Swift e-Bulletin

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Edition 25/21-22
Week – September 20th to September 24h

Quote for the week:

"The greatest wealth is to live content with little"

- Plato

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**") critical judgements and orders passed by the National Company Law Tribunal **("NCLT")**, SEBI, High Court and Supreme Court.

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

- **MCA grants extension of time for holding of Annual General Meeting ("AGM") for the financial year ended March 31, 2021;**

- **SEBI issues clarifications with respect to alignment of interest of Key Employees ("Designated Employees") of Asset Management Companies ("AMCs");**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of September 20, 2021 to September 24, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

MCA UPDATES

1. **MCA grants extension of time for holding of Annual General Meeting ("AGM") for the financial year ended March 31, 2021.**

- Section 96 of the Companies Act, 2013 ("**CA2013**") provides that every Company other than One- Person Company, shall every year hold their AGM within 6 months from the end of the financial year, and the gap between two AGM's shall not extend more than 15 months.

- Section 96 of the CA2013 also provides that the Registrar can extend the time for holding the AGM by a period of 3 months except for the first AGM. Any Company planning to avail such extension needs to make an application to the respective Registrars in e-**Form GNL-1** and the Registrar on its own discretion shall grant such extension as it deems fit.

- Based on the prevailing circumstances and due to difficulties faced by various companies to hold their AGM for the financial year ended March 31, 2021 in view of the COVID-19 pandemic, the Registrars have approved to provide a blanket extension for a period of 2 months for companies to conduct their AGMs.

- This extension shall be applicable all Companies including those who have:

  - *Pending applications filed in e-Form GNL-1 for the extension of AGM for the financial year ended on March 31, 2021, which are yet to be approved.*
  - *Applications filed in e-Form GNL-1 for the extension of AGM for the financial year ended on March 31, 2021, which were rejected.*
  - *Applications filed in e-Form GNL-1 for the extension of AGM for the financial year ended on March 31, 2021, where the extension approved was for a period less than two months.*

  To read the Extension Orders issued by the various Registrar of Companies in different jurisdictions, please click here.

SEBI UPDATES

1. **SEBI issues clarifications with respect to alignment of interest of Key Employees ("Designated Employees") of Asset Management Companies ("AMCs") vide Circular dated September 20, 2021.**

- SEBI vide its earlier Circular dated April 28, 2021, had mandated that minimum 20% of compensation received by Key Employees of AMCs shall be paid in the form of units of the scheme in which they have role/oversight. In relation to the said Circular, SEBI has come out with further clarifications, some of which are as under:

    - *The said Circular shall be implemented for junior employees in a phased manner, 10% in the 1st year and 15% in the 2nd year of implementation of the Circular. Post October 01, 2023 onwards junior employees shall be required to invest the said 20%.*
    - *Designated employee of the AMC who are below the age of 35 years (excluding CEO, head of any department and Fund Managers) shall be deemed as "junior employee". Thus, the phased implementations shall cease to apply from the date such employees attain the age of 35 years.*
    - *Investment in units of the scheme, shall be made on the day of payment of salary.*
    - *If the Designated Employees has availed loan from AMC, then such perquisite value of interest shall not be included in their CTCs.*
    - *The Designated Employees can also set off their existing investment against the fresh investments required as per the Alignment Circular in the same schemes. Such investments shall be locked-in for the period of 3 years even if the lock-in period is expired.*
    - *While redeeming the said units:*

        - ***Liquid Schemes*** – Units shall be automatically redeemed on expiry of the lock in period
        - ***Open Ended Schemes***- Approval will be required from the Compliance Officer, and can be redeemed only twice a year

To read the Circular 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. VVF (India) Limited**

NCLT, Mumbai Bench **("Tribunal")** admits the application filed by Bank of India **("Financial Creditor")** under section 7 of the Insolvency and Bankruptcy Code, 2016 **("IBC")** and Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and initiates CIRP against the VVF (India) Limited **("Corporate Debtor").**

The Financial Creditor had provided various fund based and non-fund based working capital facilities to the Corporate Debtor in various tranches. The learned council of the Financial Creditor affirmed that despite repeated reminders about repayment of loan amount, the Corporate Debtor failed to do so, and Financial Creditor had classified Corporate Debtor as a non-performing asset. The Financial Creditor had also addressed a demand notice to Corporate Debtor demanding the repayment of the loan amount, along with interest thereto.

In response to the averments made by the Financial Creditor, the learned council of the Corporate Debtor argued that a consortium of nine banks had advanced certain facilities to the Corporate Debtor and Financial Creditor was part of such consortium of banks. No other bank had initiated proceedings against Corporate Debtor under IBC. Further, he submitted that the Petition filed is ex-facie incomplete, objecting the maintainability of the petition on the ground that the it is incomplete as it does not enclose the financial contracts and agreements executed between the parties which are mandatorily required to be filed along with the petition as per the provisions of the IBC and the Rule framed thereunder.
Based on the facts presented, Tribunal was satisfied that the Corporate Debtor had made a default in its payment commitments to the Financial Creditor and the Corporate Debtor didn't point out any dispute relating to it before the hearing of this case. Tribunal admitted the said application filed by the Financial Creditor and declared moratorium in accordance to section 14 of the IBC. Tribunal resolved to appoint Mr. Avil Menezes to act as the Interim Resolution Professional **("IRP").** Tribunal further directed the Financial Creditor to deposit an amount of INR 2,00,000 to the IRP to meet the immediate expenses for CIRP and to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 subject to approval by the Committee of Creditors **("CoC").**

To read the order in detail, please click here.

