
Swift e-Bulletin

Swift e-Bulletin
Edition 06/21-22
Week – May 10th to May 14th

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

*"If you want the rainbow, you have to put up with the rain."*

*-Dolly Parton*

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 Securities and Ministry of Corporate Affairs ("**MCA**"), the Exchange Board of India **("SEBI"),** the Reserve

Bank of India ("**RBI**"), and the International Financial Services Centres Authority ("**IFSCA**"), and critical judgements and orders passed by the National Company Law Tribunal **("NCLT")**, National Company Law Appellate Tribunal **("NCLAT")** SEBI, Supreme Court and High Court.

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

- **MCA provides list of forms for providing waiver of additional fees;**
- **SEBI introduces new reporting requirements on Environmental, Social and Governance issues ("ESG") called the Business Responsibility and Sustainability Report ("BRSR");**
- **RBI issues clarifications in relation to Sponsor Contribution to an Alternative Investment Fund ("AIF") set up in Overseas Jurisdiction, including International Financial Services Centres ("IFSCs");**
- **IFSCA issues guidelines for issuance of Certificate of Deposits ("CDs") by Banking Units ("BUs").**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of May 10, 2021 to May 14, 2021.

Thank you,
Swift team

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## REGULATORY UPDATES

### MCA UPDATES

1. **MCA provides list of E-forms for providing waiver of additional fees**

- MCA vide Circular 06/2021 relating to relaxation of time for filing certain forms under the Companies Act, 2013 due for filing during April 01, 2021 to May 31, 2021 and Circular 07/2021 relating to relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 falling on any date between during April 01, 2021 to May 31, 2021, had provided relaxation from additional fees for any forms to be filed during this period.

- In continuance to the above-mentioned Circulars, the Ministry has come out with a list of forms for which the above two Circulars shall be applicable, which is mentioned below:

| Sr. No | Form ID | Form Description |
|---|---|---|
| 1) | Form CHG – 1 | Application for registration of creation, modification of charge (other than those related to debentures) |
| 2) | Form CHG – 9 | Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures |
| 3) | Form ADT – 1 | Information to the Registrar by company for appointment of auditor |
| 4) | Form INC – 22 | Notice of Situation or Change of situation of Registered Office of the Company |
| 5) | Form NDH – 3 | Return of Nidhi Company for the half year ended |
| 6) | Form FC – 4 | Annual Return of a Foreign Company |

| | | |
|---|---|---|
| 7) | Form MSC – 3 | Return of dormant companies |
| 8) | Form INC – 27 | Conversion of public company into private company or private company into public company |
| 9) | Form NDH - 2 | Application for extension of time |
| 10) | Form IEPF – 3 | Statement of shares and unclaimed or unpaid dividend not transferred to the Investor Education and Protection Fund |

To read the update containing the list of E-forms, please click here.

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SEBI UPDATES

1. **SEBI introduces new reporting requirements on Environment, Social and Governance ("ESG") parameters called the Business Responsibility and Sustainability Report ("BRSR") vide Circular dated May 10, 2021.**

- In the present scenario, adapting to and mitigating climate change impact, inclusive growth and transitioning to a sustainable economy have emerged as major issues globally. There is an increased focus of investors and other stakeholders seeking businesses to be responsible and sustainable towards the environment and society. Thus, reporting of company's performance on sustainability related factors has become as vital as reporting on financial and operational performance.

- SEBI in order to bring sustainability reporting at par with financial reporting and to enable market participants to identify and assess sustainability-related risks and opportunities in terms of ESG issues, it has introduced a new report called the BRSR which shall henceforth replace the existing Business Responsibility Report (**"BRR"**) which was prescribed vide Circular dated November 04, 2015.

- In terms of amendment to regulation 34 (2) (f) of Listing Obligations and Disclosure Requirements (**"LODR"**) Regulations vide Gazette notification dated May 05, 2021, SEBI has now decided to introduce new reporting requirements on ESG parameters called the BRSR. The BRSR is accompanied with a guidance note to enable the companies to interpret the scope of disclosures. The format of the BRSR and the guidance note are detailed in ***Annexure I*** and ***Annexure II*** to the Circular respectively.

