Swift e-Bulletin

Swift e-Bulletin
Edition 12/21-22
Week – June 21st to June 25th

<u>Quote for the week:</u>

“Someone's sitting in the shade today because someone planted a tree a long time ago.”

-Warren Buffett

Introduction

We welcome you to our weekly newsletter!

The ‘Swift e-Bulletin’ - weekly newsletter, covers all regulatory updates and critical judgements passed during the week. We hope that you liked our previous editions and found it to be of great value in its content. We want this newsletter to be valuable for you so, please share your feedback and suggestions to help us improve.

Further, various regulatory authorities have been proactive in bringing significant regulatory changes in recent challenging times. This week's newsletter covers various Circulars/notifications issued by certain regulatory authorities such as the Ministry of Corporate Affairs ("**MCA**"), the International Financial Services Centres Authority ("**IFSCA**") and the Reserve Bank of India ("**RBI**") and critical judgements and orders passed by the National Company Law Tribunal **("NCLT")**, National Company Law Appellate Tribunal **("NCLAT")** SEBI, Securities Appellate Tribunal **("SAT")** High Court and Supreme Court.

The Regulatory authorities provided various updates/relaxations, some of which being:

- **MCA extends timelines to allow companies to conduct their Extraordinary General Meetings ("EGMs") through Video Conference ("VC") or Other Audio Visual Means ("OAVM") till December 31, 2021.**

- **IFSCA issues guidelines on liquidity risk management for a Finance Company ("FC") / Finance Unit ("FU")**

- **RBI prescribes guidelines on distribution of dividend by Non-Banking Financial Companies ("NBFCs")**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of June 21, 2021 to June 25, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

MCA UPDATES

1. **MCA extends timelines to allow companies to conduct their Extraordinary General Meetings ("EGMs") through Video Conference ("VC") or Other Audio Visual Means ("OAVM") or transact items through postal ballot vide General Circular No. 10/2021 dated June 23, 2021**

- MCA had earlier through its General Circulars dated April 08, 2020, April 13, 2020, June 15, 2020, September 28, 2020 and dated December 31, 2020 had allowed the companies to conduct their Extraordinary General Meetings ("**EGMs**") through Video Conferencing ("**VC**") or Other Audio Visual Means ("**OAVM**") or transact business through postal ballots until June 30, 2021.

- The aforementioned timeline has been extended to ***December 31, 2021.*** Thus, companies can now conduct their EGMs through VC or OAVM or transact business through postal ballot in accordance with the framework provided in the above-mentioned circulars till ***December 31, 2021.***

  To read the Circular in detail, please click here.

2. **MCA amends the Companies (Accounting Standards) Rules, 2006 vide Notification dated June 23, 2021**

- These Rules shall supersede the existing Companies (Accounting Standards) Rules, 2006 and shall be called Companies (Accounting Standards) Rules, 2021.

- Some of the changes brought forth by this amendment are as follows:

  - *The definition of Small and Medium Sized Company ("**SMC**") has been amended as below:*

    "Small and Medium Sized Company" (SMC) means, a company-

    (i) whose equity or debt securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India;

(ii) which is not a bank, financial institution or an insurance company;
(iii) whose turnover (excluding other income) does not exceed two hundred and fifty crore rupees in the immediately preceding accounting year;
(iv) which does not have borrowings (including public deposits) in excess of fifty crore rupees at any time during the immediately preceding accounting year; and
(v) which is not a holding or subsidiary company of a company which is not a small and medium-sized company.

For the purposes of this clause, a company shall qualify as a Small and Medium Sized Company, if the conditions mentioned therein are satisfied as at the end of the relevant accounting period.

- *General Instructions to be followed by SMC's while complying with Accounting Standards under these rules have been provided in the* ***Annexure*** *to the Notification.*

- *Among other changes, some of the Accounting Standards that have been revised are:*

  - ***AS-1*** *Disclosure for Accounting Policies*
  - ***AS-2*** *Valuation for Inventories*
  - ***AS-3*** *Cash Flow Statements*
  - ***AS-4*** *Contingencies and Events Occurring After the Balance Sheet Date*
  - ***AS-5*** *Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies*
  - ***AS-7*** *Construction Contracts*
  - ***AS-9*** *Revenue Recognition*
  - ***AS-10*** *Property, Plant and Equipment*
  - ***AS-11*** *The Effects of Changes in Foreign Exchange Rates*
  - ***AS-12****- Accounting for Government Grants*

To read the Notification in detail, please click here.

