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CHANGE IN NAME FROM SWIFTINDIAINC CORPORATE SERVICES LLP AS ON 07.02.2017

Swift e-Bulletin
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Week – November 16th to November 20th

Quote for the week:

"Success is walking from failure to failure with no loss of enthusiasm."

- Winston Churchill

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, 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, the Securities and 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"**), the National Company Law Appellate Tribunal (**"NCLAT"**), 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 November 16, 2020 to November 20, 2020.

Thank you,
Swift Team

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REGULATORY UPDATES

Securities and Exchange Board of India

1. **SEBI amends guidelines for preferential issue and institutional placement of units by a listed Infrastructure Investment Trusts ("InvITs") vide Circular dated November 17, 2020**

- SEBI issued circular dated November 27, 2019 providing guidelines for preferential issue and institutional placement of units by listed Infrastructure Investment Trusts ("**InvITs**"). Below is the modification to the said Circular.

Clause 4.1 of Annexure I to the said circular is modified as under:

"4.1. Preferential issue of units shall not be made to any person who has sold or transferred any units of the issuer during the six months preceding the relevant date. Explanation: Where any person belonging to sponsor(s) has sold/transferred their units of the issuer during the six months preceding the relevant date, the sponsor(s) shall be ineligible for allotment of units on preferential basis."

To read the Circular in detail, please click here.

2. **SEBI lays down a uniform structure for imposing fines for non-compliance with provisions related to continuous disclosure requirements:**

- SEBI has prescribed continuous disclosure norms for issuers of listed Non-Convertible Debt Securities, Non-Convertible Redeemable Preference Shares ("**NCRPS**") and Commercial Papers, which are as follows:

  - Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR Regulations") for issuers of listed Non-Convertible Debt Securities and/or NCRPS.
  - SEBI circulars dated October 22, 2019 and December 24, 2019 for issuers of listed Commercial Papers.

- Further, the following provisions provide for monitoring of compliance and imposition of fines by stock exchanges:

- Sub regulation (1) of Regulation 97 of SEBI LODR Regulations, provides for monitoring of compliance by listed entities with the provisions of the regulation by recognized Stock Exchanges. Further, sub regulation (1)(a) of Regulation 98 of SEBI LODR Regulations provides for imposition of fines by Stock Exchanges for contravention of provisions of the regulation by listed entities.
- SEBI circular dated October 22, 2019 provides for a framework for imposition of fine to be put in place by stock exchanges in cases of non-compliance and/ or inappropriate disclosures by issuers of listed Commercial Papers

- In respect of listed specified securities (i.e. equity shares and convertible securities), SEBI issued circular dated January 22, 2020, specifying a uniform structure for imposing fines for issuers not in compliance with certain provisions of SEBI LODR Regulations.

- Accordingly, in order to ensure effective enforcement of continuous disclosure obligations by issuers of listed Non-Convertible Debt Securities or NCRPS or Commercial Papers, SEBI has decided to lay down a similar uniform structure for imposing fines for non-compliance with continuous disclosure requirements after discussion with market participants.

- In view of the above, in the interests of investors and the securities market, the Stock Exchanges shall levy fine and take action in case of non-compliances with continuous disclosure requirements by issuers of listed Non-Convertible Debt Securities and/ or NCRPS and/ or Commercial Papers as specified in Annexure I and Annexure II of this circular respectively. Stock Exchanges may deviate from the above, if found necessary, only after recording reasons in writing.

- In case a non-compliant entity is listed on more than one recognized stock exchange, the concerned recognized stock exchanges shall take uniform action under this circular in consultation with each other.

- The recognized stock exchanges shall take necessary steps to implement this circular and shall disclose on their website the action(s) taken against the entities for non-compliance(s); including the details of the respective requirement, amount of fine levied/ action taken etc.

- The amount of fine realized as per the structure provided in ***Annexure I*** of the circular shall be credited to the "Investor Protection Fund" of the concerned recognized stock exchange. The fines specified in ***Annexure I*** of this circular shall continue to accrue till the time of rectification of the non-compliance and to the satisfaction of the concerned recognized stock exchange. Such accrual shall be irrespective of any other disciplinary/enforcement action(s) initiated by recognized stock exchange(s)/SEBI.