- This report shall be applicable from the financial year 2022-2023, and the filing of the same shall be mandatory for top listed 1000 listed companies based on market capitalization. However, filing of this report is voluntary for financial year 2021-2022.

- This report seeks disclosures from listed entities on their performance against the nine principles of the National Guidelines on Responsible Business Conduct ("**NGBRCs**") and reporting under each principle is divided into essential and leadership indicators, whereby the essential indicators are required to be reported on a mandatory basis while the reporting of leadership indicators is on a voluntary basis.

- Listed entities already preparing and disclosing sustainability reports based on internationally accepted reporting frameworks may cross-reference the disclosures made under such framework to the disclosures sought under the BRSR.

To read the Circular in detail, please click here.

**2. SEBI outlines the procedure for seeking prior approval for change in control of SEBI registered Portfolio Managers in light of amendments brought forth by SEBI (Portfolio Managers) (Second Amendment) Regulations, 2021 vide Circular dated May 12, 2021.**

- SEBI vide SEBI (Portfolio Managers) (Second Amendment) Regulations, 2021 had amended Regulation 11 (Conditions for registration) by inserting a sub-regulation (aa) in the aforesaid Regulation 11 whereby henceforth portfolio managers would need prior SEBI approval in case of any change in control. The link for the amendment is provided in the Circular.

- Accordingly, SEBI has introduced a detailed procedure on how all SEBI registered portfolio managers shall take prior approval for change in control which are mentioned below:

  - *Online application shall have to be filed for prior approval;*
  - *Such prior approval granted by SEBI shall be valid only for 6 months from date of such approval;*
  - *Application for fresh registration pursuant to change in control shall be made to SEBI within 6 months from the date of prior approval; and*
  - *Prior to taking such approval from SEBI all the existing investors/ clients shall be informed about the proposed change prior to effecting the same*

To read the Circular in detail, please click here.

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RBI UPDATES

1. **RBI issues clarifications in relation to Sponsor Contribution to an AIF set up in Overseas Jurisdiction, including IFSCs vide Circular dated May 12, 2021**


- RBI has notified the AD Category-I Banks on paragraph A.3. (e) and B.6 of Master Direction No.15 dated January 1, 2016, on "Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary ("**WOS**") Abroad", as amended from time to time and Regulation 7 of the Notification FEMA 120/2004-RB, pertaining to provisions for an Indian Party ("**IP**") making investment/ financial commitment in an entity engaged in the financial services sector.

- RBI has decided that any sponsor contribution from a sponsor IP to an AIF set up in an overseas jurisdiction, including IFSCs in India, as per the laws of the host jurisdiction, will be treated as Overseas Direct Investment ("**ODI**"). Accordingly, IP, as defined in regulation 2(k) of the Notification ibid. can set up AIF in overseas jurisdictions, including IFSCs, under the automatic route provided it complies with Regulation 7 of the Notification FEMA 120/2004-RB in relation to Investment in Financial Services Sector.

- All the other provisions under the Notification ibid. shall remain unchanged. AD Category - I Banks have been directed to bring the contents of this circular to the notice of their constituents and customers concerned. The Master Direction No. 15 dated January 01, 2016, is being updated to reflect the changes.

To read the Circular in detail, please click here.

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IFSCA UPDATES

1. **IFSCA issues guidelines for issuance of Certificate of Deposits ("CDs") by Business Units ("BU's") vide Circular dated May 10, 2021**

- CD is defined as a negotiable instrument issued in dematerialised form or as a Usance Promissory Note against funds deposited at a BU for a specified time.