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IFSCA UPDATES

1. **IFSCA issues clarification on status of transactions executed at Disaster Recovery ("DR") sites vide Circular June 22, 2021.**

- IFSCA Regulations has adopted provisions from The Securities and Exchange Board of India ("**SEBI**") whereby Stock Exchanges are scheduled to undertake live trading sessions from their Disaster Recovery ("**DR**") sites located in a different seismic zone from that of the data center for at least two consecutive days every six months.

- In accordance with it, IFSCA has clarified vide this Circular that the trades executed from the DR sites located outside the GIFT-IFSCA of the stock exchanges located in GIFT-IFSCA shall be deemed to have been executed at GIFT-IFSCA.

To read the Circular in detail, please click here.

2. **IFSCA introduces Negotiated Large Trade ("NLT") facility on Stock Exchanges located in GIFT CITY vide Circular dated June 22, 2021**

- IFSCA in order to facilitate vibrant capital market ecosystem in GIFT-IFSCA and to attract global investors has introduced a NLT facility on Stock Exchanges for derivatives.

- In relation to such NLT facility, some of the operational framework prescribed under this Circular shall be as follows:

  - *NLT window shall be open throughout the normal trading hours;*
  - *Minimum order size in terms of notional value for executing trade shall be USD 1 Million;*
  - *The position limits applicable to the normal market shall be applicable to the NLT window*
  - *The Stock Exchange shall disseminate details of the NLT trades to the public on the same day, after the market hours*

To read the Circular in detail, please click here.

3. **IFSCA issues guidelines on liquidity risk management for a Finance Company ("FC") / Finance Unit ("FU") vide Circular dated June 24, 2021**

- In order to ensure that FC / FU anticipate liquidity needs and are prepared to meet them and have the ability to fund assets and meet obligations as they come due these, guidelines have been issued by the authority.

- These guidelines have been bifurcated into two sections (**Section 1 and section 2**):

  - ***Section 1 mainly covers:***

    - *Maturity profiling*
    - *Measurement of liquidity risk*

  - ***Section 2 mainly covers:***

    - *Liquidity Coverage Ratios*
    - *High Quality Liquid Assets*
    - *Total net cash outflow*
    - *Disclosures pertaining to liquidity risk management*

To read the Circular in detail, please click here.

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RBI UPDATES

1. **RBI prescribes guidelines on distribution of dividend by NBFCs vide Notification Dated June 24, 2021**

- Reserve Bank of India has decided to prescribe guidelines on distribution of dividend by Non-Banking Financial Companies ("**NBFCs**") to infuse greater transparency and uniformity in the practice.

- The guidelines will be effective for declaration of dividend from the profit for the financial year ending March 31, 2022 and onwards.

- The guidelines shall be applicable to:

  - *Applicable NBFCs as defined in Paragraph 2(2) of Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016; and*
  - *Applicable NBFCs as defined in Paragraph 2(2) of Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016.*

- The Board of Directors shall, while considering the proposals for dividend, take into account the following aspects:

  - *Supervisory findings of the Reserve Bank (National Housing Bank ("**NHB**") for Housing Finance Companies ("**HFCs**")) on divergence in classification and provisioning for Non-Performing Assets ("**NPAs**")*
  - *Qualifications in the Auditors' Report to the financial statements; and*
  - *Long term growth plans of the NBFC*

  The Board shall ensure that the total dividend proposed for the financial year does not exceed the ceilings specified in these guidelines.

- *NBFCs shall comply with the following minimum prudential requirements in relation to various parameters to be eligible to declare dividend as mentioned below:*

- *Capital Adequacy as per **Annexure 1** to the Notification*
- *Net NPA*
- *Other criteria as mentioned in the Notification*

- The Notification specifies the Quantum of Dividend payable, while for NBFCs that do not accept public funds and do not have any customer interface, no specific ceilings on dividend payout has been set, the maximum dividend payout ratio for core investment companies is 60%, standalone primary dealers 60% and other NBFCs 50%.

