Swift India
CORPORATE SERVICES LLP

MUMBAI SILICON VALLEY BANGALORE MUMBAI BKC NEW DELHI

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com
CHANGE IN NAME FROM SWIFTINDIAINC CORPORATE SERVICES LLP AS ON 07.02.2017

Swift e-Bulletin
Edition 02/21-22
Week – April 12th to April 16th

Quote for the week:

"The winds of grace are always blowing, but you have to raise the sail."

-Sri Ramakrishna Paramahamsa

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.

In the wake of COVID-19, the various regulatory authorities have been granting many relaxations, exemptions and amendments to the various legislations by regulatory authorities to ease out the operations during this time of crisis.

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**") Securities and Exchange Board of India ("**SEBI**"), The Insolvency and Bankruptcy Board of India ("**IBBI**") and International Financial Services Centres Authority ("**IFSCA**") , and critical judgements and orders passed by the National Company Law Tribunal **("NCLT")**, SEBI, Supreme Court and High Court.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of April 12, 2021 to April 16, 2021.

Thank you,
Swift Team

Table of Contents

REGULATORY UPDATES

MCA UPDATES

1. **Central Government amends Section 4 of the Insolvency and Bankruptcy Code, 2016 relating to minimum amount of default for matters relating to pre-packaged insolvency resolution process of corporate debtor**

- In Section 4 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 (3 of 2021) relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is INR 1,00,000/- (Indian Rupees One Lakh only), the Central Government hereby specifies ***INR 10,00,000/- (Indian Rupees Ten Lakh only) in variation from the earlier*** **INR 1,00,000/- (Indian Rupees One Lakh only)** as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor under Chapter III-A of the Code relating to making an application for initiating pre-packaged insolvency resolution process with respect to a corporate debtor classified as a micro, small or medium enterprise (MSME) under sub-section (1) of Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.

  To read the Notification, please click here.

2. **Central government issues the Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021**

- The Insolvency and Bankruptcy Board of India notified the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 (“**PPIRP Regulations**”) to enable operationalization of Pre-packaged Insolvency Resolution Process (“**PPIRP**”).

- Rule 4 (1) relating to filing of application states that a corporate applicant shall make an application for initiating PPIRP under sub-section (1) of Section 54C of the Code relating to application to initiate PPIRP in Form 1, accompanied with affidavit, documents or records as referred in **Annexures** to the notification therein, in electronic form, along with a fee of INR 15,000/- (Indian Rupees Fifteen Thousand only). Provided that in case, electronic facility is not available for filing such application, the application and the accompanying documents may be filed in physical form, and wherever the accompanying documents are bulky, the same may be submitted in scanned portable document format in a data storage device such as a compact disc or a USB flash drive acceptable to the Adjudicating Authority.

- The corporate applicant under sub-rule (1) of Rule 4 mentioned above shall serve a copy of the application to the Board by registered post or speed post or by hand or by electronic means, before filing it with the Adjudicating Authority.

- The application shall be filed before the Adjudicating Authority in accordance with Rules 20, 21, 22, 23, 24 and 26 of the National Company Law Tribunal Rules, 2016 relating to Institution of proceedings, petition, appeals etc. and the corporate applicant shall inform the Adjudicating Authority about the filing of any winding up petition against the corporate debtor after being aware about such filing.

- The Annexures to the Notification contain the following form:

  - ***Form 1: Application by Corporate Applicant to initiate PPIRP Under Chapter III-A of the code.***

To read the Notification in detail, please click here.

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SEBI UPDATES

1. **SEBI reviews and revises Reporting Formats for Mutual Funds vide Circular dated April 12, 2021**

- In line with the regulatory revamp exercise of SEBI (Mutual Funds) Regulations, 1996 (hereinafter called as "MF Regulations") and various Circulars issued thereunder, a circular dated March 04, 2021 had been issued. Further, on the basis of consultation with industry the formats for the following reports i.e. reports to be submitted by Asset Management Companies ("**AMCs**") to Trustees, by AMCs to SEBI and by Trustees to SEBI have been reviewed and revised as under:

  - Reporting by AMCs to Trustees:

    - ***Bi-monthly Compliance Certificate ("BCC"):*** *In partial modification to the SEBI Circular January 5, 2000 relating to amendments to SEBI (Mutual Funds) Regulations, 1996, the Compliance Certificate to be submitted by the AMC to the Trustees on a Bi-monthly basis is now discontinued;*

    - ***Half yearly Compliance Certificate ("HYCC") by AMC to Trustees:*** *In partial modification to the SEBI Circular January 5, 2000, the Compliance Certificate to be submitted by the AMC to the Trustees on a half yearly basis is now discontinued. The contents of both BCC and HYCC have been suitably incorporated in the Quarterly Report by AMC to Trustees;*

    - ***Quarterly Report by AMC to Trustees ("QR"):*** *The AMC shall submit QR to the trustees, as required in sub-regulation (4) of Regulation 25 of MF Regulations relating to Asset management company and its obligations, on its activities and the compliance with MF Regulations and various circulars issued thereunder. The format of QR is prescribed at* ***Annexure I*** *to this Circular. The same shall be submitted by AMC to Trustees by 21st calendar day of succeeding month for the quarters ending March, June, September and December.*

  - Reporting by AMCs to SEBI:

- ***Compliance Test Report ("CTR") by AMC to SEBI:*** *To synchronize the frequency of submission of the CTR and QR, SEBI Circulars dated July 4, 2000, March 16, 2005 and July 5, 2007 have been modified to the extent that, instead of exceptional reporting, complete CTR shall be submitted by AMC to SEBI on a quarterly basis, by 21st calendar day of succeeding month for the quarters ending March, June, September and December. The revised format of CTR is prescribed at* ***Annexure II*** *to the Circular.*

➢ Reporting by Trustees to SEBI

- ***Half Yearly Trustee Report ("HYTR") by Trustees to SEBI:*** *In partial modification to the SEBI Circular dated January 5, 2000, the HYTR containing the broad coverage of report of trustees to SEBI has been revised & prescribed at Annexure III. Trustees, will have to submit corrective steps taken with respect to the noncompliance reported in the HYTR and they shall continue to submit HYTR for the half year ending September and March within two months from the end of the half year.*

- Applicability for various reports is as under:

➢ For QR and CTR reports, the Circular shall come into effect for reporting from the **quarter ending June, 2021**;
➢ For HYTR report, the Circular shall come into effect for reporting from the half year **ended March, 2021**;
➢ BCC and HYCC shall be discontinued subsequent to the effective date of the QR report as mentioned above.

To read the Circular in detail, please click here.

2. **SEBI issues guidelines on warehousing norms for agricultural/agri-processed goods and non-agricultural goods (only base/industrial metals) underlying a commodity derivatives contract having physical delivery vide Circular dated April 16, 2021**

- Warehousing plays a very important role in the delivery mechanism of the Commodity Derivatives Market therefore it is of utmost importance that there be a robust and credible warehousing infrastructure.

- It is important for a Clearing Corporation ("**CC**") to have a comprehensive framework of norms for adherence by its Warehouse Service Providers ("**WSP**"). These

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
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Guideline and norms prescribed in line with this Circular are only the bare minimum prescribed which the CCs will set out for compliance by its accredited WSP.

- The norms laid herewith in this Circular shall take effect from **June 01, 2021**.

- Some of the Norms prescribed based on which CCs shall frame their guidelines are:

    - ***Eligibility Criteria:***

      WSP shall be a Body Corporate and their Promoters / Promoter Groups should be in the business of public warehousing for at least 3 years as on the date of their application.

    - ***Share Capital:***

      WSP shall have subscribed and paid-up share capital of at least 10 crores and shall meet such Minimum net worth benchmarks as prescribed.

    - ***Compliance Officer:***

      The WSP shall mandatorily appoint a compliance officer who would be responsible for monitoring the compliance with relevant Act, byelaws.

    - ***Disclosures:***

      CCs shall have to provide daily disclosures on storage facility, Quantum of goods physically withdrawn by the holders and commodity wise percentage of overall deposits held in various warehouses. They have to also provide monthly disclosures in respect of Complaints received such other matters as prescribed.

To read the Guidelines and Circular in detail, please click here.