- The recognized stock exchanges may keep in abeyance the action or withdraw the action in specific cases where specific exemption from compliance with the requirements for continuous disclosures /moratorium on enforcement proceedings has been provided for under any Act, Court/Tribunal Orders etc.

- This provisions mentioned in this circular shall come into force for compliance period ending on or after ***December 31, 2020*****.**

To read the Circular in detail, please click here.

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Reserve Bank of India

1. **RBI issues amendments in Directions / Notifications / Circulars on Compounding of Contraventions under Compounding of Contraventions under FEMA, 1999 vide Circular dated November 17, 2020:**

- Authorized Dealer Category-I (AD Category-I) banks are invited to check paragraph 3 of the **Master Direction on "Compounding of Contraventions under FEMA, 1999"**, in terms of which the powers to compound certain contraventions of Notifications dated May 3, 2000 and dated November 07, 2017 have been delegated to the Regional Offices/Sub-Offices of the Reserve Bank for enhanced customer service and operational convenience. The Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, both notified on October 17, 2019, by Government of India and Reserve Bank of India respectively have since superseded the earlier Notification. Accordingly, the compounding powers stand delegated to the Regional Offices/ Sub Offices of the Reserve Bank to compound the following contraventions:

FEM (Non –Debt Instruments) Rules, 2019 dated October 17, 2019
Rule 2(k) read with Rule 5
Rule 21 (Pricing guidelines)
Paragraph 3 (b) of Schedule I (Issue of shares without approval of RBI or Government, wherever required)
Rule 4 (Receiving investment in India from non-resident or taking on record transfer of shares by Investee Company)
Rule 9(4) and Rule 13(3)
FEM (Mode of Payment and Reporting of Non-Debt Instruments) Regulations dated October 17, 2019
Regulation 3.1(I)(A) [Mode of payment]
Regulation 4(1) [Reporting Requirements Form Foreign Currency-Gross Provisional Return (FC-GPR)]
Regulation 4(2) [Annual Return on Foreign Liabilities and Assets (FLA)]
Regulation 4(3) [Form Foreign Currency-Transfer of Shares (FC-TRS)]
Regulation 4(6) [Form LLP (I)]
Regulation 4(7) [Form LLP (II)]
Regulation 4(11) [Downstream Investment]

- Reference is made to para 3.5 of A.P. (DIR Series) Circular No. 56 dated June 28, 2010 and para 2 of A.P. (DIR Series) Circular No.11 dated July 31, 2012 with respect to the classification of a contravention under FEMA by the Reserve Bank as 'technical' or 'material' or 'sensitive/serious in nature'. On a review RBI has decided to discontinue the classification of a contravention as 'technical' that was dealt with by way of an administrative/ cautionary advice and regularize such contraventions by imposing minimal compounding amount as per the compounding matrix as contained in the 'Master Direction - Compounding of Contraventions under FEMA, 1999' dated January 01, 2016, as amended from time to time.

- Reference is made to para 3(I) of A.P. (DIR Series) Circular No.73 dated May 26, 2016 with respect to public disclosure of Compounding Orders. On a review and in partial modification of earlier instructions RBI has decided that in respect of the Compounding Orders passed on or after March 01, 2020 a summary information, instead of the Compounding Orders, shall be published on the Bank's website in the following format:

Sr. No.	Name of the Applicant	Details of contraventions (provisions of the Act/Regulation/Rules compounded)	Date of compounding order	Amount imposed for compounding of contraventions

- The aforesaid Master Direction No. 4 dated January 01, 2016, as amended from time to time, is being updated to reflect the changes. AD Category - I bank should bring the contents of this circular to the notice of their constituents and customers concerned.

To read the Circular in detail, please click here.

2. **<u>RBI Issues list of discontinued Returns/Reports under Foreign Exchange Management Act, 1999:</u>**

- With a view to improve the ease of doing business and reduce the cost of compliance, the existing forms and reports prescribed under FEMA, 1999, were reviewed by the Reserve Bank. Accordingly, RBI has decided to discontinue the 17 returns/reports as listed in the **Annexure** to this Circular with immediate effect.

