VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

Communiqué

Corporate & other related laws

January 2024

Inside this edition

Notice Inviting Comments on the review of Rules prescribed under the Companies Act, 2013 and Limited Liability Partnership Act, 2008

NCALT: Shares of any member in a Company are required to be transferred in the mode and manner provided for under the Articles of Association of the Company and it is bound to meet the requirements of the Article

Guidelines for AIFs with respect to holding their investments in dematerialized form and appointment of custodian

& more...

Notice Inviting Comments on the review of Rules prescribed under the Companies Act, 2013 and Limited Liability Partnership Act, 2008

The Ministry of Corporate Affairs (MCA) has issued notice dated January 15, 2024 stating that, pursuant to the announcement made in Para 99 & 100 of the Budget Speech (2023-24) the MCA has released a Policy for Pre-Legislative consultation and comprehensive review of existing Rules and Regulations prescribed under various legislations administered by it.

Accordingly, it has been decided to invite comments/suggestions on the Rules issued under such legislations from all the stakeholders through e-Consultation Platform on the MCA website.

It is requested that comments/suggestions on the Rules may be provided through such facility within 30 days of posting of the rules on e-Consultation module. In the first phase, rules relating to Companies Act, 2013 and LLP Act, 2008 shall be posted on econsultation module for inviting comments / suggestions with effect from 25.01.2024.

NCALT: Shares of any member in a Company are required to be transferred in the mode and manner provided for under the Articles of Association of the Company and it is bound to meet the requirements of the Article

In Case, Avanti Metals Private Limited (Appellant) Vs. Alkesh Gupta (Respondent)

Hon'ble NCLAT inter alia observed that it is seen from Section 44 of the Companies Act, 2013, shares are construed as movable property governed by the Articles of Association of the Company and it mandates that a Succession Certificate is required for the transmission of the shares. When Section 44 of the Act provides that shares of any member in a Company are required to be transferred in the mode and manner provided for under the Articles of Association of the Company, the sole Respondent is bound to meet the requirements.

Further, NCLAT held that the `Succession Certificate', specifies the `debts' and `securities' entitles a `legal heirs' not only to receive the `Interest' or `Dividends' but also to `negotiate' or `transfer' them, as per decision in `Themappa Chettiar' Vs. `Indian Overseas Bank', reported in (1943) 13 Comp. Cas. 202 (Madras). In regard to disputes pertaining to `Will', parties are expected to get that dispute settled from a `Competent Court of Law' as per decision in `C. Rajesh Kapoor' Vs. `Tirupati Balaji Hotels P. Ltd.', reported in (2017) 204 Comp. Cas 303. If the `Probate' Proceedings are pending in `Civil Court' then the `Petitioner' under the `Companies Act' for `rectification of register' will not be `maintainable'. In the facts of the attendant matter on hand, the Company can effect `transfer of shares', on the basis of `Succession Certificate', as per Section 370 of the `Indian Succession Act, 1925'

MCA Update

Stakeholders may please note that LEAP-1 form under the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024 would be deployed in MCA-V2 system on 24.01.2024 under Company forms download - Compliance Related Filing.

Guidelines for AIFs with respect to holding their investments in dematerialized form and appointment of custodian

SEBI vide this circular has prescribed that any investment made by an AIF on or after October 01, 2024 shall be held in dematerialised form only, irrespective of whether the investment is made directly in the investee company or is acquired from another entity. The investments made by an AIF prior to October 01, 2024 are exempted from the requirement of being held in dematerialised form, except in the cases as specified by SEBI. However, the aforesaid requirement of holding investments in dematerialised

form shall not be applicable to scheme of an AIF whose tenure ends on or before January 31, 2025 and scheme of an AIF which is in extended tenure as on date of this circular.

Further provided that the custodian for a scheme of an AIF shall be appointed prior to the date of first investment of the scheme and the pilot Standard Setting Forum for AIFs ('SFA'), shall formulate implementation standards for reporting data on investments of

AIFs that are under custody with the custodian. Such standards shall specify the format and modalities of reporting of data by the manager of AIF to the custodian and subsequently, by the custodian to SEBI.