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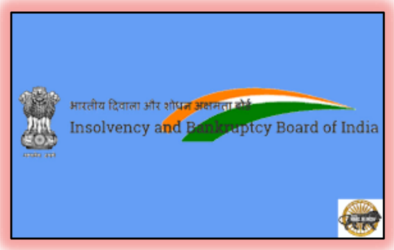
IBBI UPDATES



1. **IBBI amends issues The Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 vide Gazette Notification dated April 13, 2021**

- In the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, (hereinafter referred to as the principal regulations), in Regulation 15 relating to Bye-laws of information utilities, in sub-regulation (3), after clause (b), the following clauses shall be inserted, namely:

  "(ba) minimum service quality standards, including timelines for:
  - *(i) registration of users,*
  - *(ii) issuance of record of default, and*
  - *(iii) issuance of annual statement to registered users.*

  (bb) adoption of quality standards and quality standards certifications"

- In the principal regulations, in Regulation 27 relating to duties of a user, for sub-regulation (1), the following sub-regulation shall be substituted, namely:

  *"(1) A user, who has submitted information in Form C of the Schedule to an information utility, shall submit the information updated as on **<u>the last day of every month, in the first week of following month</u>**:*
  *Provided that information of default shall be updated **<u>within seven days</u>** of occurrence of default."*

  Earlier the timeline for submitting updated information by the user to the information utility was not specified but now post this amendment the timelines have also been specified.

- Regulation 36A has been inserted relating to Publication of statistical information by an Information utility:

  - An information utility shall publish statistics relating to debt related information in its possession, quarterly.

- The statistics in sub-regulation (1) shall provide distribution of debts in terms of currency, geography, sector, size, tenor, type, lending arrangement, and incidence of default.

- ***Form C*** relating submission of information by a user to an information utility under regulation 20 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 has also been substituted as given in the Notification.

To read the Notification in detail, please click here

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IFSCA UPDATES

1. **IFSCA issues International Financial Services Centres Authority (Market Infrastructure Institutions) Regulations, 2021 vide Gazette Notification dated April 12, 2021**

- In Order to conduct, organize or assist in organizing any stock exchange, clearing corporation or depository in an International Financial Services Centres ("**IFSC**") such persons will be required to be recognized under this regulation and shall also have to comply with these regulations.

- Any Market infrastructure institution ("**MII**") seeking recognition in an IFSC shall have to be a company incorporated in an IFSC in compliance with the shareholding requirements prescribed under these regulations.

- The Regulations outline details pertaining to the following aspects:

  - *Requirements for Grant of Recognition;*
  - *Final Grant of Recognition;*
  - *Regulatory Fees to be paid;*
  - *Renewal and Withdrawal of Recognition;*
  - *Net Worth Requirements;*
  - *Shareholding Requirements;*
  - *Monitoring and Disclosure of shareholding;*
  - *Listing of MII's;*
  - *Fit and proper requirements for s directors, key management personnel and shareholders of a recognized market infrastructure institution;*
  - *Governance norms for MII's;*
  - *Code of Conduct for directors and key management personnel;*
  - *Committees and Segregation of Regulatory Departments;*
  - *General obligations of a Recognized Stock Exchange and a Recognized Clearing Corporation;*
  - *General obligations of a Recognized Depository; and*
  - *Miscellaneous such as Maintenance of website, Record Keeping etc.*

To read the Notification in detail, please click here.

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
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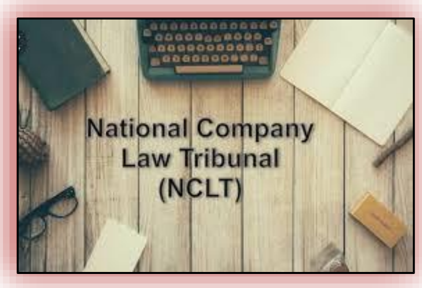
JUDGEMENTS/ ORDERS

NCLT

1. NCLT disallowed the application filed under Section 10(3)(a) of the Insolvency and Bankruptcy code, 2016



An application under section 10 (3) (a) of the Insolvency and Bankruptcy code, 2016 ('Code') by the applicant seeking to direct respondent to produce Balance sheets from 2008-09 to 2018-19.

