Swift e-Bulletin

Swift e-Bulletin
Edition 13/21-22
Week – June 28th to July 02nd

Quote for the week:

"The man who does not read good books has no advantage over the man who cannot read them."

-Mark Twain

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**"), and the Securities and Exchange Board of India ("**SEBI**") and critical judgements and orders passed by the National Company Law Appellate Tribunal **("NCLAT")**, SEBI, High Court and Supreme Court.

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

- **MCA extends timelines and relaxes levying additional fees on filing of certain forms under the Companies Act, 2013 and Limited Liability Partnership ("LLP") Act, 2008.**

- **SEBI introduces cross margin benefit between Commodity Index futures and futures of its underlying constituents or its variants**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of June 28, 2021 to July 02, 2021.

Thank you,
Swift team

Table of Contents

REGULATORY UPDATES

MCA UPDATES

1. **MCA extends timelines and relaxes levying additional fees on filing of certain forms under the Companies Act, 2013 and LLP Act, 2008 vide General Circular No. 11/2021 dated June 30, 2021**

- MCA had earlier through its General Circulars dated May 03, 2021 had provided additional time up to July 31, 2021 for Companies and Limited Liability Partnership's ("**LLPs**") to file their respective forms which were due for filing during the period commencing from April 01, 2021 to May 31, 2021. However, the above relaxations were not applicable for forms pertaining to Charges (CHG- 1, CHG-4 and CHG-9) for which a separate Circular had been issued by the Ministry.

- The aforementioned timeline has been extended to ***August 31, 2021***. Accordingly, no additional fees shall be levied up to ***August 31, 2021*** for the delayed filing of forms (other than charge related forms) which were due for filing during the period commencing from April 01, 2021 to July 31, 2021 and only normal fees shall be payable.

  To read the General Circular in detail, please click here.

2. **MCA extends relaxations in timeline for filing forms related to creation or modification of charges under Companies Act, 2013 vide General Circular No 12/2021 dated June 30, 2021**

- In continuation of the MCA General Circular No 07/2021 dated May 03, 2021, MCA on account COVID – 19 further extends additional relaxations on time and condonation of delay in filing of forms related to creation/modification of charges.

- This Circular shall only be applicable for Form CHG-1 and Form CHG-9 where the date of creation/modification:

- *Is before April 01, 2021 but timeline for filing of the same has not expired under section 77 of the Act relating to Duty to Register Charges as on April 01, 2021.*
- *Falls on any date between April 01, 2021 and July 31, 2021 (both days inclusive).*

- In the above sub bullet 1 period beginning from April 01, 2021 to July 31, 2021 shall not be reckoned for the purpose of counting of number of days under Section 77 (Registration of Charge) and Section 78 (Application for Registration of Charge). In case, the form is not filed within such period, the first day after March 31, 2021 shall be reckoned as August 01, 2021 for the purpose of counting the number of days within which the form is required to be filed under Section 77 or Section 78 of Companies Act, 2013.

- In the above- sub bullet 2, period beginning from the date of creation/modification of charge to July 31, 2021 shall not be reckoned for the purpose of counting of number of days under Section 77 and Section 78. In case, the form is not filed within such period, the first day after the date of creation/modification of charge shall be reckoned as August 01, 2021 for the purpose of counting the number of days within which the Form is required to be filed under Section 77 or Section 78 of Companies Act, 2013

- In regard to sub bullet 1 above, if the form is filed on or before July 31, 2021, the fees payable as on March 31, 2021 under the Fees Rules for the said form shall be charged. If the form is filed thereafter, the applicable fees shall be charged under the Fees Rules after adding the number of days beginning from August 01, 2021 and ending on the date of filing plus the time period lapsed from the date of the creation of charge till March 31, 2021.

- In regard to sub bullet 2 above, if the form is filed before July 31, 2021, normal fees shall be payable under the Fees Rules. If the form is filed thereafter, the first day after the date of creation/modification of charge shall be reckoned as August 01, 2021 and the number of days till the date of filing of the form shall be counted accordingly for the purposes of payment of fees under the Fees Rules.