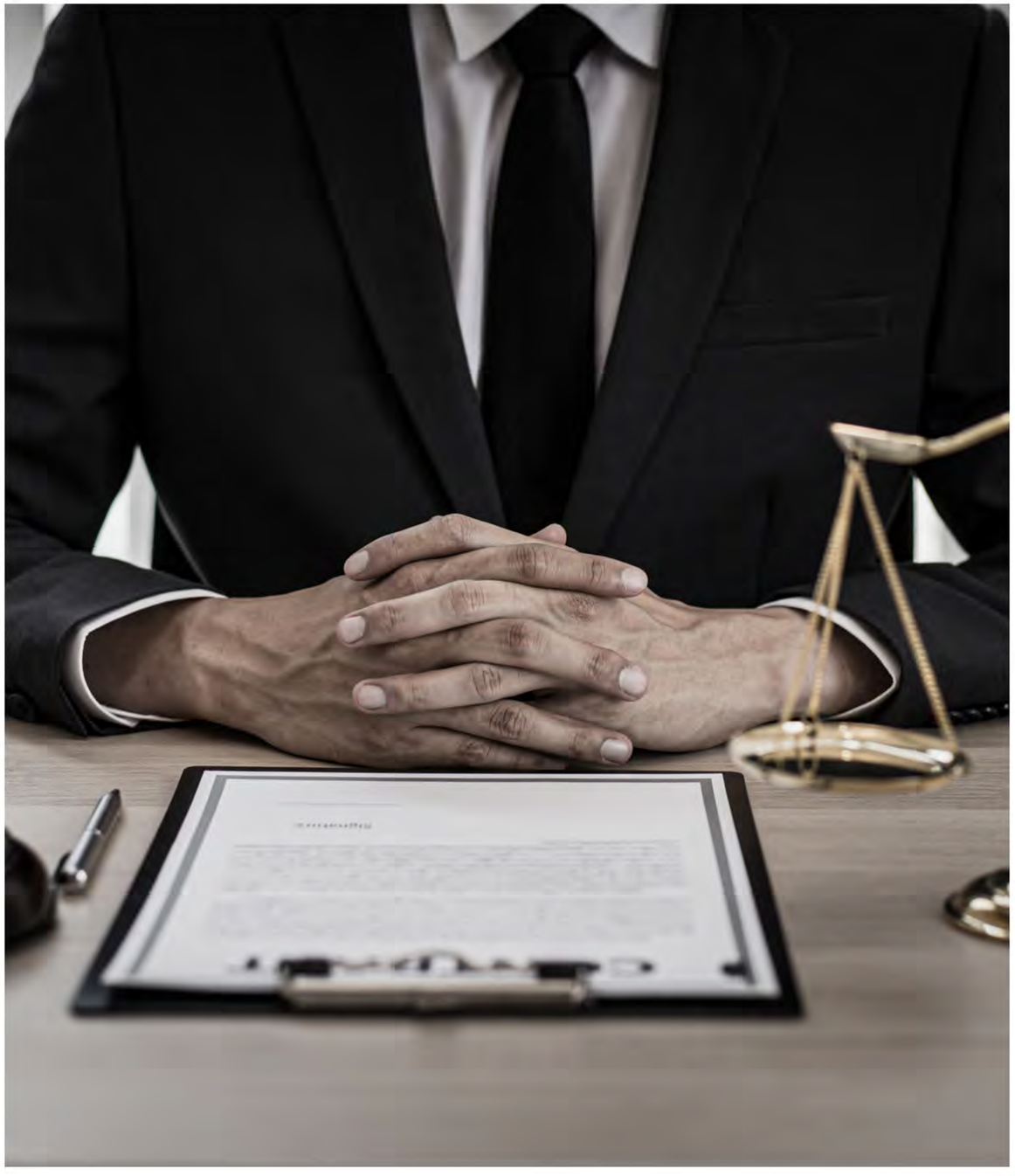
Ease of Doing Investments by Investors- Facility of voluntary freezing/ blocking of Trading Accounts by Clients

To enhance ease of doing business and ease of investment, SEBI has prescribed that the framework for Trading Members to provide the facility of voluntary freezing/blocking the online access of the trading account to their clients on account of suspicious activities shall be laid down on or before April 01, 2024, by the Brokers' Industry Standards Forum (ISF), which shall, inter-alia, contain necessary guidelines on detailed policy, action to be taken by the Trading Member, process for re-enabling etc. Further, the Stock Exchanges shall ensure that the guidelines so issued under the aforesaid Framework are implemented by Trading Members with effect from July 01, 2024. A compliance report to this effect shall be submitted to SEBI by Stock Exchanges latest by August 31, 2024.

NCLAT: Rectificatory jurisdiction under Section 59 of the Companies Act, which is summary in nature can be exercised where there are contested facts and disputed questions.

In Case, Gireesh Kumar Sanghi (Appellant) Vs. Sanghi Industries Ltd. & 19 Ors (Respondents)

The Hon'ble National Company Law Appellate Tribunal, in a recent observation, highlighted the comprehensive bar on the jurisdiction of Civil Courts outlined in Section 430 of the Act. This section unequivocally states that Civil Courts cannot entertain suits or proceedings concerning matters within the purview of the Tribunal or Appellate Tribunal, nor can they grant injunctions regarding actions carried out under the Act or any other relevant legislation. Notably, the Tribunal emphasized that this bar does not diminish its rectificatory jurisdiction under Section 59 of the Act, even in cases involving contested facts or disputed questions. This interpretation aligns with the precedent set in the case of Shashi Prakash Khemka Vs. NEPC Micon & Ors. (2019) 18 SCC 569, as referenced by the Hon'ble Supreme Court in relation to Section 430 of the Act.



Let's Connect

+91.135.2743283, +91.135.2747084

3rd Floor, MJ Tower, 55, Rajpur Road, Dehradun - 248001

E: info@vkalra.com | W: vkalra.com

Follow us on

For any further assistance contact our team at kmt@vkalra.com

© 2024 Verendra Kalra & Co. All rights reserved.
This publication contains information in summary form and is therefore intended for general guidance only. It is not a substitute for detailed research or the exercise of professional judgment. Neither VKC nor any member can accept any responsibility for loss occasioned to any person acting or refraining from actions as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.