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Swift e-Bulletin
Edition 17/20-21
Week – November 9th to November 13th

Quote for the week:

"Life is a long lesson in humility."

- James M. Barrie

Introduction

We wish you a very happy and prosperous Diwali and 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, we all are witnessing 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, Ministry of Corporate Affairs ("**MCA**"), the Securities and Exchange Board of India ("**SEBI**") and the Ministry of Home Affairs (**"MOHA"**) and critical judgements and orders passed by the National Company Law Tribunal (**"NCLT"**), the National Company Law Appellate Tribunal (**"NCLAT"**), and High Court.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of November 9, 2020 to November 13, 2020.

Thank you,
Swift Team

Swift India
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CHANGE IN NAME FROM SWIFTINDIAINC CORPORATE SERVICES LLP AS ON 07.02.2017

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REGULATORY UPDATES

Ministry of Corporate Affairs

1. **MCA extends applicability of LLP Settlement Scheme, 2020 vide General Circular 37/2020 dated November 09, 2020**

- In continuation to Ministry's General Circular No. 13/2020 dated March 30, 2020 and in the General Circular No. 31/2020 dated September 28, 2020, the scheme was extended till December 31, 2020.

- In view of large scale disruption caused by the COVID-19 pandemic and after due examination, MCA has decided to extend the date on applicability to defaulting LLPs and therefore, in serial number 3, para 8A, sub-para (iii) of the said circular dated March 30, 2020, belated documents due for filing till November 30, 2020 shall be substituted. Thus, the applicability for defaulting LLP's to file belated documents which were due for filing till August 31, 2020 shall now be extended to belated documents due for filing till November 30, 2020. All other requirements provided in the said circulars shall remain unchanged.

- Further, if a statement of account and solvency for the financial year 2019-2020 has been signed beyond the period of six months from the end of financial year but not later than November 30, 2020, the same shall not be deemed as non-compliance.

To read the Circular in detail, please click here.

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Securities and Exchange Board of India

1. **SEBI releases new guidelines on monitoring and Disclosures by Debenture Trustee(s) vide Circular dated November 12, 2020**

- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and SEBI (Debenture Trustees) Regulations, 1993 ("DT Regulations") mandates issuers to submit information/ documents to Debenture Trustee(s). In order to enable debenture trustee(s) to discharge its obligations in respect of listed debt securities, the debenture trustee(s) shall undertake independent periodical assessment of the compliance with covenants or terms of the issue of listed debt securities including for 'security created'.

- SEBI has issued guidelines on the following points:

  - *Monitoring of 'security created' / 'assets on which charge is created;*
  - *Action to be taken in case of breach of covenants or terms of issue;*
  - *Disclosure on website by debenture trustee; and*
  - *Reporting of regulatory compliance*

- The provisions of this circular shall come into force w.e.f. quarter ended December 31, 2020 for listed debt securities

To read the Circular in detail, please click here.

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Ministry of Home Affairs

1. **Central Government amends the Foreign Contribution (Regulation) Rules, 2011 vide Gazette Notification dated November 10, 2020**

- These rules may be called the Foreign Contribution (Regulation) (Amendment) Rules, 2020.

- Among other changes made, here are few changes as per the notification, in the Foreign Contribution (Regulation) Rules 2011:

- For sub-rule (6), the following sub-rule shall be substituted, namely:

"(6) If no application for renewal of registration is received or the application is not accompanied by requisite fee before the expiry of the validity of the certificate of registration, the validity of the certificate of registration shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of certificate of registration.

***Note 1**: A certificate of registration granted on the 1st January, 2012 shall be valid till the 31st December, 2016 and a request for renewal of certificate of registration shall be submitted in electronic form accompanied by requisite fee after the 30th June, 2016 and within the 31st December, 2016.*

***Note 2**: If no application is received or is not accompanied by renewal fee, the validity of the certificate of registration issued on the 1st January 2012 shall be deemed to have ceased after the 31st December, 2016 and the applicant shall neither receive nor utilise the foreign contribution until the certificate of registration is renewed.";*

- In the said rules, in rule 18, after the word, letters and figure "***Form FC-1***", the word "***in electronic form***" shall be inserted.

- In the said rules, for rule 20, the following rule shall be substituted, namely.

"20. Revision. – An application for revision of an order passed by the competent authority under section 32 of the Act shall be made to the Secretary, Ministry of Home Affairs, Government of India, New Delhi on a plain paper and it shall be

accompanied by a fee of rupees three thousand only, which shall be paid through the payment gateway specified by the Central Government.".

To read the Notification in detail, please click here.

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JUDGEMENTS/ ORDERS

National Company Law Tribunal

1. National Company Law Tribunal allows the Restoration of S M Hyper City Private Limited.

NCLT, Allahabad Bench (“**Tribunal**”) accepts the appeal filed by the Appellant under section 252 of the Companies Act, 2013 (“**the Act**”) and allows the restoration of M/s. S M Hyper City Private Limited.