- Some of the important guidelines mentioned in the Circular pertaining to CD are mentioned below:

  - *BU can issue CDs denominated in any convertible foreign currency and up to the amount depending on their funding requirements;*
  - *Minimum amount of a CD should be USD 2500 (USD Two Thousand Five Hundred) or equivalent in any convertible foreign currency;*
  - *BUs may issue CDs to persons resident in India and persons resident outside India, however Qualified Individual ('**QI**') or Qualified Resident Individual ('**QRI**') shall not be able to invest in CDs;*
  - *The maturity period of CDs issued by BU's should not be less than 7 days and not more than one year, from the date of issue and there shall not be any lock in period other than minimum maturity period;*
  - *BU's cannot grant loan against CDs and they also cannot buy back their own CDs before maturity.*

  To read the Circular in detail, please click here.

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JUDGEMENTS/ ORDERS

NCLT

1. **National Company Law Tribunal allows the Restoration of M/s Spike Organice Private Limited**


National Company Law Tribunal, New Delhi Bench **("Tribunal")** accepts the appeal filed by the Directors of Spike Organice Private Limited ("Appellant Company") under section 252 of the Companies Act, 2013 ("the Act") and allows the restoration of the Appellant Company.

The Appellant submitted that the Registrar of Companies ("RoC") New Delhi, struck off the Appellant Company from the Register of Companies due to non-filing of financial statements and annual returns for the financial years 2016 onwards, in accordance with section 248 of the Act and had not filed application under section 455 of the Act for obtaining status of Dormant Company.

The learned counsel of Appellant Company submitted that the non-filing of statutory returns was due to inadvertence and lack of professional advice on the same and the Appellant Company was always in operation since its inception. Further, the Appellant Company did not receive any show cause notice from the Respondent nor any opportunity of being heard was given to explain the reason of non-filing of statutory returns. In order to sustain the said plea, the learned counsel of Appellant Company had placed before the Tribunal the copies of financial statements of financial years 2016 onwards, copy of sale agreement executed by the Appellant Company during the relevant tenure and acknowledgement copies of Income Tax returns of assessment years 2017 onwards as an evidence that the Appellant Company was acting as a going concern during the relevant period. He further affirmed that the Appellant Company shall complete all pending statutory filings along with the requisite fees once its name is restored in the register of companies.

Based on facts presented, the Tribunal was satisfied that the Appellant Company was in operation during the period preceding strike off, therefore, it could not be termed as a defunct company under Section 252 of the Act and passed the restoration order subject to filing of all statutory returns for the defaulting years as required by law and completion of all formalities and on payment of INR 25,000/- to Prime Minister's Relief Fund by the Appellant company.
To read the order in detail, please click here.

SEBI

1. **SEBI imposed penalty on PC Jeweller promoters for insider trading**

SEBI imposed penalty of INR 20,00,000 (INR Twenty lakh) each on Ms. Shivani Gupta **(Noticee 1)**, Mr. Sachin Gupta **(Noticee 2)**, Mr. Amit Garg **(Noticee 3)**, Quick Developers Private Ltd **(Noticee 4)** and Mr. Balram Garg **(Noticee 5) (in together notices)** as well as barred them from the securities market for one year in a case of alleged insider trading activities in the shares of M/s PC Jeweller Limited for trading in the scrip of M/s PC Jeweller Limited **("Company or PC Jeweller")** while being in possession of Unpublished Price Sensitive Information ( **"UPSI")** in order to make gains on account of the fall price of scrip due to the announcement for withdrawal of the buy-back of shares.

Securities and Exchange Board of India ('**SEBI'**) had conducted an investigations into the scrip of the Company to ascertain whether the suspected entities had traded in the scrip during the period April 2–July 31, 2018 (investigating period) on the basis of unpublished price sensitive information, in contravention of the provisions of the SEBI Act, 1992.

SEBI Noted that Company had announced that its Board of Directors had approved buy-back of certain numbers of fully paid-up equity shares, but subsequently, the company announced withdrawal of the buy-back offer due to non-receipt of requisite NOC from company's State Bank of India (SBI).

SEBI issued Sow Cause Notice (SCNs) to the Noticees, observing that both the aforementioned announcements which related to change in the company's capital structure were UPSI in terms of Reg. 2(n) of PIT Regulations.

