

REGULATOR EXPECTATIONS

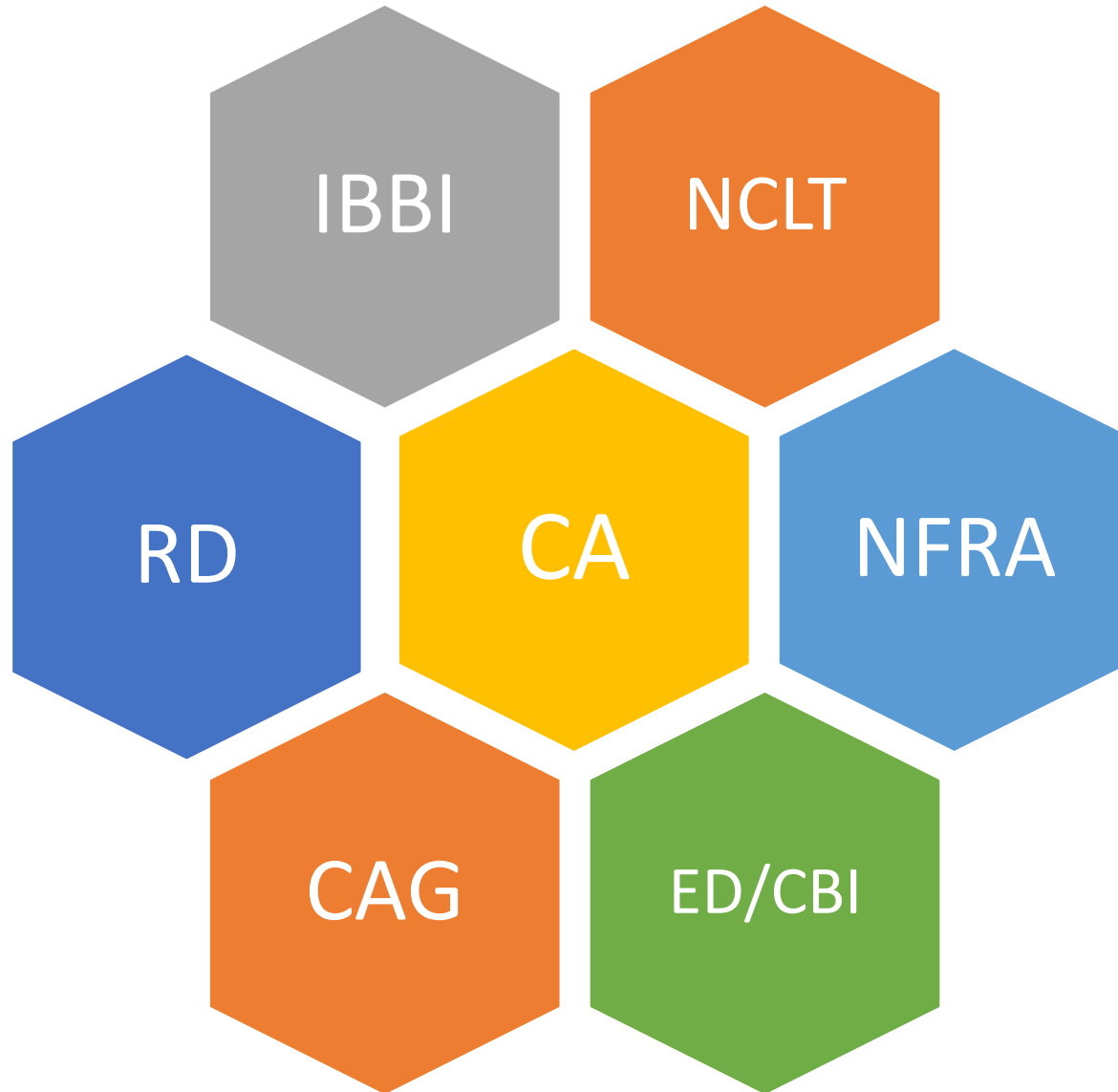
Nipun Singhvi

Founding Partner

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Certified IFRS - Forensic Accountant- Con. Bank Audit, Qualified ID (MCA), Qualified IP (IBBI)