- A reporting system has been formulated whereby NBFCs, HFC & CIC declaring dividend shall report details of dividend declared during the financial year as per the format prescribed in ***Annexure 2*** to the Notification.

To read the Notification in detail, please click here.

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JUDGEMENTS/ ORDERS

NCLT

1. National Company Law Tribunal Initiates Corporate Insolvency Resolution Process ("CIRP") against M/s. Trikalp Laminates Private Limited

NCLT, New Delhi Bench **("Tribunal")** admits the application filed by M/s. S.K. Enterprises **("Operational Creditor")** under section 9 of the Insolvency and Bankruptcy Code, 2016 **("IBC")** and Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and initiates CIRP against the M/s. Trikalp Laminates Private Limited **("Corporate Debtor").**

The Corporate Debtor had entered into agreement with Operational Creditor towards the supply of goods. The Operational Creditor had raised various invoices in respect of the goods provided by it at periodic intervals, however the Corporate Debtor failed to make any payments against such invoices, amounting to a default of INR 31,32,820 /- including the interest component towards the goods supplied during various intervals of time.

The Operational creditor had submitted various proofs evidencing that the said invoices were duly recorded in the Corporate Debtor's books of accounts. The Operational Creditor had also served a demand notice, demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

The Corporate Debtor failed to issue any reply / letter against the issue of the demand notice and against the application filed by the Operational Creditor under section 9 of IBC. On the date of hearing, the Corporate Debtor failed to appear before the Adjudicating Authority. Further, Tribunal declared that the application is not time barred and filed within the period of limitation.

Based on the facts presented, Tribunal was satisfied that the Corporate Debtor had made a default in payment for goods provided by the Operational Creditor and the Corporate Debtor didn't point out any dispute relating to it before or at the hearing of this case.

Tribunal admitted the said application filed by the Operational Creditor and declared moratorium in accordance to section 14 of the IBC. Since no name was proposed by the Operational Creditor for Insolvency Resolution Professional ("IRP"), Tribunal resolved to appoint Ms. Rukhsana Choudhary to act as the IRP. Tribunal further directed the Operation Creditor to deposit an amount of INR 2,00,000 to the IRP to meet the immediate expenses for CIRP which shall be fully accountable by the IRP and shall be reimbursed to the Operational Creditor as costs of the CIRP.

To read the order in detail, please click here.

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NCLAT

1. **NCLAT, New Delhi set aside the order passed by the NCLT Ahmedabad and allowed restoration of name of the Company on the Register of Companies.**

An appeal was filed with NCLAT New Delhi against the order passed by the National Company Law Tribunal **(NCLT)** Ahmedabad Bench wherein NCLT dismissed the application stating that company is running in losses and also failed to produce any document with regard to the future prospect of business. On further perusal of the Income Tax Return Acknowledgment for the 3 years, which reflects 'NIL' income continuously, however, they are showing TDS deduction but no supporting documents has been filed regarding this.

NCLAT stated that, the main ground for the removal of the company from the Register of Companies is that if the company is not carrying any business or operation for a period of two immediately preceding years, the ROC may issue notice to the Company calling explanation from the Company and thereafter take action in accordance with law. Non-filing of Annual Return is a default. The said default can be cured/rectified by imposing costs as per the provisions of the Companies Act, 2013. Further stated that, non-filing the Annual Returns and the financial statement as required under law inadvertently may not be a ground for removing the name of the company.

Hence, in view of the aforesaid reasons the impugned order of the Learned NCLT was set aside and directed to ROC to restore the name of the Company i.e. Hiraj Hospitality Pvt. Ltd. on the Register of Companies.

To read the order in detail, please click here.

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SEBI

1. **SEBI grant exemption to the acquirer from open offer obligation.**

The Heineken International B.V. (‘**Acquirer**’) filed an application seeking exemption from the applicability of regulations 3(2) and regulation 3(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**Takeover Regulations, 2011**”) in the matter of its proposed acquisition of maximum number of 3,96,44,346 equity shares of the Target Company from recovery officer through block deal mechanism.

SEBI Observes that, if equity shares acquired by the Acquirer, then it shall increase the shareholding of the Acquirer along with its group companies beyond the threshold of more than 5% of equity shares in the Target Company in a single FY and would trigger open offer obligation under Takeover Regulations.