The Appellant had been struck off from the Register of Companies by Registrar of Companies (“**RoC**”), Uttar Pradesh due to default in statutory compliances with respect to non-filing of Financial Statements and Annual Returns since 2016 onwards in accordance with section 248 of the Act. Further, the Appellant had also failed to reply to the show-cause notice served by RoC for this purpose.

The Appellant placed the audited balance sheets of the Company for the Financial year 2016-17, 2017-18, 2018-19 before the Tribunal, reflecting that though Company had no revenue from operations, but it had assets worth up to INR 40,00,000/- and further stated that the non-filing of statutory returns by the Company was completely unintentional.

Based on facts presented, the Tribunal passed the restoration order subject to filing of all statutory returns within 30 days from the date on which the name of the company is restored and on payment of costs of INR 50,000/-. Tribunal also directed the Appellant to publish a notice in leading newspaper in the district, pertaining to the restoration of company after taking approval of the draft notice from RoC.

To read the order in detail, please click here.

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National Company Law Appellate Tribunal

1. **NCLAT set aside the appeal filed by the petitioner and directed the first Appellant to fulfill with the directions issued in the impugned order of 'National Company Law Tribunal', Bengaluru Bench, Bengaluru.**

M/s Vintage Hotels Private Limited	Appellant No. 1
Mr. Kunhibi Layinchirapurakkal Saithumada	Appellant No. 2
Mr. Ahamed Nizar Moideen Kunhi Kunhimahin	Respondent

The Appellant had preferred the Company Appeal as an 'Aggrieved Person', in respect of the order dated October 16, 2020, passed by the National Company Law Tribunal (**NCLT**), Bengaluru Bench, Bengaluru where under the Company petition was allowed by issuance of setting aside the letter dated October 30, 2015 and resultantly certain directions were issued.

The NCLT set aside letter dated October 30, 2015 directing the respondents to register the transfer of shares in the name of the Petitioner with effect from lodgement of share transfer request and directed the respondents to rectify the register of shareholders by incorporating the name of the Petitioner.

The Learned Counsel for the Appellants submits that the impugned order passed by the NCLT, Bengaluru Bench, is bad in Law and further that the Tribunal had decided the matter erroneously without reference to the admitted documents and not taking into consideration of the pleadings of the case.

The Learned Counsel for the Respondent contends that the Respondent purchased 20,000 and 12,500 shares from existing shareholders on April 10, 2015 and on June 30, 2015 respectively in accordance with Law. Further, the 'Transferors' on April 10. 2015 and June 30.2015 through their respective 'Indemnity Bonds' given to the Respondent had requested the Board to issue 'Duplicate Share Certificates' and affirmed that the 'Original Share Certificates' were confirmed to be lost and untraceable and the Board never bothered to reply and that the Board refused to issue 'Duplicate Share Certificates.

The petitioner after considering the request of the Respondent mischievously rejected the request for transfer of shares by providing frivolous reasons.

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NCLT after taking into consideration of the facts and circumstances of the present case in a holistic fashion, especially rejection of transfer of shares through letter dated October 30, 2015 mentioning two reasons therein, was set aside in the impugned order, by the NCLT, Bengaluru Bench, Bengaluru. In other words, the impugned order of the Tribunal whereby and where under the directions issued was free from legal infirmities. Consequently, the Appeal fails.

To read the Judgment in details, please click here.

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High Court

1. Sole Arbitrator was appointed to arbitrate on the disputes between the parties as per the mechanism, contained in Clause of the Facility Agreement.

ARB.P. 562/2020 and I.A 10265/2020

Jayneer Infrapower and Multiventures Private Limited & ORS.	Petitioners
Hero Fincorp Limited	Respondent

Date of Judgement: November 09, 2020

Petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator to arbitrate on the disputes between the parties, was disposed of.

The present petition has been filed by the petitioners seeking reference of the disputes between the petitioners and the respondent to arbitration, in terms of Clause 12 of the Pledge Agreement, which contemplates the disputes arising thereunder to be resolved by way of arbitration under the 1996 Act, as per the mechanism, contained in Clause 14.11 of the Facility Agreement.

In view, thereof, the aforesaid disputes, raised by the petitioner, for resolution by arbitration, the parties are directed, therefore, to contact the learned sole arbitrator within a period of three days from the receipt, by email from the Court, of a copy of this judgment, to work out the modalities of arbitration.

To read the Judgement in detail, please click here.