Multiple Regulators



Civil actions

- Companies Act ,2013
- CA Act, 1949
- Insolvency and Bankruptcy Code, 2016
- Prevention of Money Laundering Act, 2002
- NBFC- RBI Act, 1934

Criminal Action

- Companies At, 2013
- Indian Penal Code , 1860
- Criminal Procedure Code, 1973

Removal of auditors under Companies Act, 2013

Section 140 : Removal of the auditor before RD

Form is filed before Regional Director to remove the auditor

Notice is issued by the RD

Reply is to be filed

Hearing is done



Removal of auditors under Companies Act, 2013

Principles of Natural Justice

Language should be descent

Life threat to auditor

*HGR Logistics Limited Vs Regional Director, NWR
[Gujarat HC] : Auditor removal approved*



Removal of auditors under Companies Act, 2013



Shareholder dispute

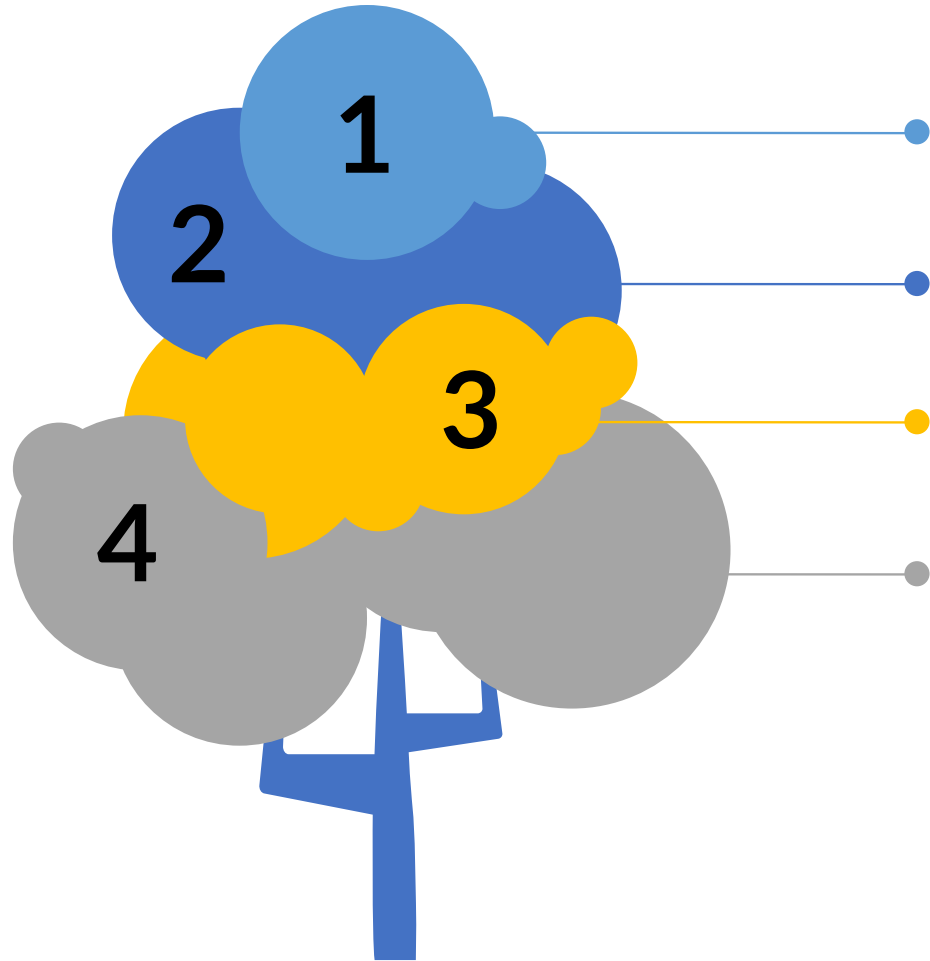
Matter pending in NCLT

*Sankheshwar Builders and Developers
Private Limited: Auditor removal rejected*



- Notes on account
- Neutral comments on dispute
- Going through litigations documents

Action against Statutory Auditors of NBFC under section 45MAA of RBI Act, 1934



U/s section 45MAA of the Reserve Bank of India Act, 1934, RBI by an order dated September 23, 2021, debarred M/s Haribhakti & Co. LLP, Chartered Accountants from undertaking any type of audit assignment/s in any of the entities regulated by RBI for a period of two years with effect from April 1, 2022.