- The Master Direction - Reporting under Foreign Exchange Management Act, 1999 dated January 01, 2016, shall accordingly be updated to reflect the above changes. AD banks may bring the contents of this circular to the notice of their constituents.

  To read the Circular in detail, please click here.

3. **<u>RBI releases the Report of the Internal Working Group to Review Extant Ownership Guidelines and Corporate Structure for Indian Private Sector Banks vide Press release dated November 20, 2020:</u>**

- The Reserve Bank of India ("**RBI**") had constituted an Internal Working Group ("**IWG**") on June 12, 2020 to review extant ownership guidelines and corporate structure for Indian private sector banks. The Terms of Reference of the IWG inter alia included review of the eligibility criteria for individuals/ entities to apply for banking license; examination of preferred corporate structure for banks and harmonization of norms in this regard; and, review of norms for long-term shareholding in banks by the promoters and other shareholders.

- Some of the key recommendations submitted by IWG in its report are:

  - The cap on promoters' stake in the long run (15 years) may be raised from the current level of 15 per cent to 26 per cent of the paid-up voting equity share capital of the bank.
  - As regards non-promoter shareholding, a uniform cap of 15 per cent of the paid-up voting equity share capital of the bank may be prescribed for all types of shareholders.

- Large corporate/industrial houses may be allowed as promoters of banks only after necessary amendments to the Banking Regulation Act, 1949 (to prevent connected lending and exposures between the banks and other financial and non-financial group entities); and strengthening of the supervisory mechanism for large conglomerates, including consolidated supervision.
- Well run large Non-Banking Finance Companies ("**NBFCs**"), with an asset size of ₹50,000 crores and above, including those which are owned by a corporate house, may be considered for conversion into banks subject to completion of 10 years of operations and meeting due diligence criteria and compliance with additional conditions specified in this regard.
- Small Finance Banks and Payments Banks may be listed within '6 years from the date of reaching net worth equivalent to prevalent entry capital requirement prescribed for universal banks' or '10 years from the date of commencement of operations', whichever is earlier.
- The minimum initial capital requirement for licensing new banks should be enhanced from ₹500 crores to ₹1000 crores for universal banks, and from ₹200 crores to ₹300 crores for small finance banks.
- Reserve Bank may take steps to ensure harmonization and uniformity in different licensing guidelines, to the extent possible. Whenever new licensing guidelines are issued, if new rules are more relaxed, benefit should be given to existing banks, and if new rules are tougher, legacy banks should also conform to new tighter regulations, but a non-disruptive transition path may be provided to affected banks.

- RBI has placed this report on its website for comments of stakeholders and members of the public. Comments on the report may be submitted by January 15, 2021 through email. RBI will examine the comments and suggestions before taking a view in the matter.

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

To read the report of Internal Working Group ("**IWG**"), please click here.

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International Financial Services Centers Authority

1. <u>**Government of India notifies International Financial Services Centres Authority (Global In-House Centres) Regulations, 2020:**</u>

- These regulations may be called the International Financial Services Centres Authority (Global In-House Centres) Regulations, 2020. These regulations provide a framework for recognition and operation of Global In-House Centres and for matters concerning the same.

- These regulations cover the following areas:

  - Eligibility criteria for being registered as a Global In-House Centre
  - Manner of Application for registration
  - Grant of Registration
  - Permissible services and activities in a Global In-House Centre
  - Currency and mode for conducting business in a Global In-House Centre
  - Reporting requirements in a Global In-House Centre
  - Manner of Maintenance of books of accounts, records and documents
  - Power to specify procedures and issue clarifications
  - Action in case of default

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 Fuoco Chits Private Limited and activates Directors Identification Number of its directors**

National Company Law Tribunal, Kochi Bench (“***Tribunal***”) accepts the appeal filed by the Appellant Company under section 252 of the Companies Act, 2013 (“***the Act***”) and allows the restoration of M/s. Fuoco Chits Private Limited and also activates the Directors Identification Number (“***DIN***”) of its directors.

