Edition 03/21-22
Week – April 19th to April 23rd

Quote for the week:

"Always remember that you are absolutely unique. Just like everyone else."

- Margaret Mead

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

The Regulatory authorities provided various updates/relaxations such as :

- **Spending of Corporate Social Responsibility ("CSR") funds for 'setting up makeshift hospitals and temporary COVID Care facilities will be eligible CSR activity;**

- **Extension of validity of relaxation pertaining to procedural aspects of Rights issues opening to September 30, 2021 by SEBI;**

- **Constitution off Committee by Reserve Bank of India on function of Asset Reconstruction Companies ("ARCs");**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of April 19, 2021 to April 23, 2021.

Thank you,
Swift team

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CHANGE IN NAME FROM SWIFTINDIAINC CORPORATE SERVICES LLP AS ON 07.02.2017

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REGULATORY UPDATES

MCA UPDATES

1. **MCA issues clarification on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities vide General Circular No 05/2021 dated April 22, 2021**

- In continuation to the Ministry's General Circular No. 10/2020 dated March 23, 2020 wherein MCA had clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, further clarification has been issued by the Ministry that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID Care facilities ' is an eligible CSR activity under item nos. (i) and (xii) of Schedule VII (Activities which may be included by companies in their Corporate Social Responsibility Policies Activities) of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

- The companies have been directed to undertake the aforesaid activities in consultation with State Governments subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR issued by the Ministry from time to time.

  To read the Circular in detail, please click here.

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SEBI UPDATES

1. **SEBI extends relaxations with respect to procedural matters related to Issues and Listing pertaining to Rights Issue vide Circular dated April 22, 2021**

- SEBI vide Circular dated May 6, 2020, granted one time relaxations from strict enforcement of certain regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, pertaining to Rights Issue opening up to July 31, 2020.

- Taking into view the representations received from various market participants, the validity of these relaxations was further extended for Rights Issues opening up to December 31, 2020, vide SEBI Circular dated July 24, 2020.

- The relaxation mentioned in point (iv) of the SEBI Circular No. dated May 6, 2020 relating to an application for a rights issue being made only through Applications secured by Blocked Amount (“**ASBA**”) facility, was further extended for Rights Issues opening up to March 31, 2021, vide SEBI Circular dated January 19, 2021.

- To ease and facilitate investors, the relaxation mentioned in point (iv) of the SEBI Circular dated May 6, 2020, is further extended and shall be applicable for Rights Issues opening up to ***September 30, 2021***, provided that the issuer along with the Lead Manager(s) shall continue to comply with point (v) of the SEBI Circular dated May 06, 2020 relating to obligations of Issuer along with Lead Merchant Banker.

- In respect to mechanism and compliance requirements at point (iv) and (v) of the SEBI Circular dated May 6, 2020, the issuer along with Lead Manager(s), Registrar, and other recognized intermediaries (as incorporated in the mechanism) have also been directed to ensure the following:

  - *Refund for un-allotted / partial allotted application shall be completed on or before T+1 day (T: Basis of allotment day).*
  - *Registrar to the issue, shall ensure that all data with respect to refund instructions is error free to avoid any technical rejections. Further, in case of any technical rejection of refund instruction, same shall be addressed promptly.*

To read the Circular in detail, please click here.

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RBI UPDATES

1. **RBI constitutes a Committee on functioning of ARCs and to review regulatory guidelines applicable to them vide Press Release dated April 19, 2021**

- Reserve Bank of India had announced setting up of a Committee to undertake a comprehensive review of the working of **ARCs** in the financial sector ecosystem and recommend suitable measures for enabling such entities to meet the growing requirements of the financial sector. Accordingly, it has constituted a Committee on functioning of ARCs and to review regulatory guidelines applicable to them.

