

# Corporate Affairs Newsletter

## November 2022



### SEBI proposes substantial relaxation of buy-back norms

The Securities and Exchange Board of India (SEBI) floated a consultation paper proposing to revamp the share buyback process. The new framework proposes to cut the time period taken for completion of buybacks, enhance the amount companies can repurchase vis-à-vis their free reserves and reduce the cooling-off period between two buybacks.

Currently, companies can buyback only 25% of the paid-up capital and free reserves under the tender route. SEBI has proposed an increase in it to 40%. This will help companies return a greater amount to shareholders in the form of buyback. Further, the committee has suggested that companies should be allowed to undertake two buybacks during a 12-month period as opposed to just one at present.

Moreover, it has been proposed to reduce the time period of buyback, from the current six months, to 66 working days from April 2023. The regulator has also prescribed increasing the minimum threshold for buybacks through the open market route to 75% from the current 50%. This is the threshold that companies have to mandatorily utilise from the amount earmarked for buy-back.

The proposal aims to prevent companies from announcing buy-backs in cases where there is no real intention to complete the buy-back for the entire amount announced.



 **CASE LAWS**

Moratorium u/s 14 of Insolvency and Bankruptcy Code, 2016 (IBC) isn't an embargo on the attachment of tainted property of Corporate Debtor u/s 5 & 8 of Prevention of Money Laundering Act, 2002(PMLA)

**Case Name: *Rajiv Chakraborty- Resolution Professional of Era Infra Engineering Limited v. Directorate of Enforcement***

The brief facts leading to the case is that, Rajiv Chakraborty, a Resolution Professional of Era Infra Engineering Limited, challenged the orders of attachment passed by the Enforcement Director under PMLA before the High Court. The challenge to the orders of attachment was essentially founded on the provisions of Section 14 of the IBC contending that once the moratorium had come into effect, the ED stood denuded of jurisdiction to exercise powers under the PMLA. The question before the Delhi High Court was whether Moratorium u/s 14 of IBC is an embargo on attachment of tainted property of CD under sections 5 & 8 of PMLA.

The Court ruled that the principle that “latter Act shall prevail” is not an inviolable rule applicable in case of conflict of two special statutes both having non-obstante clauses. Therefore, by virtue of this principle, one cannot mechanically conclude that moratorium under IBC would gain overriding effect over attachment actions under sections 5 and 8 of PMLA without having regard to section 32A of IBC which was enacted later in 2020 to clarify the extent to which the provisions of the PMLA are to give way to proceedings initiated under the IBC.

