

## Corporate Law Newsletter for April 2019

### **ABOUT ACUITY LAW**

Acuity Law was founded in November 2011. Acuity Law comprises of a team of young and energetic lawyers led by Souvik Ganguly and Gautam Narayan, who have deep and diverse experiences in their chosen areas of practice. We have advised Indian and multinational companies, funds, banks and financial institutions, founders of companies, management teams, international law firms, domestic and international investment banks, financial advisors and government agencies in various transactions in and outside India.

Acuity Law takes pride in rendering incisive legal advice taking into consideration commercial realities. Our areas of practice are divided not two departments.

The Corporate practice is led by Souvik Ganguly and the Disputes practice is led by Gautam Narayan.

As part of the Corporate practice, Acuity Law advises on:

- Mergers and acquisitions;
- Distressed mergers and acquisitions;
- Insolvency Law;
- Private Equity and Venture Funding;
- Employment and labour laws
- Commercial and trading arrangements; and
- Corporate Advisory

As part of the Disputes practice, Acuity Law under the leadership of Gautam Narayan advises and represents clients on domestic and cross - border:

- Civil disputes;
- Criminal law matters; and
- Arbitration matters

Acuity Law actively follows legislative and policy developments in its chosen areas of practice and shares such developments with clients and friends on a regular basis.

If you want to know more about Acuity Law, please visit our website [www.acuitylaw.co.in](http://www.acuitylaw.co.in) or write to us at [al@acuitylaw.co.in](mailto:al@acuitylaw.co.in).

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<p><b>INTRODUCTION</b></p>	<p>This newsletter covers developments with respect to corporate law during the month of April 2019. In relation to corporate laws, we have covered a case law stating that the same forum will adjudicate the revival scheme and liquidation proceedings. Notifications by Ministry of Corporate Affairs (<b>MCA</b>) on annual filing of form DIR-3 KYC by directors; withdrawing the restriction on incorporation of Limited Liability Partnerships (<b>LLPs</b>) for manufacturing activities; and extension of due-date to 15 June 2019 for filing e-form ACTIVE. Please see below summaries of the relevant developments.</p>
<p><b>SAME FORUM TO ADJUDICATE REVIVAL SCHEME AND LIQUIDATION PROCEEDINGS</b></p>	<p><b>Matter:</b> Rasiklal S. Mardia vs. Amar Dye Chem Ltd. (In liquidation) and others</p> <p><b>Order Date:</b> 08 April 2019</p> <p><b>Summary:</b></p> <p>The National Company Law Tribunal (<b>NCLT</b>) had refused to approve the scheme of compromise/arrangement for Amar Dye Chem Limited (<b>Company</b>) under the provisions of Companies Act, 1956. The promoter of the Company filed an appeal against the decision of NCLT before the National Company Law Appellate Tribunal (<b>NCLAT</b>).</p> <p>NCLAT quashed the NCLT's order stating that liquidator is only an additional person and not exclusive person who can move application under section 391 of the Companies Act, 1956 when the company is in liquidation.</p> <p>NCLAT opined that a scheme of compromise and arrangement can be filed even when liquidation proceeding is pending but if such application is filed, it would be a proceeding relating to the ongoing winding up process and so it has to be in the same forum.</p> <p>NCLAT noted that Bombay High Court had ordered winding up of the Company in 1998 and the official liquidator was directed to take charge of all affairs, assets and properties of the Company. NCLAT further noted that the appellant had proposed to the Bombay High Court that he along with the co-investors was in a position to revive the Company, to which Bombay High Court stated that it would be open to the appellant to submit a revival scheme. NCLAT observed that the matter with respect to the scheme of arrangement was transferred to NCLT pursuant to a notification issued by MCA.</p> <p>NCLT had referred to section 391(1) of the Companies Act, 1956 and concluded that once a Company was in liquidation, it was the liquidator alone who was authorized to file the Company Petition either for compromise or arrangement in respect of the Company in liquidation. NCLAT observed that NCLT had interpreted the provision under section 391(1) of the Companies Act, 1956, to mean that a liquidator "alone" is authorized to file a petition for compromise or arrangement in respect to a company in liquidation. On this, NCLAT remarked that <i>"the word "alone" has not been used by the legislature."</i> in the said provision.</p> <p>Further, with respect to the Company's submission that the transfer of proceedings from Bombay High Court to NCLT was itself flawed, NCLAT relied on a ruling where Bombay High Court held that it would exercise exclusive jurisdiction to adjudicate application in relation to revival of Company in provisional liquidation and declined to transfer the matter to NCLT, hence, NCLAT held that <i>"NCLT could not exercise jurisdiction for adjudicating application for scheme of compromise/arrangement which had been moved by appellant, in liquidation proceeding on being divorced from the liquidation/winding up proceeding."</i></p> <p>Therefore, NCLAT quashed NCLT's order, while providing the appellant with an opportunity to move Bombay High Court, so as to ensure that the scheme and liquidation/winding up proceedings are before one and same forum.</p>

<p><b>RESTRICTION ON INCORPORATION OF LLPS FOR MANUFACTURING ACTIVITIES WITHDRAWN</b></p>	<p>On 6 March 2019, MCA had issued an office memorandum which barred limited liability partnerships from carrying out manufacturing and allied activities. Consequently, various Registrar of Companies refused to incorporate or convert companies to limited liability partnerships in the manufacturing and allied sector. The reasoning for this restriction was unclear. The MCA on 16 April 2019 withdrew the office memorandum. This is a welcome decision which clarifies that limited liability partnerships can operate in the manufacturing and allied sector.</p>
<p><b>CLARIFICATION REGARDING ANNUAL FILING OF FORM DIR-3 KYC BY DIRECTORS</b></p>	<p>MCA has clarified that all Directors, holding Director Identification Number (<b>DIN</b>) are required to file the DIR-3 KYC form every year, before 30th April of immediate next financial year, for confirming information available in MCA-21 portal.</p> <p>As the form is presently being modified to enable pre-filling of data &amp; information, the time limit for filling e-form DIR 3 KYC for FY 2018-19 has been extended and it can be filed without any fee within a period of 30 days from the date of deployment of the Form on the MCA website.</p>
<p><b>DUE-DATE FOR FILING E-FORM ACTIVE EXTENDED TO 15 JUNE 2019</b></p>	<p>MCA has extended the due date for furnishing e-Form ACTIVE, which is required to be filed by a company incorporated on or before 31 December 2017 to intimate details of a company and its registered office with the ROC, from 25 April 2019 to 15 June 2019.</p> <p>In case a company does not intimate the said particulars, the Company shall be marked as "ACTIVE-non-compliant" on or after June 16, 2019 and shall be liable for action under sub-section (9) of section 12 of the Companies Act, 2013.</p> <p>Further, clarifies that where a Company files the e-Form on or after June 16, 2019, the Company shall be marked as "ACTIVE Compliant", on payment of fees of Rs. 10,000.</p>