In 2019, the RBI had imposed a one-year ban on SR Batliboi & Co, an affiliate of global auditing firm EY

45MAA states where any auditor fails to comply with any direction given by the Bank under section 45MA the Bank may debar the auditor.

45MA states it is duty of an auditor to inquire whether or not the non-banking institution has furnished to the Bank such statements, information or particulars relating to deposits received by it, as are required and further issue directions relating to balance-sheet, profit and loss account, etc.

Gujarat RERA penalizes for incorrect classification

Classification of advance received from customers

Loans received from third party

Form 3 : CA certificate – Total amount received from customer

Form 5 : Annual return

Source of funds verification



Removal and replacement of auditor

Sequence of Events

Complaint lodged under Prevention of Corruption Act for disproportionate assets

ACB issued letter to GAD

GAD issued letter to all PSU's

CAG portal showed Auditor removed without intimation

New auditor appointed



[Pipara & Co. Vs Gujarat State Police Housing Corp Limited]

SCA 7340,7342 and 7270 of 2021

Removal and replacement of auditor

Removal & Replacement of auditor

Set aside by the Gujarat HC

Right of being heard

Old Auditors restored

[Pipara & Co. Vs Gujarat State Police Housing Corp Limited]

SCA 7340,7342 and 7270 of 2021



Apprehension of Arrest : Bail or Jail?

Nowadays, complaints are filed which leads to FIR

Criminal complaint

- 7 years
- More than 7 years

DK basu guidelines

Arnesh Kumar guidelines

- Notice u/s 41A CrPC



CBI



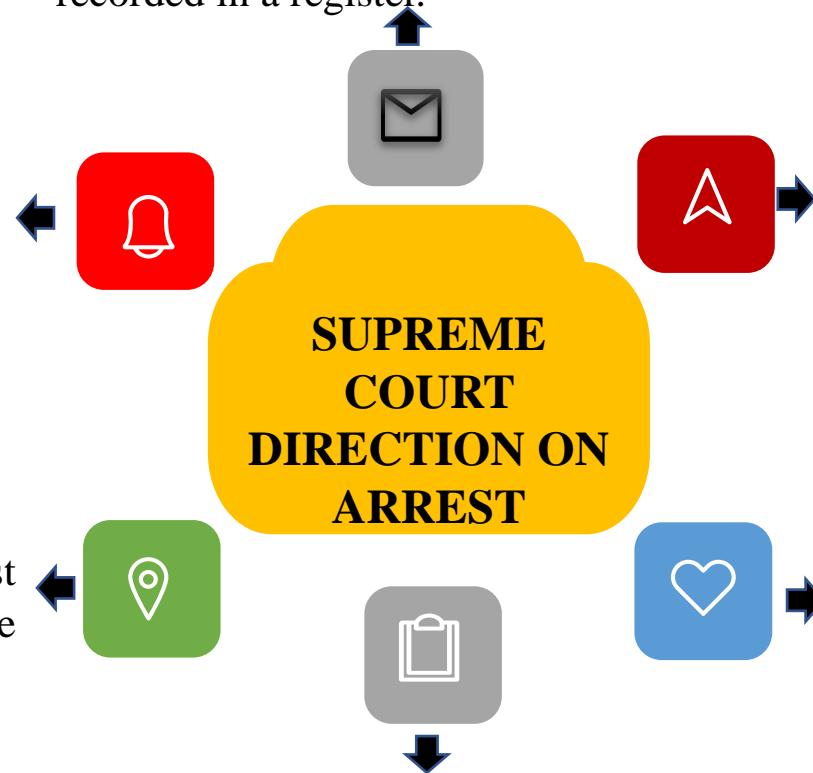
ED

D.K. Basu vs. State of West Bengal

Police arresting and interrogating suspects should wear “accurate, visible and clear” identification and name tags, and details of interrogating police officers should be recorded in a register.