Applicant states that: -

1. Respondent did not provide any financial or credit facility to the applicant;

2. Respondent alleged that investment comes under the ambit of Section 7 of the Code;

3. Copy of Balance sheets showing that investment made by the Financial Creditor as equity contribution not as financial debt; and

4. Hence, Balance sheets from 2008-09 to 2018-19 is required to be produced before the Hon'ble tribunal.

Respondent submitted that: -

1. the present application has been filed under incorrect provisions of law.

2. Tribunal granted the applicant to file an application to seek financial statements, however, applicant failed to file the said application;

3. Respondent relied upon the order of Hon'ble NCLAT in the matter of V. Padamkumar Vs. Stressed Assets Stabilisation Fund wherein Hon'ble Tribunal states that Balance Sheets of the Corporate Debtor cannot be treated as an acknowledgment of Debt.

NCLT New Delhi Bench - VI noted that Section 10 (3) (a) of the Code deals with the 'Corporate Applicant' whereas the applicant in the present application is 'Corporate Debtor'

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
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in the main matter. As per definition of 'Corporate Applicant' means 'Corporate Debtor'. NCLT further noted that the application has been filed Under Section 10 (3) (a) of the Code, whereas, in main matter application was filed under Section 7 of the Code. Hence, present application is not maintainable.

To read the order in detail, please click here.

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SEBI

1. **SEBI impose penalty on Yes Bank Limited for selling AT-1 Bonds to individual investors**

The Securities and Exchange Board of India ('**SEBI**') investigated against YES Bank Limited ('**YBL/Noticee 1**'), Mr. Rana Kapoor ('**Noticee 2**') Managing Director of YBL, Mr. Vivek Kanwar ('**Noticee 3**') who was the head of Private Wealth Management Team ('**PWM Team**'), Mr. Ashish Nasa ('**Noticee 4**') and Mr. Jasjit Singh Banga ('**Noticee 5**') in respect of selling of AT-1 bonds of YBL to retail investors.

SEBI observed that, the Noticees had facilitated selling of AT-1 Bonds of YBL from Institutional Investors to Individual Investors. It was alleged that during the process of selling of the AT-1 Bonds, Individual Investors were not informed about all the risks involved in subscription of AT-1 Bonds. Therefore, it was alleged that the AT-1 Bonds were fraudulently sold to the individual investors and thereby violating the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('**PFUTP Regulations**') and SEBI Act, 1992 ('**SEBI Act**').

SEBI noted that initially, AT1 bonds were allowed to be issued only to institutional investors. Thereafter, RBI vide its circular allowed Banks to issue AT1 Bonds to individual investors but also mandated issuers to appropriately disclose to the investors, the unique features along with the risks associated with the bonds. However, noticees designed a scheme which provides detailed step by step process, which only highlights the positive features of the AT-1 bonds like the high interest rate but there is no mention of any of the risks associated with these bonds.

Further, SEBI on perusal of sales process found that the sales person used the 'Verbal Sales Pitch' to highlight the positive features like high interest rate to the customers and once the customers decided to invest in the AT1 Bonds the Term Sheet was shared with them. However, PWM team never shared the term sheet with individual investors on certain cases.

Noticee submitted that all relevant details relating to the AT-1 bonds, including risks associated with the same, were informed to the customers, who were interested in purchasing the said bonds, through emails, Term Sheets and verbal communication.

SEBI noted that Noticees have not furnished any documentary evidence to substantiate the fact that the Term Sheets were provided to all the customers of YBL and failed to provide any concrete evidence to show that the risk factors were actually explained to the customers, either orally or by sharing the Term Sheet.

Based on the facts and circumstances of the case, SEBI observed that, in order to make the institutional investors subscribe to more capital of YBL the Noticees devised the plan to down sell the AT1 bonds, held by the institutional investors, to individual investors including their customers and highlighted the AT1 bonds as earning high interest as the fixed deposit. The omission on the part of the Noticees to forward relevant documentary information to the investors/customers indicates the suppression of material facts so as to create a misleading appearance of the AT1 bonds so that the investors/customers to invest in them.

After considering material available on record and all the facts and circumstance SEBI imposed penalty of INR 25 Crores (INR Twenty-Five Crore) on Yes Bank and INR 1 Crore (One Crore) on its former MD Mr. Rana Kapoor.

