growth of 0.7 per cent in October to ₹ 3.61 lakh crore from ₹ 3.59 lakh crore in October FY20. Deployment to services MSE continued to be in green in October FY21. The gross bank credit growth was up 10 per cent from ₹ 6.94 lakh crore in October last FY to ₹ 7.63 lakh crore. Similarly, for September, the deployment grew 10.2 per cent to ₹ 7.66 lakh crore and for August, it was up 8.8 per cent to ₹ 7.49 lakh crore. Nonetheless, the growth in FY21 so far till October remained negative to 0.5 per cent from ₹ 7.67 lakh crore in March 2020. The contraction in the FY till September stood at minus 0.2 per cent to ₹ 7.66 lakh crore.

Meanwhile, the government had enabled sanctioning of over 80 lakh loans involving ₹ 2.05 lakh crore out of which loans involving more than ₹ 1.58 lakh crore has been disbursed as of December 4, 2020, under the Emergency Credit Line Guarantee Scheme. The scheme was extended from October 31, 2020, to November and further till March 2021 as it targeted to enable disbursement of ₹ 3 lakh crore scheme corpus announced in May as part of the Atmanirbhar package to MSMEs, individuals, Mudra enterprises, and other businesses.

(Source: <https://www.financialexpress.com>)