The person arrested, detained or being interrogated has a right to have a relative, friend or well-wisher informed as soon as practicable, of the arrest and the place of detention or custody. If the person to be informed has signed the arrest memo as a witness this is not required.

Copies of all documents including the arrest memo have to be sent to the Area Magistrate (laqa Magistrate) for his record.



Where the friend or relative of the person arrested lives outside the district, the time and place of arrest and venue of custody must be notified by police within 8 to 12 hours after arrest. This should be done by a telegram through the District Legal Aid Authority and the concerned police station.

An entry must be made in the diary at the place of detention about the arrest, the name of the person informed and the name and particulars of the police officers in whose custody the person arrested is.

The person arrested should be told of the right to have someone informed of the arrest, as soon as the arrest or detention is made.

SUPREME COURT DIRECTION ON ARREST

D.K. Basu vs. State of West Bengal

There should be a police control room in every District and State headquarters where information regarding the arrest and the place of custody of the person arrested must be sent by the arresting officer. This must be done within 12 hours of the arrest.

The person arrested must have a medical examination by a qualified doctor every 48 hours during detention. This should be done by a doctor who is on the panel, which must be constituted by the Director of Health Services of every State

The person arrested has a right to meet a lawyer during the interrogation, although not for the whole time.

The person being arrested can request a physical examination at the time of arrest. Minor and major injuries if any should be recorded. The "Inspection Memo" should be signed by the person arrested as well as the arresting police officer. A copy of this memo must be given to the person arrested

A memo of arrest must be prepared at the time of arrest. This should: Have the time and date of arrest. be attested by at least one witness who may either be a family member of the person arrested or a respectable person of the locality where the arrest was made. be counter-signed by the person arrested.



Arnesh Kumar vs State Of Bihar

All the State Government should instruct its police officers not to automatically arrest a person when an offence under section 498-A of the Indian Penal Code is registered. The necessity of arrest arises when the case falls under the parameter of section 41 of the Code of Criminal Procedure.

All police officers be provided with the check list containing specified clauses under Section 41 (1) (b) (ii).



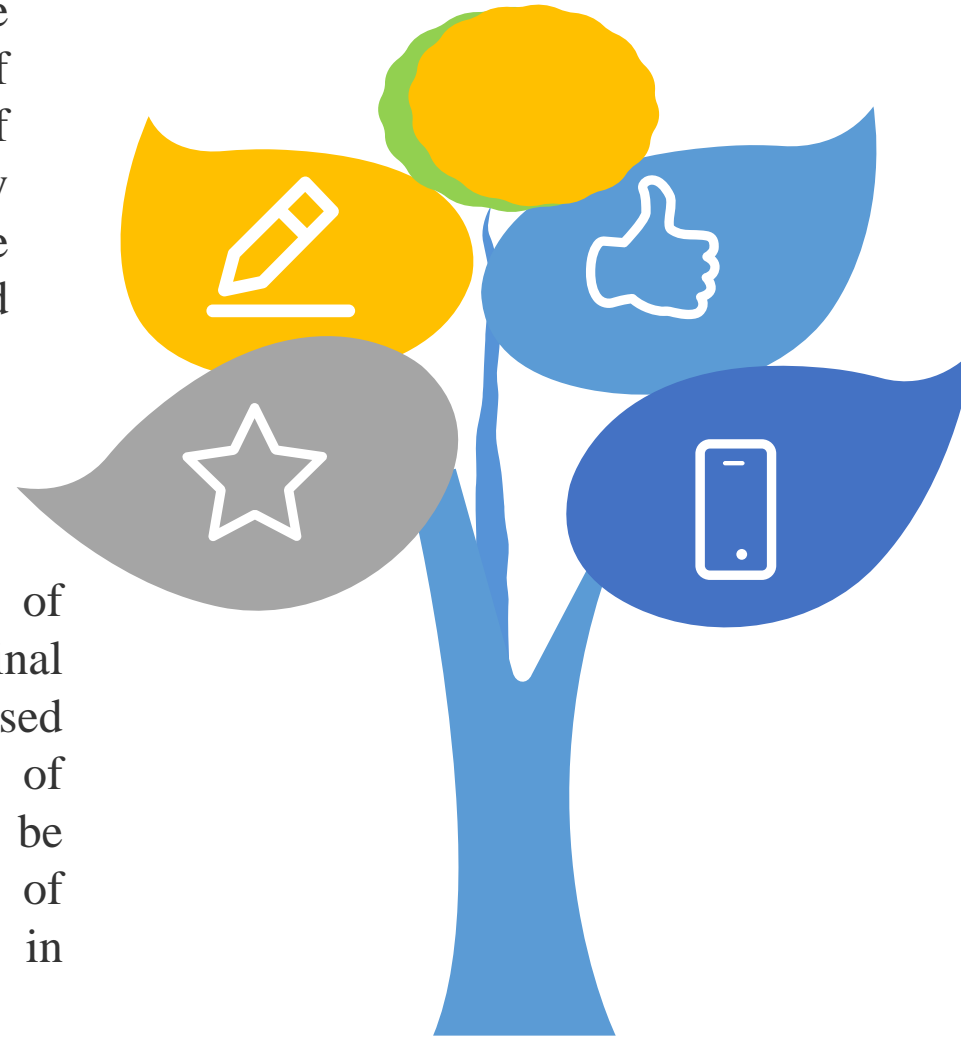
The police officer shall forward the check list duly filed and furnished with the reason and material necessitated the arrest while producing accused before the magistrate for further detention.