To the order in detail please click here.

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91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
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HIGH COURT

1. Delhi High Court allowed the appeal filed by the National Highways Authority of India by setting aside the Order passed for seeking relief relating to stay on the 'Notice of intention to issue termination notice' ("NIT")

National Highways Authority of India	Appellant
Panipat Jalandhar NH-I Tollway Private Limited	Respondent

<u>Date of Judgement</u>: April 13, 2021

National Highways Authority of India ("**NHAI**") has filed the present appeal challenging the order passed by the learned Single Judge. NHAI in the present appeal made the submissions relating to the provisions under Article 36 and Article 37 of the Concession Agreement, which do not operate in separate and mutually exclusive spheres, but form a "Composite Scheme" and both options are available to the NHAI in the event there is a concessionaire default. In this regards, the respondent – Panipat Jalandhar NH-I Tollway Private Limited had contended that the two Articles are mutually exclusive and if the NHAI exercised its choice of proceeding under Article 36, it could not jump to Article 37 to terminate the "Composite Scheme", without allowing the entire procedure provided under Article 36 to play out.

This being the case and relying upon the facts, the Delhi High Court held that, the order that was passed based upon the observations of the learned Single Judge against NHAI against the Petition filed by the respondent under Section 9 of the Arbitration and Conciliation Act, 1996, seeking relief relating to stay on the 'Notice of intention to issue termination notice' ("NIT"), that NHAI is estopped from exercising its rights of termination under Article 37 or that even under Article 36, it is required to mandatorily await the lapse of 180 days before termination can occur or that once suspension has been invoked, the termination can only be on the efflux of 180 days.

Thus, the Delhi High Court was of the view that, it is unable to agree with this observation of the learned Single Judge that the Termination Notice could not have been issued by the

NHAI in March 2021 or that it had to wait till June 2021. The present appeal was allowed and by setting aside the order challenged in the present appeal.

To read the Judgement in detail, please click here.

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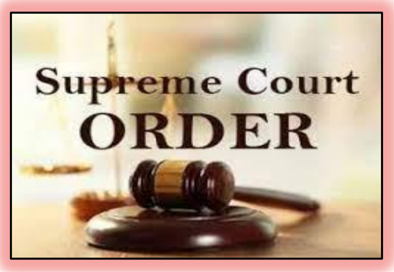
SUPREME COURT

1. **The Supreme Court allows the appeal filed by IFFCO Tokio General Insurance Company Limited, were a car accident took place driven under the influence of intoxicating liquior and setting aside the Order passed by the National Consumer Disputes Redressal Commission ('NCDRC')**



IFFCO Tokio General Insurance Company Limited	Appellant (s)
Pearl Beverages Limited	Respondents

Date of Judgement: April 12, 2021

This is case of a car accident (a Porshe) belonging to the respondent – Pearl Beverages Limited, where the car was completely damaged. The car was insured with the appellant – IFFCO Tokio General Insurance Company Limited. The accident resulted in the filing of this appeal against the Order by the National Consumer Disputes Redressal Commission **('NCDRC'),** were the appellant repudiated the claim made by the respondent.

The question which arose in this appeal was, whether the NCDRC was correct in holding that the appellant is not entitled to invoke the shield of Clause (2c) of the Contract of Insurance, under which, it was not liable, if the person driving the vehicle, was under the influence of intoxicating liquor, or drugs. The Clause (2c) in controversy states that, the Company (the appellant) shall not be liable to make any payment in respect of any accidental loss or damage suffered whilst the insured or any person driving the vehicle with the knowledge and consent of the insured is under the influence of intoxicating liquor or drugs."

Based upon the findings, that there was evidence to show that the person who drove the vehicle, had consumed liquor and was under the influence of liquor, the State Commission rejected the complaint of the respondent. However, the NCDRC, by the Order that was challanged, had found that there was no material to establish that the driver of the vehicle was under the influence of intoxicating liquor.

Basis the discussions the Supreme Court by applying the principles that were referred to , to the facts of the present case, the conclusions were summarized in points A to K, and held that, the Order was liable to set aside, and the appeal filed by Iffco Tokio General Insurance Company Limited was allowed.