The matter was referred to a Panel of Experts who opined that “the Recovery Officer is holding these shares in pursuance of the order of Debt Recovery Tribunal and it remains a mere technical requirement since the transaction would have been otherwise exempted under regulation 10(1)(a)(ii) of the Takeover Regulations, 2011”

SEBI noted that the transfer shares were originally held by the group companies of the promoter Vijay Mallya, who defaulted in paying the outstanding dues and was declared as Fugitive Economic Offender.

SEBI further noted that “the public policy and public interest involved in the entire transaction and taking into cognizance various steps taken by the agencies over the years to recover the dues of the Public Sector Banks and other Financial Institutions by liquidating the assets of the defaulter including the Transfer Shares” and hence finds that it would be apt to grant exemption to the Acquirer from open offer requirements.

After considering the facts and circumstances of the case, SEBI grants exemption to the Acquirer from the obligation of making an open offer under Takeover Regulations, 2011 in the proposed acquisition of transfer shares in United Breweries Ltd, subject to certain conditions.

To read the order in detail, please click here.

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SAT

1. **SAT allows EGM of PNB Housing Finance Limited; however, the results would not be declared and would be kept in a sealed cover**

SEBI alleged that, PNB Housing Finance Limited **('Company')** issued Board resolution for approving issuance and allotment of equity shares by way of preferential allotment on a private placement basis for cash consideration in accordance with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 **('ICDR Regulations')**. The said resolution also directed to convene an Extra Ordinary General Meeting **('EGM')** to seek approval from the members of the Company in accordance with Section 62(1)(c) of the Companies Act, 2013.

SEBI directed the Company not to consider EGM notice till independent valuation of the shares is done by a registered independent valuer and thereafter the matter will be placed before the board of directors afresh for deciding the preferential allotment based on the valuation report. The appellant has filed the present appeal being aggrieved by this direction.

SAT contended that under Section 62(1)(c) of the Companies Act a provision has been made for valuation through a registered valuer but under Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014 this requirement has been dispensed with where preferential allotment of shares is being issued by a listed company. Opines that electronic voting has already commenced and it would not be fair to stay the consideration of the EGM notice.

After considering the fact that no factual dispute exists and only an interpretation of the provisions of the ICDR Regulations and Companies Act read with Articles of Association is required to be considered, SAT directed SEBI to file reply on or before June 26, 2021.Further directed that, EGM would be held as prescribed in the board notice. However, announcement of results of the EGM would not be allowed and kept in sealed cover.

To read the order in detail, please click here.

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HIGH COURT

1. **Petition filed by eight persons against Tribal Cooperative Marketing Development Federation on India Limited was dismissed by the Delhi High Court.**

Saroj Kumar Nayak & ORS.	Petitioner(s)
Tribal Cooperative Marketing Development Federation On India Limited	Respondent

Date of Judgement: June 21, 2021

The present petition was filed by eight persons, that their initial engagement on contract basis was in the years 2010 / 2011 on the post of Assistant Grade-I (now Senior Assistant) and Clerk (now called as Junior Assistant) through a selection process which is undertaken for making regular appointment. The appointments were made with the nomenclature "on contract basis" but for all purposes it was a regular appointment except the fact that the remuneration that is being paid, is not that of a regular appointee.

Tribal Cooperative Marketing Development Federation on India Limited, a Multi-State Cooperative Society under the administrative control of the Ministry of Tribal Affairs and is an organization engaged in marketing development of tribal products including tribal art & craft under the brand name "TRIBES INDIA", being the respondent had advertised the filling up of various posts on direct recruitment basis, which included the posts of Deputy Manager, Sales Executive, Senior Accountant, etc. According to the petitioner, who recognized themselves to be eligible for having been performing their duties sincerely and diligently, are entitled to be regularized on the posts on which they are working. The petitioners had referred to the various representations made by them requesting the authorities in the respondent organization, for regularization of their services, which unfortunately had not been replied to.

This being the case, the Court on discussions held that the petitioners are not entitled to any relief as there is no merit in the petition filed and the same stands dismissed.

To read the Judgement in detail, please click here.

