

Communiqué

Corporate & other related Laws

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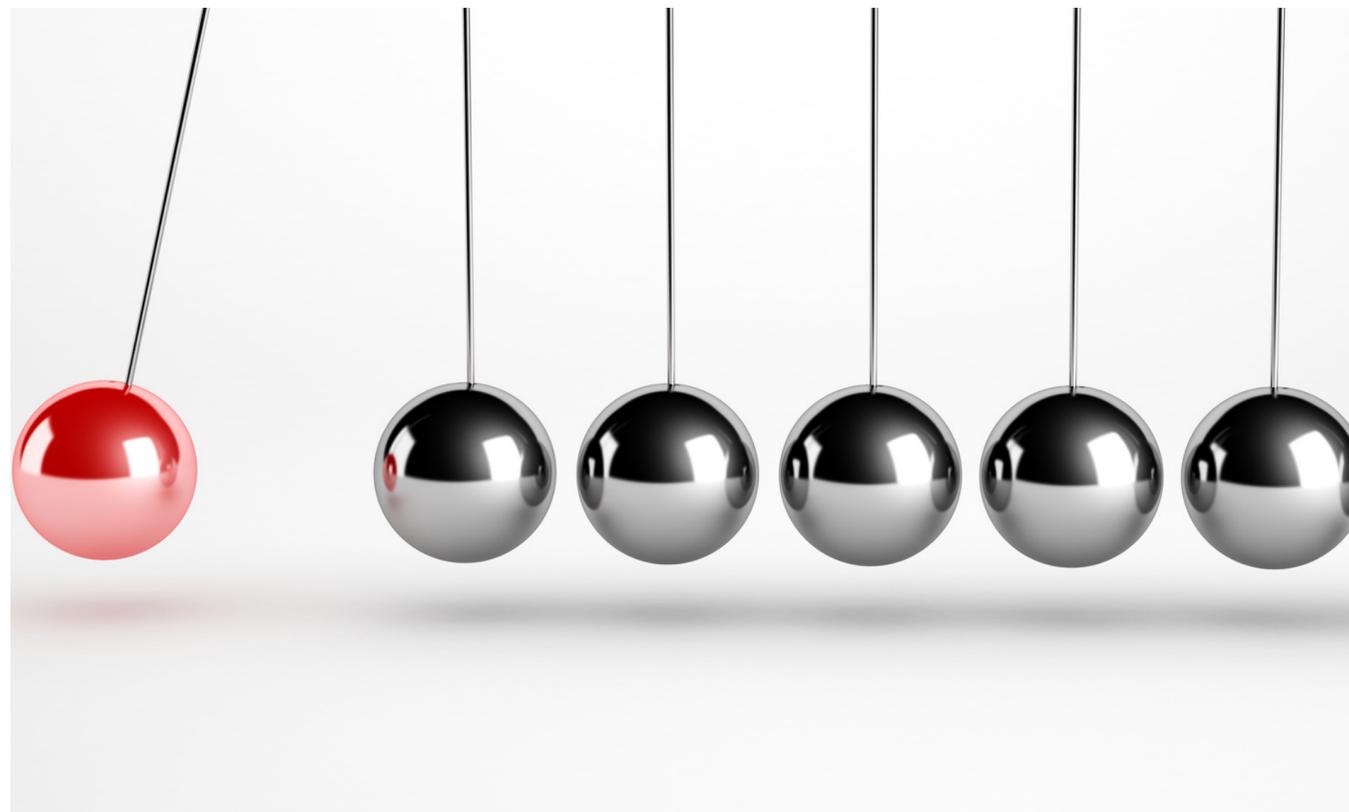
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Merging multiple user-ids in MCA21 V2 portal with ones in V3 portal

MCA has observed that the Institute of Chartered Accountants of India (ICAI), Institute of Cost Accountants of India and Institute of Company Secretaries of India have created multiple user IDs while transacting on the existing MCA21 V2 Portal. Due to this the users are facing errors and hardship. MCA further states that all such members may approach their respective institutes with their credentials and the institute shall make recommendations for merging multiple existing user IDs with the ID created in V3 Portal or for deactivation of the old user IDs in V2.