The Appellant Company had been struck off from the Register of Companies by Registrar of Companies, Kochi (“**RoC**”) due to non-filing of Financial Statements and Annual Returns since 2017 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. Further, the Appellant had also failed to reply to the show cause notice served by RoC for this purpose.

RoC contended that the action of striking off the name of the Company was triggered due to negligence and lack of due diligence on the part of the Directors of the Company for not discharging their statutory duties in filing the statutory returns within the due date stipulated under the Companies Act and also for not responding to the several periodical notices within the notice periods. In response to which the learned counsel of Appellant Company submitted that the failure to file the annual returns by the company was purely an inadvertent omission and without any malafide intention and further prayed to Tribunal to levy minimum amount of fine or penalty towards costs as its business is sluggish and its growth prospects are very low, taking into account the development of Covid-19 pandemic.

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 also directed the RoC to activate the DIN of Appellant Company directors, if there is no any criminal case pending against the said Directors. Further, Tribunal while passing its order and taking into account the impact of Covid-19 pandemic ordered the Appellant Company to pay INR 30,000/- towards costs.

To read the order in detail, please click here.

National Company Law Appellate Tribunal

1. **NCLAT uphold the Order of NCLT, Bengaluru Bench and dismissed the present Appeal Preferred under Section 421 read With Section 58 & 241 of the Companies Act, 2013.**

Positiveedge Technology Private Limited	**Appellant No.1**
Shivendra Singh Sainger	**Appellant No.2**
Asmita Katdare	**Respondent No.1**
Siona Mondal	**Respondent No.2**

The present Appeal was preferred under section 421 read with Section 58 & 241 of the Companies Act, 2013 against the impugned order passed by National Company Law Tribunal, Bangalore Bench (‘**Tribunal**’).

The Tribunal in the Order directed to the Appellant no. 1 to give effect to the transmission of shares of late Mr. Santanu Mondal, the deceased Director and Shareholder of Appellant No.1 in favour of Respondents by rectifying its register of members and also to pay all consequential benefits on par with other shareholders with effect from May 01, 2017.

The Appellant against the impugned order, has prayed for setting aside the impugned order passed by the Tribunal.

The Appellants are alleging that the respondents are putting pressure on the Appellants for transmission of 5000 equity shares erstwhile held by Mr. Mondal in the Appellant No.1 Company without complying with the Indian Laws Intestate Succession.

The Appellants have also raised that; the rights of inheritance can be made only on a civil suit filed for such adjudication before Civil Court of competent jurisdiction and have cited certain judgments.

The Respondents have alleged that, the Appellants have raised several new factual as well as legal submission before this Appellant Tribunal for the first time which were not raised before the Tribunal and have also alleged that the Appellants have raised new grounds that, the mother of Late Mr. Mondal is also a legal heir of Mr. Mondal and therefore, the Respondents are not the sole legal heirs entitled to the transmission of the shares and clarified that the mother of Mr. late Mondal has released her rights in the 5000 shares held in her son's name on December 25, 2015 by way of a letter to the Respondents.

The NCLAT observed that, Appellant company have not assigned a tenable or sound reason as well as taken the correct approach to the issue of transmission. The appellant himself has purchased the shares of the respondents of USA based company at a consideration on the same plea hence taking a different plea in India and without communicating in explicit terms when this fact was known to the Appellant no.2 since the date of death of Late Mondal and also states that, the Indian Evidence Act, 1872 does not permit taking one stand at one place & a different stand at another place.

In view of the observations made in the Order, NCLAT did not find any merit in the case and uphold the order of Tribunal, Bengaluru Bench. The Appeal was dismissed.

To read the Judgment in details please click here.

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Securities and Exchange Board of India

1. **Adjudication Order in respect of 4 Entities in the matter of Focus Industrial Resources Limited**

Securities and Exchange Board of India (‘**SEBI’**) conducted an investigation in the scrip of Focus Industrial Resources Limited (‘**FIRL’**) to ascertain any possible violation of the provisions of SEBI Act, 1992 (‘**SEBI Act’**) and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (‘**PFUTP Regulations, 2003’**).