SEBI

1. SEBI imposes penalty on the Noticees under SCRA relation to off-market transaction.

Securities and Exchange Board of India (**"SEBI"**) carried out an investigation scrip of Yamini Investment Company Limited. The focusses of the investigation was to ascertain whether there were any violations of the Securities Contracts (Regulation) Act, 1956 **("SCRA")** relating to the off-market transactions noticed during investigation period. The shares the Company were listed on BSE Ltd.

During the investigation, SEBI observed that Noticee 1 had transferred 1,60,000 shares to Noticee 2 and consideration was not received, which was alleged to be in violation of SCRA. In this regard, the Adjudicating officer **("AO")** sent Show Cause Notice **("SCN")** to the Noticees stating that why an inquiry should not be held against under the SCRA to which the Notice never provided their responses and basis on principle of natural justice personal hearing was provided. However, Noticees failed to attend the same. The AO noted that sufficient opportunities were given and quoted various case law to determine that the Noticees has admitted to the alleged violation and AO proceeded with ex parte in the matter.

The AO analyzed the provision of SCRA and noted that the Noticees had committed the violations and accordingly penalty was imposed.

To read the order in detail, please click here

HIGH COURT

1. **Aggrieved by unilateral appointment of a retired Chief Engineer of the Public Works Department, Government of Maharashtra, as the sole arbitrator on the disputes, Larsen and Toubro Limited files Petition.**

Larsen and Toubro Limited	Petitioner
HII Lifecare Limited	Respondent

Date of Judgement: September 20, 2021

In the present petition, the petitioner is aggrieved by the fact that the respondent, unilaterally appointed a retired Chief Engineer of the Public Works Department, Government of Maharashtra, as the sole arbitrator on the disputes, where the arbitral proceedings, forming subject matter of the present petition emanate out of contract agreement between the petitioner and respondent.

Clause 21 of the General Conditions of Contract (GCC), forming part of the said agreement, provided for arbitration as the mode of resolution of disputes.

The order here does not seek, in any manner, to comment on the competence or independence of the learned arbitrator, if the learned arbitrator has been rendered incapable of proceeding with the dispute, that is by operation of Statute and not for any other reason. This Court, has, no reason to dispute the competence or impartiality of the learned arbitrator.

Basis the above observation, the present petition was allowed, and the dispute between the parties, stands terminated, and the Court had requested Hon'ble Ms. Justice Indu Malhotra, an eminent retired Judge of the Supreme Court, to arbitrate on the disputes between the parties.

To read the Judgement in detail, please click here.

SUPREME COURT

1. **Supreme Court quashes the judgement and order passed by the High Court of Punjab and Haryana, in case of allocation of Coal Blocks**

Punjab State Power Corporation Limited and Another	Appellant (s)
Emta Coal Limited	Respondent (s)

With

DBLVPR Consortium Through Authorised Representative	Appellant (s)
Emta Coal Limited And Others	Respondent (s)

Date of Judgement: September 21, 2021

Punjab State Power Corporation Limited **("PSPCL"),** (*formerly known as The Punjab State Electricity Board),* was proposed to be allotted Captive Coal Mines by the Union of India, issued a tender inviting bid for the purpose of development of Captive Coal Mines. The said bid was emerged by the respondent – Emta Caol Limited, successfully.

The parties entered into an agreement, thereby creating a Joint Venture Company called Panem Coal Mines Limited. The said agreement provided the rights for mining of coal from the Coal Mines, transporting and delivery of it, wholly and exclusively to PSEB. Since EMTA being a partnership firm could not have been a shareholder of the Joint Venture Company, a follow up Joint Venture Agreement was entered into between PSEB, EMTA and the three partners of EMTA, incorporating the same terms and conditions as were found in the earlier agreement. This was intimated to the Union of India by PSEB. Thereafter, Union of India allotted a Captive Coal Block being Pachhwara (Central Block) Coal Mine in the State of Jharkhand to PSEB.

Until 2014, there was no problem. However, the Supreme Court in the case of ***Manohar Lal Sharmal*** held that the entire allocation of Coal Blocks made between 1993 and 2011, except those which were made through competitive bidding, were invalid, unfair, arbitrary and violative of Article 14 of the Constitution of India. The Court thereafter quashed all Coal Block allocations made by the Central Government between 1993 and 2011, pursuant to the orders passed in the case of ***Manohar Lal Sharma v. Principal Secretary and Others.***

The Supreme Court, in the result, the impugned judgment and order passed by the High Court of Punjab and Haryana is unsustainable in law and held that, the appeals are therefore allowed and the judgment and order passed by the High Court of Punjab and Haryana be quashed and set aside.

To read the Judgement in detail, please click here.

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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.

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