- This Circular shall not be applicable for the below mentioned cases:

- *Where CHG-1 and Form CHG-9 have already been filed before issue of this Circular.*
- *Timeline for filing the Form has already expired prior to April 01, 2021.*
- *Timeline for filing of the forms expire at a future date despite the above-mentioned exclusions.*
- *Filing of Form CHG-4 for satisfaction of Charges.*

To read the General Circular in detail, please click here.

[This space is intentionally left blank]

SEBI UPDATES

1. **SEBI amends, reviews, merges and introduces multiple regulations at its Board Meeting vide Press Release dated June 29, 2021.**

- SEBI at its Board Meeting held on June 29, 2021 has amended, reviewed, merged and introduced various regulations, some of which are provided as under.

  - *Merging of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and SEBI (Non-Convertible Redeemable Preference Shares) Regulations, 2013 into a single Regulation to be called SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021.*

  - *It also approved the introduction of a new framework for 'Accredited Investors'.*

  - *The Board has also amended Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) pertaining to provision in regard to:*

    - *Appointment/ Re- appointment of Independent Directors;*
    - *Composition of Nomination and Remuneration Committee and Audit Committee has been twerked a bit;*
    - *Colling off period has been introduced for Key Managerial Personnel among things*

  - *The Board amended the SEBI (Infrastructure Investment Trusts) Regulations, 2014 by introducing minimum unit holder's requirement for unlisted InvITs.*

  - *The Board amended the SEBI (Real Estate Investment Trusts) Regulations, 2014 and SEBI (Infrastructure Investment Trusts) Regulations, 2014 by revising minimum subscription and trading lot for publicly issued REITs and InvITs.*

  - *The Board amended the SEBI (Foreign Portfolio Investors) Regulations, 2019 by permitting eligible Resident Indian Fund Managers (other than individuals) to be constituents of Foreign Portfolio Investors.*

To read the Press Release in detail, please click here.

2. **SEBI introduces cross margin benefit between Commodity Index futures and futures of its underlying constituents or its variants vide Circular dated June 29, 2021**

- SEBI had prescribed norms for providing margin benefit on spread positions in commodity futures contracts, vide various circulars. In addition to it and in order to improve the efficiency of the use of the margin capital by market participants, SEBI has decided to introduce cross margin benefit between Commodity Index futures and futures of its underlying constituents or its variants which shall reduce the cost of trading and may lead to enhanced liquidity in both the Commodity index futures and its underlying constituent futures or its variants.

- In relation to it, the following provisions have been introduced:

  - *Ways of Computation of cross margin benefits;*
  - *Allowing members to maintain two accounts with trading member/clearing member, namely arbitrage account and a non-arbitrage account;*
  - *Eligibility requirements in regards to cross margin benefit;*
  - *Default provisions.*

  To read the Circular in detail, please click here.

3. **SEBI relaxes timelines for compliance with regulatory requirements vide Circular dated June 30, 2021**

- As a result of the situation arising due to COVID-19 pandemic, lockdown imposed by the Government and representations received from Stock Exchanges, SEBI had earlier provided relaxations in timelines for compliance with various regulatory requirements by the trading members / clearing member's / depository participants, vide Circulars dated April 16, 2020, April 21, 2020 and April 24, 2020.

- Later, vide Circulars dated May 15, 2020, June 19, 2020, June 30, 2020, July 29, 2020, July 29, 2020, October 01, 2020, December 01, 2020, December 31, 2020 and Page 2 of 3 SEBI/HO/MIRSD/DOP/P/CIR/2021/559 dated April 29, 2021, relating to compliance with the regulatory requirements by the Trading Members /

Clearing Members / Depository Participants / KYC Registration Agencies timelines / period of exclusion were further extended for certain compliance requirements.