To read the Judgement in detail, please click here.

2. **The Supreme Court allowed the appeals filed under Corporate Insolvency Resolution Process ("CIRP") thereby quashing and setting aside the impugned judgement and order of the Jharkhand High Court**

Ghanashyam Mishra and Sons Private Limited **Through the Authorized Signatory**	**Appellant(s)**
Edelweiss Asset Reconstruction Company Limited **Through the Director & ORS.**	**Respondent(s)**

Date of Judgement: April 13, 2021

Civil Appeal was filed by the appellant – Ghanashyam Mishra and Sons Private Limited, were the Corporate Insolvency Resolution Process ("CIRP") was initiated in respect of the Corporate Debtor by an application under Section 7 of I & B Code filed by the State Bank of India before the National Company Law Tribunal (NCLT), Kolkata Bench, Kolkata.

Corporate Debtor, being the Orissa Manganese & Minerals Limited, which is engaged in the business of mining iron ore, graphite, manganese ore and agglomerating iron fines into pellets through its facilities in Orissa and Jharkhand.

Company Petition filed by SBI was admitted and an Interim Resolution Professional was appointed, who initiated the CIRP and continued the resolution process by inviting Expression of Interest and applications for resolution plan in accordance with the provisions of the Insolvency & Bankruptcy Code and the Regulations framed thereunder. In response to the invitation three Resolution Plans were received by Resolution Professional, each from, Edelweiss Asset Reconstruction Company Limited, Orissa Mining Private Limited and Ghanashyam Mishra & Sons Private Limited, respectively. Application for extension for a period of 90 days was extended post expiry of the initial period of 180 days of CIRP.

The Supreme Court, as a result held that, the appeals deserve to be allowed and was ordered accordingly, thereby quashing and setting aside the impugned judgement and order of the Jharkhand High Court. The Court further held that, the respondents are not entitled to recover any claims or claim any debts owed to them from the Corporate Debtor accruing prior to the transfer date.

To read the Judgement in detail, please click here.

3. **Supreme Court allows the appeal filed by M/s Neeharika Infrastructure Private Limited, by setting aside the Order of the High Court which had directed that "no coercive measures to be adopted" against the petitioners (original accused) in respect of FIR registered at Worli Police Station, Mumbai, Maharashtra.**

M/s Neeharika Infrastructure Private Limited	**Appellant**
State of Maharashtra and others	**Respondents**

Date of Judgement: April 13, 2021

FIR (First Information Report) was filed against the original accused, being the respondent nos. 2 & 4 at the Worli Police Station, Mumbai for the offences under Sections 406, 420, 465, 468, 471 and 120B of the Indian Penal Code, were the allegations pertain to forgery and fabrication of Board Resolution and the fraudulent sale of a valuable property Naziribagh Palace ad-measuring 111,882 sq. ft. belonging to the appellant company to one M/s Irish Hospitality Private Limited. In this respect the original accused had filed anticipatory bail which was pending before the learned Sessions Court, Mumbai, who had granted interim protection from the arrest to the alleged accused. Hence, during the pendency of the anticipatory bail, the original accused had preferred a petition before the High Court of Judicature at Bombay under Article 226 of the Constitution of India under Section 482 of Cr.P.C for quashing the FIR. In this respect, the High Court has passed the impugned interim order directing that "no coercive measures shall be adopted against the petitioners in respect of the said FIR".

Feeling aggrieved and dissatisfied with the impugned interim order passed by the Division Bench of the High Court directing that "no coercive measures shall be adopted" against the original accused (writ petitioners before the High Court) in respect of the said FIR, the original complainant has preferred the present appeal.

The present appeal was allowed by the Supreme Court and the impugned interim order/direction which the High Court had directed that "no coercive measures to be adopted" against the petitioners (respondent nos. 2 to 4) in respect of FIR registered at

Worli Police Station, Mumbai, Maharashtra is hereby quashed and set aside. However, it is made clear that the Supreme Court has not expressed anything on the merits of the case, more particularly the allegations in the FIR and the High Court to consider the quashing petition in accordance with law and on its own merits and considering the afore-stated observations made the Supreme Court in the present judgment.

To read the Judgement in detail, please click here.