2. Delhi High Court dismisses the petition filed by Pragya Electronics for want of merit

M/s. Pragya Electronics Private Limited	**Petitioner**
M/s. Cosmo Ferrites Limited & Anr.	**Respondents**

Date of Judgement: June 23, 2021

Pragya Electronics Private Limited has filed the petition under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the Award of April 2016. The dispute involved in the petition is commercial in nature and in view of The Commercial Courts, Commercial Division & Commercial Appellate Division of High Courts Act, 2015, the same falls within the jurisdiction of Commercial Courts. The matter was thereafter listed before the Registrar General, who directed the matter to be placed before the appropriate Bench.

The Respondent being the Cosmo Ferrites Limited, a manufacturer and the petitioner was the distributor of the respondent. Both the parties had entered into a non-exclusive Distributorship Agreement and subsequently entered into annual agreements for the year 2007, 2008 and 2009. As per the terms of the Distributorship Agreement, the petitioner placed purchase orders on the respondent for supply of goods, which in turn were sold by the petitioner to its customers.

This being the case and the Delhi High Court upon considering the facts and circumstances and the discussions that took place during the proceedings, concluded that the award is not in conflict with the public policy and the judgment has no applicability and held that, there is no merit in the petition and the same was dismissed.

To read the Judgement in detail, please click here.

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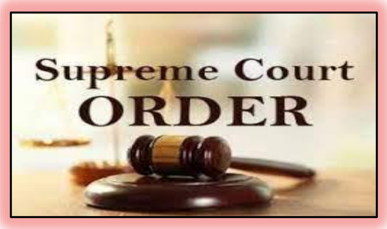
SUPREME COURT

1. **Union of India appeals to the Supreme Court aggrieved by the directions issued by the High Court for release of the goods imported by the private respondents which were liable to absolute confiscation**



Union of India & ORS.	Appellant (s)
M/s. Raj Grow Impex LLP & ORS.	Respondent (s)

<u>Date of Judgement</u>: June 17, 2021

The Union of India and the authorities related with customs have questioned the orders passed by the High Court of Judicature at Bombay in Writ Petition, being aggrieved of the directions issued by the High Court for compliance of the orders-in-original passed by the Additional Commissioner of Customs, Group-I, Mumbai and consequently, for release of the goods imported by the private respondents though the goods in question are, according to the appellants, liable to absolute confiscation.

The genesis of the present litigation lies in the notifications issued by the Central Government under the Foreign Trade (Development and Regulation) Act, 19922 as also the consequential trade notices issued by the Directorate General of Foreign Trade3, making provisions for restricting the import of certain beans, peas and pulses.

The Supreme Court, concluded and directed that the appeals be allowed and the orders challenged, as passed by the High Court in Writ Petition be set aside and the Writ Petitions so filed by the respondent-importers are dismissed. The subject goods are held liable to absolute confiscation but, in continuity with the order in these appeals, it was provided that if the importer concerned opts for re-export, within another period of two weeks from the date of the judgement, such a prayer for re-export may be granted by the authorities after recovery of the necessary redemption fine and subject to the importer discharging other statutory obligations. If no such option is exercised within two weeks from today, the goods shall stand confiscated absolutely.

The Supreme Court, further held that, the matters relating to the interveners shall also be governed by the findings of this judgment and appropriate orders in their regard shall be passed by the authorities/Courts, wherever their matters relating to the subject goods are pending but, their options of further appeal, only in relation to the quantum of amount payable, including that of penalty, is left open. With this respondent-importers were directed to pay the costs of this litigation to the appellants, quantified at Rs. 2,00,000/- (Rupees Two Lakh only) each.

To read the Judgement in detail, please click here.

+91 22 6669 5000

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About Swift

Swift India Corporate Services LLP ("Swift") (Formerly known as SwiftIndiaInc Corporate Services Private Limited) established in the year 2005, is an associate entity of Nishith Desai Associates — Legal & Tax Counseling Worldwide (legal and tax consulting firm).

We are a team of professionals with rich corporate, legal and secretarial backgrounds. We are a premier corporate compliance firm that caters to the needs and demands of our global clients. Swift aims to provide quick and pragmatic corporate solutions alongside high-quality compliances.

Swift India Corporate Services LLP

Regd. Office: 91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
LLPIN: AAH-4705, registered under the Limited Liability Partnership Act, 2008
Tel +91 22 6669 5000, Fax +91 22 6669 5001

www.swiftindiallp.com