- The action points to be covered by the Committee will be as under:

  - *Review of existing legal and regulatory framework applicable to ARCs and recommend measures to improve efficacy of ARCs;*
  - *Review of role of ARCs in resolution of stressed assets including under Insolvency & Bankruptcy Code (**"IBC"**), 2016;*
  - *Suggestions for improving liquidity in and trading of security receipts;*
  - *Review of business models of the ARCs;*
  - *Any other matter relevant to the functioning, transparency and governance of ARCs.*

- The Committee will submit its report within three months from the date of its first meeting. Department of Regulation, Reserve Bank of India would be providing the necessary secretarial support to the Committee.

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

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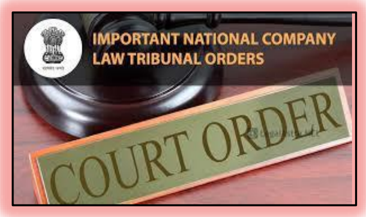
JUDGEMENTS/ ORDERS

NCLT



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

NCLT, New Delhi Bench **("Tribunal")** admits the application filed by M/s. Emgreen Impex Limited **("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 ANR International 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 1,46,76,051/- 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.

Based on the facts presented, Tribunal was satisfied that the Corporate Debtor had made a default in payment for materials provided by the Operational 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 Operational Creditor and declared moratorium in accordance to section 14 of the IBC. Tribunal resolved to appoint Mr. Devendra Umrao to act as the Insolvency Resolution Professional ("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.

To read the order in detail, please click here.

SEBI

1. **SEBI imposed penalty for not complying with the disclosure requirements under SEBI (Prohibition of Insider Trading) Regulations, 2015**

SEBI imposed penalty of INR 1,00, 000 (INR One Lakh) on Victor Peter Christopher **("Noticee")** an employee of ITC limited **("ITC")** for not complying with the disclosure requirements of Regulation 7(2)(a) read with Regulation 7(2)(b) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**"). SEBI observed that Noticee was allotted Employee Stock Options by ITC and the Noticee had exercised his options and equity shares was allotted by ITC. Subsequently, the Noticee sold the shares. Further, Noticee also traded in the scrip of ITC in the derivative segment. SEBI Noted that, Noticee failed to disclose details of his transactions in time and made subsequent belated disclosures. SEBI further noted that, Noticee already faced great deal of suffering due to ignorance of law. Hence, penalty imposed is commensurate with the violation on the part of the Noticee.

To read the order in detail, please click here.

2. **SEBI grant exemption to acquirers from complying with the requirement of regulations 3(1) and 4 the Takeover Regulations, 2011**

Madhushree Private Trust and Pawan Private Trust (together called as **Proposed Acquirers**) filed an application seeking exemption from the applicability of regulations 3 and 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Regulations, 2011**") to the SEBI. Proposed acquirers submits that, the proposed acquisitions are in furtherance to an internal reorganization within the Promoter Family and intended to streamline succession and promote welfare of Promoter Family. The proposed direct and indirect acquisitions would be non-commercial transactions which would not affect or prejudice the interests of the public shareholders of the Target Company in any manner. After considering the facts and circumstances, SEBI grant exemption to the proposed acquirers from complying with the requirement of regulations 3(1) and 4 the Takeover Regulations, 2011 with respect to direct acquisitions in the Kaveri Seed Company Limited (Target Company) subject to the conditions prescribed in the order. SEBI stated that, the exemption granted is limited to the requirements of making open offer under the Takeover Regulations, 2011 and not in any other requirements under the SEBI regulations. To read the order in detail, please click here.

HIGH COURT

1. **M/s. Ayush Services and Consultancy filed petition against Delhi Metro Rail Corporation Limited for tenure period of the license agreement not been extended further.**

M/s. Ayush Services and Consultancy	**Petitioner**
Delhi Metro Rail Corporation Limited (DMRC)	**Respondent**

<u>Date of Judgement</u>: April 19, 2021

M/s. Ayush Services and Consultancy ("**Petitioner**") had preferred a petition against Delhi Metro Rail Corporation Limited ("**Respondent**") in respect of license agreement, wherein the Petitioner was awarded the license for installing display guide maps, including train timings, fare structure and other vital information.