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2. **United News of India challenging the impugned order by the Central Government Industrial Tribunal ('CGIT') directing pre-deposit of 25% of the assessed amount of damages**

W.P.(C) 8851/2020 & CM APPLs. 28443/2020, 28444/2020

M/s. United News of India	Petitioner
Regional Provident Fund Commissioner, Delhi (Central)	Respondent

Date of Judgement: November 09, 2020

The present petition is disposed of, along with all pending applications. The Petitioner, being – M/s United News of India challenging the impugned order by the Central Government Industrial Tribunal ('CGIT') directing pre-deposit of 25% of the assessed amount of damages i.e. INR 61,63,590/-, as a pre-condition for granting stay on the implementation of the original assessment order.

The original assessment order was passed by the Employees' Provident Fund Organization ('EPFO/Authority') under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ('EPF Act').

The Petitioner-Assessee was given an opportunity to put forth its case before the EPFO and a speaking order shall be passed after hearing the Assessee. The order shall be passed by the EPFO, within three months from the date of this judgement.

To read the Judgement in detail, please click here.

3. **Writ Petition filed under Articles 226 and 227 of the Constitution of India was disposed off with such liberty and all contentions**

Writ Petition No.12475 of 2020 (GM-CPC)

M/s. Vihaan Direct Selling (India) Private Limited	Petitioner
1. M/s. TV 18 Broadcast Limited	Respondent 1
2. M/s. TV Today Network Headlines Today	Respondent 2
3. M/s. TV Today Network Limited	Respondent 3
4. M/s. Jagaran TV Private Limited	Respondent 4
5. M/s. Independent News Service Private Limited	Respondent 5

6. M/s. ITV Network	Respondent 6
7. M/s. New Delhi Television Limited	Respondent 7
8. M/s. Zee Media Corporation Limited	Respondent 8
9. M/s. Network 18 Media and Investments Limited	Respondent 9
10. Ananda Bazar Patrika (ABP) Group	Respondent 10
11. M/s. Sahara Prime City Limited	Respondent 11
12. The Resident Editor "The Times of India"(Mumbai) M/s. Bennett Coleman & Co. Limited	Respondent 12
13. M/s. The Printers (Mysore) Private Limited	Respondent 13
14. M/s. Diligent Media Corporation Limited	Respondent 14
15. M/s. The India Express Limited	Respondent 15
16. M/s. The HT Media Limited	Respondent 16
17. M/s. Bennett, Coleman & Company Limited	Respondent 17
18. Bloomberg L. P	Respondent 18
19. Doordarshan Kendra Delhi	Respondent 19
20. M/s. CSL Infomedia Private Limited	Respondent 20
21. M/s. News Nation Network Private Limited	Respondent 21
22. Information TV (ITV) Media Group	Respondent 22
23. M/s. B.A.G Films and Media Limited	Respondent 23
24. Broadcast Initiatives Limited	Respondent 24
25. Asian News International	Respondent 25

Date of Judgement: November 09, 2020

Writ Petition filed under Articles 226 and 227 of the Constitution of India was disposed off with such liberty and all contentions of the parties having been kept open.

The Petitioner who being the plaintiff in a suit for permanent injunction against the order made by the Additional City Civil Judge, Bengaluru. Upon hearing, the Court declines to grant indulgence in the matter in as much as the framing, non-framing, recasting or deletion of issues are ordinarily not deeply examined by the Courts in the Writ jurisdiction when the litigants have a deferred remedy against the same in the sense that they can make such orders as one of the grounds for challenging the judgement and decree if and when made adverse to their interest, as provided under Section 105 read with Order 43 Rule 1A of CPC, 1908.

To read the Judgement in detail, please click here.

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4. Delhi High Court disposed of the petition on merit, were the application for restoration of the appeal was rejected by the Central Government Industrial Tribunal-cum-Labour Court, Delhi-2 ("CGIT")

W.P.(C) 8928/2020 & CM APPLs. 28776-77/2020

M/s. Apra Auto India Private Limited	**Appellant**
Central Board of Trustees the Regional of Commissioner & ANR.	**Respondent**

Date of Judgement: November 11, 2020

The petition filed challenging the order by which the Petitioner's application for restoration of the appeal was rejected by the Central Government Industrial Tribunal-cum-Labour Court, Delhi-2 ("CGIT"). Hence, the Petitioner preferred an appeal under Section 7-I of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 ("**EPF Act**") challenging the order passed by the Regional Provident Fund Commissioner ("**RPFC**") under Section 7-A of the EPF Act.

The appeal was heard on merits and a speaking order was passed by the CGIT, as the appeal of the Petitioner was admitted with complete waiver of the pre-deposit amount, the appeal is clearly not devoid of merits. Considering the pandemic situation, the dismissal of the appeal due to non-appearance would cause enormous injustice to the Petitioner. Parties are entitled to be heard on merits unless there is a deliberate intention to delay or some malafide conduct that can be deciphered. In view of the fact that the ground on which the restoration was sought does not appear to be far-fetched, the High Court is of the opinion that the appeal of the Petitioner deserves to be heard on merits and the said petition was disposed of along with all pending applications.

To read the Judgement in detail, please click here.

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