The magistrate while authorizing the order of further detention shall rely upon the report furnished by the police officer and only after recording the reason duly furnished on Police report and on the satisfaction, the Magistrate will authorize further detention

Arnesh Kumar vs State Of Bihar

The decision not to arrest an accused be forwarded to Magistrate within two weeks from the date of institution of the case with a copy of Magistrate which may extended by the Superintendent of police of the district for the reason to be recorded in writing.

Notice of Appearance in terms of Section 41-A of the Code of Criminal Procedure be served upon the accused within two weeks from the date of institution of case which may be extended by the Superintendent of Police after recording the reason in writing.



Failure to comply with the directions mentioned above shall rendered the police officer liable to be punished for contempt of court before High Court having jurisdiction.

Authorizing detention by the Judicial Magistrate without recording the reason, the concerned Judicial Magistrate shall be liable for Departmental Proceedings by the High Court.

FIR to be uploaded in 24 hours

Youth Bar Association Vs Union of India

WP (Criminal) No. 68/2016 [SC]
dated 07.09.2016

Criminal complaint closed
with Police

- Available under RTI
- Complaint can also be demanded under RTI
- In case the complaint is closed



Anticipatory or Regular Bail?

- Anticipatory Bail
- Regular Bail
- Investigation
- Charge Sheet : 60 days
- Default Bail

Anticipatory or Regular Bail?

- Special Court
- Supplementary charge sheet
- Discharge
- Transit Bail

Special Court

Companies Act, 2013

Bail: Which Court?

Special Court

- Companies Act, 2013
- CBI
- Enforcement
Directorate



SC directs installation of CCTV's in police stations



PARAMVIR SINGH SAINI vs. BALJIT SINGH [SLP (CRIMINAL) NO.3543 of 2020] dated 02.12.2020

Para 19 – CBI, NIA,ED, NCB, DRI, SFIO
Any other agency which carries out interrogations and has the power of arrest.



SC directs installation of CCTV's in police stations



- Maintained for 18 months
- Audio-Video mode should be maintained

Code of Conduct of IP

*INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONALS)
REGULATIONS, 2016 states for Code of Conduct of IP*

At all times abide by the IBC, rules, regulation and guidelines thereunder



At all times continue to satisfy the requirement of Regulation 4.



Not outsource his duties and responsibility under the IBC, except those specifically permitted by IBBI.



Continue and undergo professional education as may be required by IBBI



Moreover, abide by the code of conduct specified in the first schedule to the regulation



An IP should be honest, straightforward and direct in all professional relationships



An IP should continuously upgrade and maintain his skill and knowledge, which are required to render his services.