The reason for dispute in this case was because, the initial tenure period had lapsed and the Petitioner had sought extension of further 5 years. However, as per Clause 14 in the Contract relating to the period of the license agreement had clearly stated that DMRC – the respondent was solely within its discretion to extend or not to extend the agreement for a further period of five years or such any other period beyond the period agreed.

Upon hearing the overall facts and circumstances of the case, the Delhi High Court issued necessary directions to the parties to the dispute and made it clear to the parties that it has not examined the merits of the dispute, as raised by the Petitioner and the contentions of the parties.

To read the Judgement in detail, please click here.

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2. **Issuance of fresh Certificates under Section 197 indicating the rate of withholding tax was ordered by the Delhi High Court.**

Concentrix Services Netherlands B.V.	**Petitioner**
Income Tax Officer (TDS) and ANR.	**Respondents**
Optum Global Solutions International BV	**Petitioner**
Deputy Commissioner Of Income Tax & ANR....	**Respondents**

Date of Judgement: April 22, 2021

In the present writ petition filed in both the cases, the petitioners are the deductees i.e., the ultimate tax payers, were the arguable issue that has arisen is with respect to, as to what should be the withholding rate of tax in respect of dividend. Even though, there being the appended protocol between the Government of the Republic of India and the Government of the Kingdom of Netherlands Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion, were the request for issuance of a certificate at a lower withholding tax rate of 5% applied under Section 197 of the Income Tax Act, 1961 in the prescribed Form 13, was rejected.

Basis the submissions made on behalf of the petitioners, and submissions advanced on behalf of the revenue, the Delhi High Court analyzed the relevant provisions of the Double Taxation Avoidance Agreement, insofar as they are relevant, to determine as to what is the withholding tax rate applicable in respect of dividend and concluded that it is of the view that the challenged certificates which were requested by the petitioners in both the cases deserved to be quashed and ordered the respondent no. 1 to issue fresh certificate under Section 197 of the Income Tax Act, 1961, which would indicate, that the rate of withholding tax, in the facts and circumstances of these cases, would be 5%.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **Interesting question before the Supreme Court to choose a forum for arbitration outside India, under Part II of the Arbitration and Conciliation Act, 1996, by two Indian companies under dispute.**

PASL Wind Solutions Private Limited	Appellant
GE Power Conversion India Private Limited	Respondents

Date of Judgement: April 20, 2021

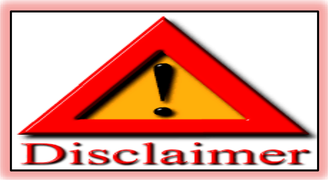
PASL Wind Solutions Private Limited, being the appellant is a company incorporated under the Companies Act, 1956 having its registered office at Ahmedabad, Gujarat, which had issued three purchase orders for supply of certain converters by the respondent – GE Power Conversion India Private Limited, a company incorporated under the Companies Act, 1956 having its registered office at Chennai, Tamil Nadu, which is a 99% Subsidiary of General Electric Conversion International SAS, France, which in turn is a subsidiary of the General Electric Company, United States.

Dispute arose between the parties in relation to the expiry of the warranty of the six converters supplied to the appellant against the purchase order. In order to resolve the dispute the parties to the dispute entered into a settlement agreement, under which the respondent agreed to provide certain delta modules along with warrantieson these midules for the working of the converter panel. There arose further dispute pursuant to the settlement agreement, whereby the appellant claimed that warranties that were supposed to be given for converters were not so given, whereas the respondent argued that the warranties covered only the delta modules and not the converters.

This being the case, the appellant issued a request for arbitration to the International Chamber of Commerce ["ICC"] and accordingly the parties agreed to resolution of disputes by the sole arbitrator appointed by the ICC. This appeal raised an interesting question – as to whether two companies incorporated in India can choose a forum for arbitration outside India – and whether an award made at such forum for arbitration outside India, to which the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958

["New York Convention"] applies, can be said to be a "foreign award" under Part II of the Arbitration and Conciliation Act, 1996 and be enforceable as such.

To read the Judgement in detail, please click here.



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