SCNs had considered information pertaining to the proposal for buy-back of equity shares of the Company as "**UPSI-I**" and the withdrawal of the proposed buyback of equity shares of the Company shall be considered as "**UPSI-II**". SEBI observed that, the Noticees considered as 'insiders' under both the clauses of Regulation 2(1)(g) i.e. connected person and as well as possession of or having access to UPSI, of PIT Regulations, 2015.

SEBI observed that, Noticee 1 is continued its selling spree from July 6, 2018 till July 13, 2018 i.e. the day on which the Company's Board approved the withdrawal of buyback proposal. This indicates that noticee 1 (noticee 2 and noticee 3 were placing orders from the account of Noticee no. 1) had possession of UPSI-II and immediately started selling the shares of PC Jeweller to avoid loss that may arise in future due to the negative news of non-receipt of NOC for buyback from SBI and subsequent withdrawal of buyback offer by PC Jeweller resulting into fall in price of shares of PC Jeweller.

In view of the above facts and circumstances, it is clears that Noticee no. 1 along with Noticee no. 2 and 3 were aware of the events taking place in the Company with regards to the buyback proposal and its withdrawal. Thus, SEBI find that Noticee no. 1, 2 and 3 had possession of UPSI-I and UPSI-II and they were 'insiders' in terms of Regulation2(1)(g)(ii) of PIT Regulations, 2015.

In view of the trading pattern and timing of trades of Noticee no. 4, the overarching influence and control of Noticee no. 3 over the affairs of Noticee no. 4, it was clear that trading by Noticee no. 4 in the futures contracts of PC Jeweller was due to the possession of UPSI-II. Thus, SEBI find that Noticee no. 4 had possession of UPSI-II through Noticee no. 3 and thus, Noticee no. 4 was an 'insider' in terms of Regulatio2(1)(g)(ii) of PIT Regulations, 2015.

SEBI Also finds that Noticee no. 5 is a connected person within the meaning of Regulation 2(1)(d)(i) of PIT Regulations, 2015. Therefore, Noticee no. 5 is an insider of PC Jeweller in terms of PIT Regulations, 2015. on ground that he was aware of the developments pertaining to the buy-back offer, refusal of NOC from SBI and its subsequent withdrawal of buy-back offer.

To read the order please click here.

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HIGH COURT

1. **Appeal filed by National Highways Authority of India (NHAI) was allowed setting aside the judgement/order allowed under Section 9 of the Arbitration and Conciliation Act, 1996**


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|---|---|
| National Highways Authority of India | Appellant |
| Bhubaneswar Expressway Private Limited | Respondent |

<u>Date of Judgement</u>: May 11, 2021

Appeal was filed by National Highways Authority of India **("NHAI")** under Section 37(1)(b) of the Arbitration Act read with Section 13 of the Commercial Courts Act, 2015, challenging the judgment/order allowing under Section 9 of the Arbitration Act, filed by the respondent - Bhubaneswar Expressway Private Limited **("BEPL")**.

This gave rise to the question for adjudication in this appeal as to whether Section 9 of the Arbitration and Conciliation Act, 1996 empowers the Court to grant to an applicant, a relief, not in the nature of interim measure of protection, but in the nature of a final relief, even if a case for urgent need thereof is made out and merely by expressing the same to have been granted on a prima facie view of the matter and by making it subject to the arbitral award and by securing the respondent, against whom the relief is so granted, for restitution.

The said appeal was allowed by setting aside the judgement/ order that was challenged and the application filed by the respondent BEPL under Section 9 of the Arbitration and Conciliation Act, 1996 was dismissed.

To read the Judgement in detail, please click here.

2. **Kamdhenu Limited files suit against Aashiana Rolling Mills Limited seeking injunction against alleged infringement of its registered design under the Design Act, 2000.**

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|---|---|
| **M/s. Kamdhenu Limited** | **Plaintiff** |
| **M/s. Aashiana Rolling Mills Limited** | **Defendant** |

Date of Judgement: May 12, 2021

Suit was filed by the Palintiff - Kamdhenu Limited against the Defendant - Aashiana Rolling Mills Limited, seeking an injunction against the defendant's alleged infringement of its registered design in respect of steel bars, as both Plaintiff and Defendant are engaged in the manufacture of steel bars.