Resignation does not absolve auditor of onus of reporting fraud

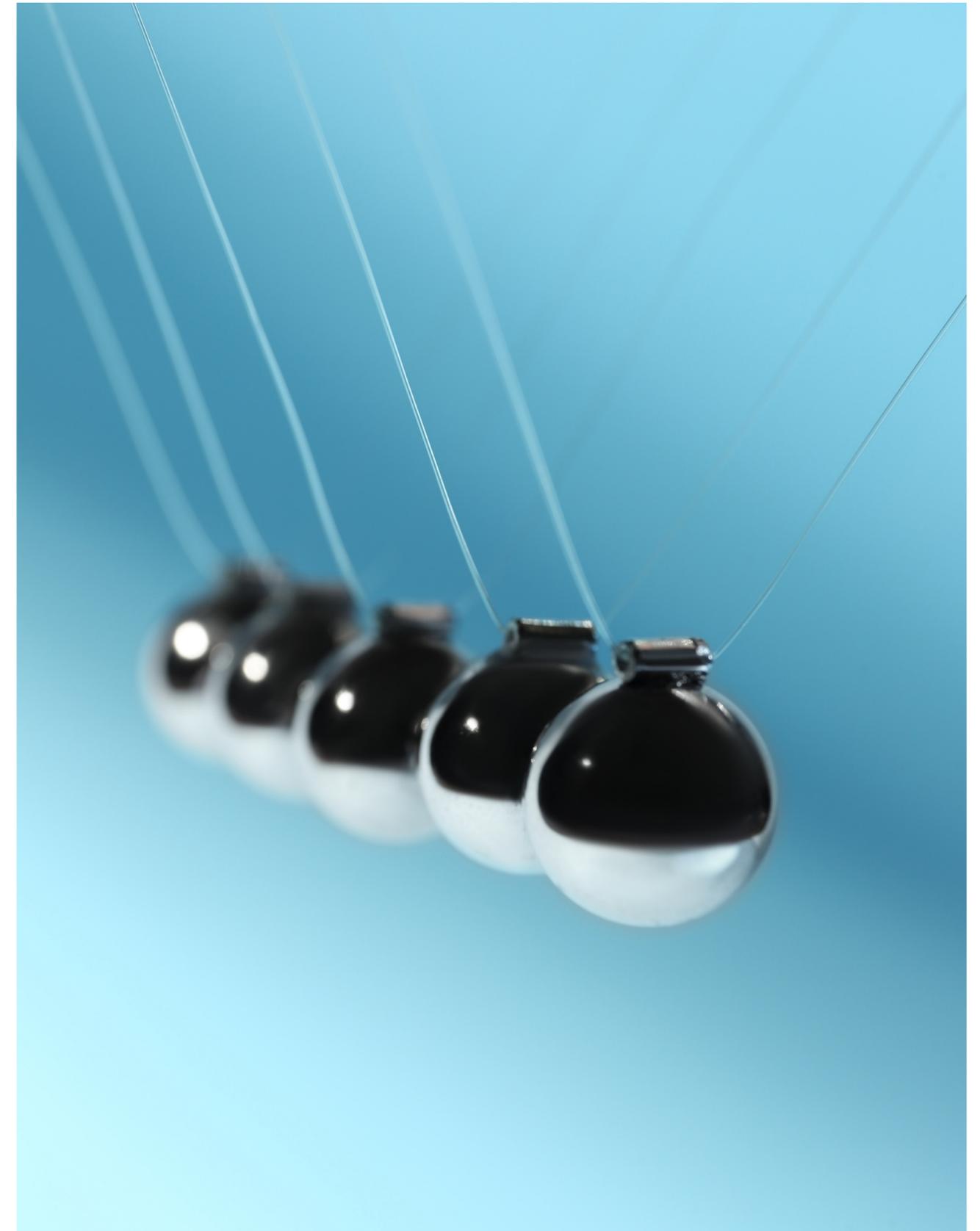
The National Financial Reporting Authority (NFRA) has said that resignation does not absolve the auditor of his responsibility to report suspected fraud or fraud as mandated by law. The NFRA in a circular has said that it has noticed that auditors are not fulfilling their statutory responsibilities relating to reporting of fraud as required by the Companies Law.

NFRA said that statutory auditors are under a mandatory obligation to report fraud or suspected fraud if they observe suspicious activities, transactions or operating circumstances in a company that indicate reasons to believe that an offence of fraud is being or has been committed against the company by its officers or employees.

“The Statutory Auditor is duty bound to submit Form ADT-4 to the Central Government u/s 143 (12) even in cases where the Statutory Auditor is not the first person to identify the fraud/suspected fraud,” NFRA said in its circular. The Companies Auditor’s Report Order also states that if the auditor has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees., the auditor is required to report the matter to the Board or Audit Committee and to the Central Government in the form of a statement.

NCALT: Admission of an application under section 7 of IBC if fulfils certain criteria is a rule

Hon'ble NCLAT inter-alia held that provisions for the admission of a petition, under Section 7 of the IBC on the basis of certain relevant criteria. There must be debt and default for admission of the petition. If an application fulfils the said criteria, the Adjudicating Authority is to admit such application. However, proviso 1st to Section 7 (5) speaks that only for rejection of an application reasons are required to be assigned. Meaning thereby if an application fulfils certain criteria, the Adjudicating Authority is to admit the said application and while admitting there is no requirement for assigning detailed reasons. However, if the Adjudicating Authority is going to dismiss the application as per provisions contained Section 7 of the IBC reasons are mandatory. Accordingly, it is evident that admission of an application under Section 7, if fulfils certain criteria is a rule, however, rejection of such application is an exception.



SEBI: Appointment of director nominated by the debenture trustee on boards of issuers

Under SEBI norms pertaining to listing of non-convertible securities, an entity registered under the Companies Act, 2013 must ensure that a person nominated by the debenture trustee is appointed as a director. While this obligation exists for issuers that are companies under the Companies Act, 2013.

Citing issues raised by the debenture trustees and the role of a nominee director, SEBI said that issuers coming under certain categories can submit an undertaking to the debenture trustees instead of nominating a director.

NCLAT stays insolvency proceedings against container corporation of India

The National Company Law Appellate Tribunal (NCLAT) has stayed the insolvency proceedings initiated against Container Corporation of India. On July 12, the New Delhi based Principal bench of the National Company Law Tribunal (NCLT) had admitted the petition filed by Roadwings International, an operational creditor of the public sector enterprise, and ordered to initiate Corporate Insolvency Resolution Proceedings (CIRP). The order was challenged by the Container Corporation of India Ltd (CONCOR) before the appellate tribunal, which passed an order on July 14 to stay the NCLT's decision. The appellate tribunal also issued notices to the operational creditor Roadwings International and the interim resolution professional (IRP), which was accepted by them counsel present in the hearing.

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