- In view of the current pandemic, the Board has provided the following relaxations in timelines for compliance:

<table>
<tr><th>SR. No</th><th>Submission/Compliance</th><th>Current timeline / Period of exclusion</th><th>Proposed timeline / Period of exclusion</th></tr>
<tr><td>1</td><td>Maintaining call recordings of orders/ instructions received from clients</td><td rowspan="3">Till June 30, 2021</td><td rowspan="3">Till June 30, 2021</td></tr>
<tr><td>2</td><td>Client Funding Reporting</td></tr>
<tr><td>3</td><td>To operate the trading terminals from designated alternate locations</td></tr>
<tr><td>4</td><td>KYC application form and supporting documents of the clients to be uploaded on system of KYC Registration Agency (“KRA”) within 10 working days</td><td>Till June 30, 2021, documents may be uploaded on to the system of KRA within 15 working days.</td><td>Till July 31, 2021, documents may be uploaded on to the system of KRA within 15 working days.</td></tr>
<tr><td>5</td><td>Issue of Annual Global Statement to clients</td><td>Till June 30, 2021. Relaxation is provided only if the client has requested for a physical statement.</td><td>Till July 31, 2021, Relaxation is provided only if the client has requested for a physical statement.</td></tr>
</table>

To read the Circular in detail, please click here.

4. **SEBI releases Master Circular for Commodity Derivatives Market dated July 01, 2021**

- In order to ensure availability of comprehensive information mentioned in the circulars/directions issued from time to time for commodity derivatives markets at one place, SEBI has been releasing Master Circular by compiling all the circulars issued by the department till the date of Master circular. With the said objective, Commodity Derivatives Market Regulation Department ("**CDMRD**") also has been issuing a Master circular comprising of information mentioned in various circulars pertaining to commodity derivatives segment. Further, references in the circular to the Statutes/Regulations which now stand repealed have been suitably updated. Efforts have also been made to incorporate certain applicable provisions of existing circulars issued by other departments of SEBI relevant to commodity derivatives markets. This Master circular has covered various circulars issued till April 30, 2021.

- The term "national commodity derivatives exchanges" or "regional commodity derivatives exchanges" or "commodity derivatives exchanges" have been suitably replaced with stock exchanges; wherein stock exchanges means recognized stock exchange having commodity derivatives segment.

- In case of any inconsistency between the Master Circular and the original applicable circular, the content of the original circular shall prevail and This Master Circular shall supersede previous Master Circular dated July 10, 2020.

- The Circular is divided in to 15 chapters and Annexures followed by the compilation of list of circulars at the end.

To read the Master Circular in detail, please click here.

[This space is intentionally left blank]

JUDGEMENTS/ ORDERS

NCLAT

1. **NCLAT new Delhi set aside the NCLT order and dispensed with the convene the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors**

An appeal was filed with NCLAT New Delhi against the order passed by the National Company Law Tribunal **("NCLT")** Ahmedabad Bench wherein NCLT ordered that the meetings of shareholders, Secured and Unsecured creditors of Gujarat Ambuja Exports Limited, Applicant Transferee Company shall be convened and conducted through video conferencing or other Audio-Visual Means appoint a Depository and other required agencies to facilitate the conduct of the meetings"

The Appellant Company (Mohit Agro Commodities Processing Private Limited. "Transferor Company'" and Gujarat Ambuja Exports Limited "Transferee Company") filed Applications under Sections 230 to 232 seeking dispensation of the meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors in respect of the scheme of Amalgamation of the 'Transferor Company' with the 'Transferee Company'

The Appellant Company stated that the 'Transferor Company' is a Wholly Owned Subsidiary of the 'Transferee Company' and both the Companies are in similar type of nature of activities and that the 'Transferee Company' had acquired the 'Transferor Company' as a business supportive mechanism for ease of operations

Further, stated that the Amalgamation of the business of the 'Transferor Company' and the 'Transferee Company' would result in simplification of the corporate structure and elimination of duplicate corporate procedure. It would also facilitate a consolidation of resources and expertise and reducing the multiplicity of administrative costs.