In the year 2012-23, the plaintiff claims to have created and developed a unique design, which was registered under Class 25-01 and in this respect a certificate was issued by the Controller General of Patents, Designs & Trade Marks.

Based upon the facts and circumstances the it was concluded that, the Plaintiff - Kamdhenu Limited had a registered design prior to the published design and the registration of such design is contrary to Section 4 of the Design Act, 2000. Further, the Court was satisfied that in the present case, based upon the findings in the case, it is observed that the Plaintiff has no real prospect of success in the suit and that there is also no other compelling reason to record oral evidence in the present case.

To read the Judgement in detail, please click here.

3. **Autometers Alliance Limited filed petition, praying to quash the notice of termination issued by the Rail Vikas Nigam Limited**

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|---|---|
| **Autometers Alliance Limited** | **Petitioner** |
| **Rail Vikas Nigam Limited & ANR.** | **Respondents** |

Date of Judgement: May 13, 2021

Autometers Alliance Limited, being the petitioner was awarded a contract for supply, installation, testing and commissioning of telecommunication systems for the Kolkata Metro Railways, pursuant to a bid, who filed the present petition challenging the termination notice issued by the respondent – Rail Vikas Nigam Limited, praying for a direction that the Office Memorandum issued by the Procurement Policy Dividion, Ministry of Finance, Union of India is binding upon the respondent – Rail Vikas Nigam Limited.

The petitioner - Autometers Alliance Limited was, in terms of the tender documents required to submit a performance security of 10% of the bid amount, as the Primary Performance Security, which was already submitted. However, as per the terms of the tender document, the petitioner was also required to give Additional Performance Security, which could have been waived in view of the Office Memorandum issued by the Ministry of Finance, which reduced the Performance Security from 10% to 3%. This however was not acceded by the respondent - Rail Vikas Nigam Limited, which resulted in termination of the contract. Accordingly, the petitioner had prayed in the present petition to quash the said notice of termination.

The Court was of opinion that the petitioner would have availed the remedies in accordance with the dispute resolution mechanism, as specified in the contact in respect of the termination of a contract. Further held that, considering the fact that there could be a chance of an amicable resolution of the dispute, the Respondent may hold a meeting with the Petitioner’s representatives in its Kolkata office. Basis the observations, the application stands disposed of.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **Uttar Pradesh Power Transmission Corporation Limited files Special Leave Petition against the final order passed by the Lucknow Bench**


| | |
|---|---|
| Uttar Pradesh Power Transmission Corporation Limited and ANR. | Petitioners |
| CG Power and Industrial Solutions Limited and ANR. | Respondents |

Date of Judgement: May 13, 2021

A Special Leave Petition was filed by the Petitioner - Uttar Pradesh Power Transmission Corporation Limited against a final Judgment and Order passed by the High Court of Judicature at Allahabad (Lucknow Bench). The Lucknow Bench had allowed the writ petition filed by the respondent - 1 and had set aside the letters issued by the Executive Engineer to remit the Labour Cess amount under Section 3 (1) and (2) of the Building and Other Construction Workers' Welfare Cess Act, 1996 **("BOCW Act").** The said BOCW Act was enacted to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto.

The Supreme Court in the present case held that, there is apparently no dispute, difference or controversy the petitioner and the respondent – 1, as to the true construction, meaning or intent of any part of the conditions of contract or to the manner of execution or the quality or description or payment for the same. Nor is there any dispute as to the true meaning, intent, interpretation, construction or effect of the clauses of contract, specifications or drawings or any of them. It further held that, the petitioner has not opposed the writ petition on the ground of an existing arbitration clause, even though there exists an arbitration clause, and such existence does not debar the court from entertaining a writ petition.

The said leave petition was dismissed on the ground that the High Court may entertain a writ petition in an appropriate case even though there is availability of an alternate remedy and can also grant monetary relief in a writ petition.

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).

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