An IP shall disclose all the costs which will be incurred towards insolvency process cost, liquidation cost and cost of bankruptcy to the relevant stakeholders and also strive to ensure that such costs are reasonable

An IP should comply with all the timelines which are stated under IBC and the rules, guidelines and regulations, which are provided for resolution, bankruptcy or liquidation.



Code of Conduct of IP

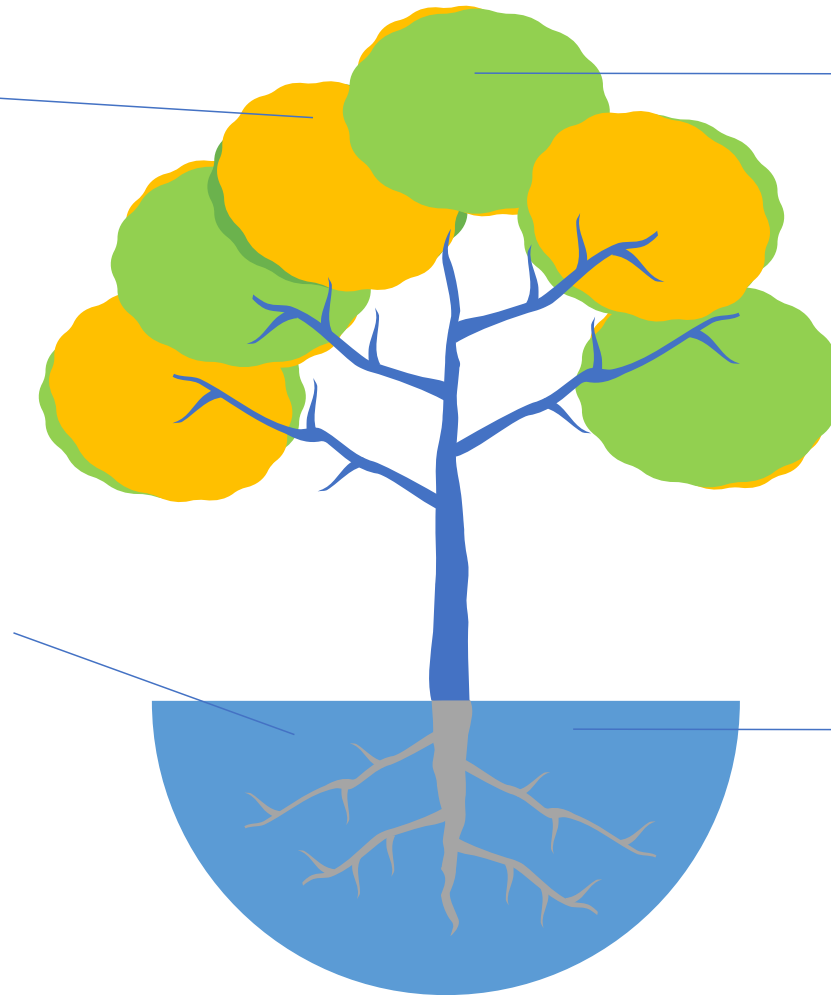
An IP should never conceal any material information or make a misleading statement to the IBBI, AA or any stakeholder, as applicable.

An IP should not get involved in any activities that might bring disrepute to the profession and must not misinterpret the facts or situation.

Code of Conduct of IP

An IP should not communicate any privileged information to any stakeholder unless it is required under IBC, rules, regulation or order of AA.

In the matter of Mohan Lal Jain, the resolution professional during the moratorium period paid EMI out of the assets of the corporate debtor to the financial creditor which violated section 14(1) (b) of IBC. The IBBI (Disciplinary Committee) held that once the corporate insolvency resolution process is initiated, all the claims of the creditors have to wait till the process is completed. In this matter, preference was given to one creditor. Thus, the resolution professional compromised his independence



An IP should not accept too many assignments if he cannot devote adequate time to each assignment.

In the matter of Tirupati Juice Industries Private Limited, the resolution professional did not render correct advice to the COC while submitting a resolution plan. The AA, in this case, held that the resolution professional should not be appointed as liquidator in such circumstances.



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