NCLAT noted that, Section 232 (2) of the Companies Act, 2013 use the word 'may' which has elements of discretion to the Tribunal to be exercised in the interest of justice in appropriate situations. Further noted that, whether the Tribunal can exercise their discretion when the 'Transferor Company' is a Wholly Owned Subsidiary of the 'Transferee

Company' and financial position of the 'Transferee Company' is positive and the merger is not affecting the rights of the Shareholders or the Creditors. Therefore, NCLAT considered the view that since 'Transferor and Transferee Company' involve a parent Company and a Wholly Owned Subsidiary the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors can be dispensed with as the rights of the Equity Shareholders of the 'Transferee Company' are not being affected.

To read the order in detail, please click here.

[This space is intentionally left blank]

SEBI

1. SEBI imposed penalty on Company for violations of Clause 35 of the Listing Agreement

SEBI observed that the M/s Linkhouse Industries Limited (‘**Noticee’**) repeatedly made incorrect disclosures over 3 (Three) quarters in respect of its promoters. Being a listed company with stock exchange, Noticee is obliged to comply with the regulatory requirement of filing correct disclosures with the stock exchange so as to give a true picture of promoter’s shareholding. Filing incorrect disclosures sends diminishes confidence in the markets and adversely impacts on investor’s confidence.

After taking into consideration all the facts and circumstances of the case SEBI imposed the penalty of INR 300,000 (INR Three Lakhs) on noticee for violations of Clause 35 of the Listing Agreement.

To read the order in detail, please click here.

[This space is intentionally left blank]

HIGH COURT

1. Three interconnected petitions filed before the Delhi High Court were directed for speedy resolution under the Arbitration and Conciliation Act, 1996.

<u>Petition I</u>

ATC Telecom Infrastructure Private Limited	Petitioner
Orion Security Solutions Private Limited	Respondents

<u>Petition II</u>

ATC Telecom Infrastructure Private Limited	Petitioner
Orion Security Solutions Private Limited	Respondents

<u>Petition III</u>

Orion Security Solutions Private Limited	Petitioner
ATC Telecom Infrastructure Private Limited & ORS	Respondents

<u>Date of Judgement</u>: June 28, 2021

There were three petitions raised which had interconnected issues. M/s. Orion Security Solutions Private Limited ("**Orion**") and M/s. ATC Telecom Infrastructure Private Limited ("**ATC**") had entered into an agreement to provide operation and maintenance services and surveillance services in respect of the tower sites in the State of Maharashtra. Due to arise in disputes between the parties and expiry of the operation and maintenance service agreement, followed by termination of surveillance agreement, application under Section 9 of the Arbitration and Conciliation Act, 1996 was filed by ATC against Orion.

On the other hand, Orion had filed a petition against ATC, for restraining ATC from encashing Bank Guarantees issued by HDFC Bank Ltd and Standard Chartered Bank.

Arbitrator was appointed by the Court to arbitrate all the disputes between the parties, so that speedy resolution thereof is attained and basis the submissions made, the petitions were disposed of with certain terms and directions which were as follows:

i. Orion shall handover peaceful and vacant possession of the towers to ATC;
ii. Orion shall ensure that they and their personnel do not interfere with the operation of the telecom sites by ATC;
iii. ATC shall stand injuncted from invoking Bank Guarantee issued by the Standard Chartered Bank, New Delhi;
iv. No orders shall be passed in respect of the Bank Guarantee issued by HDFC Bank Ltd, however it shall remain alive for being urged in the arbitral proceedings;
v. The disputed amount was stated to be in excess of INR 17 Crores;
vi. The Arbitrator shall file the requisite declaration under Section 12 of the Arbitration and Conciliation Act, 1996; and
vii. The Arbitrator was entitled to charge fees in accordance with the Fourth Schedule to the 1996 Act.

With the above-mentioned directions, the Delhi High Court disposed of all the three petitions.

To read the Judgement in detail, please click here.

2. Suit was filed for recovery of payment due from Maharashtra State Police Housing & Welfare Corporation Limited

M/s. Ajay Deep Construction Private Limited	**Plaintiff**
Maharashtra State Police Housing & Welfare Corporation Limited	**Defendants**

<u>Date of Judgement</u>: June 28, 2021

Maharashtra State Police Housing & Welfare Corporation Limited had invited tenders for construction of 650 quarters for policemen of SRPF Group IX at Amravati, with infrastructural amenities. M/s. Ajay Deep Construction Private Limited, being the Plaintiff was the successful bidder who had filed the present suit for recovery of INR 1,00,00,000 (INR One Crore) approx., where the claim that arise was out of a construction contract. The grievance was pertaining to the three individual items of work for which the payment was not made by the Defendants and a claim for excess amount recovered by the Defendants from mobilization advance given by the Defendants to the Plaintiff and diverse claims of interest, i.e. interest on delayed payments on three items, namely:

(i) Running account bills, which were paid by the Defendants with delay;
(ii) Escalation bills (labour, material, POL) paid with delay; and
(iii) Escalation bills (star rate) paid with delay, and interest till filing of the suit on unpaid amounts.

There were submissions made by parties to the dispute and basis these submissions, the questions that arises were, whether there was any time-line provided for payment so far as running account bills are concerned and what is the consequence of non-payment within time, as the contract does not provide for any. It has been an established principle of law that interest (i.e. pre-suit interest) can be allowed on delayed payment (i) in terms of the agreement entered into between the parties, or (ii) where it is permissible by statute, or (iii) by reason of usage of trade having the force of law.

To read the Judgement in detail, please click here.

[This space is intentionally left blank]

SUPREME COURT

1. In view of common issues that arise in two Civil appeals, common judgement was passed by the Supreme Court.

Silpi Industries etc.	Appellants
Kerala State Road Transport Corporation & ANRr. etc.	Respondents

With

M/s. Khyaati Engineering	Appellants
Prodigy Hydro Power Private Limited	Respondents

Date of Judgement: June 29, 2021

Kerala State Road Transport Corporation **("KSTRC")** had invited tenders for supply of thread rubber for tyre rebuilding. The appellants were the claimants before the arbitrator who were given purchase orders and as per the terms of the purchase order, 90% of the total purchase price was payable to the appellants/ claimants on supply of materials and balance 10% was to be paid subject to final performance report.

However, due to non-payment of balance 10% as per the purchase order, the appellants/ claimants approached the Industrial Facilitation Council [previously constituted under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 **("IDPASC Act")**], which is presently under the Micro and Small Enterprises Facilitation Council constituted under Micro, Small and Medium Enterprises Development Act, 2006.

On the other hand, M/s. Khyaati Engineering and the respondent, being the Prodigy Hydro Power Private Limited had entered into a contract for supply and installation of hydro-mechanical equipment for 2 X 3 MW Baner-II SHP. Here the appellant had alleged that, though it has fulfilled all its obligations under the contract, the respondent has refused to make payments as per the contract, has filed a Claim Petition, before the Micro and Small Enterprises Facilitation Council constituted under the provisions of MSMED Act. The claim was filed in respect of supply of goods and services rendered to the respondent-company. It is the case of the appellant that pursuant to notice issued by Facilitation Council, the respondent appeared before the Council.

Due to common issues, which arise for payment of consideration, the appeals were heard together and was disposed of with common judgement.

To read the Judgement in detail, please click here.

DISCLAIMER The contents of this newsletter should not be construed as legal opinion. View detailed disclaimer.

This newsletter provides general information existing at the time of preparation. The newsletter is intended as a news update and Swift India Corporate Services LLP neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this newsletter. It is recommended that professional advice be taken based on the specific facts and circumstances. This newsletter does not substitute the need to refer to the original pronouncements.

+91 22 6669 5000

Call us toll free to explore a topic or let us answer your questions

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