It was observed by SEBI that a group of entities viz. Savitri Devi Agarwal, B M Agarwal, Mukat Behari and Deepak Gupta along with other connected entities (‘**Noticee’**) created artificial volume in the scrip of FIRL by repeatedly transacting in off market and on market. In view of the same, it was observed that the said entities had violated the provisions of PFUTP Regulations, 2003. It was also observed that Savitri Devi Agarwal manipulated the scrip price by New High Price (**NHP**) contribution. In view of the same, it was observed that Savitri Devi Agarwal had violated the provisions of PFUTP Regulations, 2003.3. In view of the above, SEBI initiated adjudication proceedings against the above entities under the Section 15HA of the SEBI Act for the above-mentioned violations of PFUTP Regulations, 2003.

The SEBI appointed adjudicating officer to inquire into and adjudge the alleged violations committed by the Noticee sunder Section 15HA of SEBI Act and issued show cause notice (‘**SCN’**) to show-cause as to why an inquiry should not be initiated against the Noticees and why penalty should not be imposed upon the Noticees under Section 15HAofof the SEBI Act.

The SEBI made different analysis of the trades of the connected entities which clearly indicates that, these connected entities had attempted to create an upward trend in the price through NHP creation and further noted that, trades of connected entities were getting matched in most of the cases with other connected entities, which cannot be mere coincidence. The pattern of trading clearly brings out the role played by Savitri Devi Agarwal along with other connected entities in influencing the price by creating new high price. In view of the same, SEBI concluded that Savitri Devi Agarwal by entering into trades in the scrip of FIRL had impacted the price of the scrip significantly through NHP creation and there by violated the provisions of PFUTP Regulations, 2003.

After considering all the facts and circumstances of the case and the material available on record the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers

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conferred upon me under Section 15-I of the SEBI Act, imposed penalty of INR 2, 00,000 (INR Two Lakh Only) on each of the noticees.

To read the order in detail, please click here.

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High Court

1. **Petition stands dismissed for being incompetent for want of territorial jurisdiction and without entering into the merits of the relief sought in the petition.**

+ ARB.P. 328/2020

Cars24 Services Private Limited	Petitioner
Cyber Approach Workspace LLP	Respondent

Date of Judgement: November 17, 2020

The Petition filed was dismissed with the view of the High Court of Delhi being, incompetent as the petition was filed for want of territorial jurisdiction, and without entering into the merits of the relief sought in the petition.

The respondent being who has its registered office in Gurgaon, Haryana, executed a lease deed with the petitioner, who paid interest free refundable security deposit and monthly lease rental, as per the lease deed and was required to pay the maintenance charges, apart from electricity and water charges. The petitioner was meeting all these liabilities, without default. Due to COVID-2019 pandemic, the petitioner claims that it had to suspend its operations, completely and wrote to the respondent, informing the respondent that it was not in a position to continue operating from the premises and requesting the respondent, therefore, to switch off the power supply and vide a notice addressed to the respondent, the petitioner purported to terminate the lease deed, invoking Clause 13.2 thereof (which dealt with force majeure) and requested to refund the interest free refundable security deposit.

However, the respondent replied denying any liability towards the petitioner, which gave rise to the dispute between the parties and the petitioner issued a separate notice, invoking arbitration, for the resolution of the dispute, in accordance with the Clauses of the lease deed.

To read the Judgement in detail, please click here.

2. **Delhi High Court held that the objection raised on the maintainability of the petition needs to be accepted and directed the Registry to return the petition, to present the same before the appropriate court of jurisdiction in accordance with law.**

+ OMP (COMM) 536/2020

Goyal MG Gases Private Limited	**Petitioner**
Steel Authority of India	**Respondent**

Date of Judgement: November 18, 2020

Petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 challenging the Award was dismissed as infructuous.

A preliminary objection has been taken by the respondent that this petition is not maintainable in this Court. In this regard, he stated that the Agreement between the parties contains an arbitration clause which clearly states that (i) the arbitration proceedings shall be held in Durgapur, West Bengal and (ii) the Courts of Durgapur, West Bengal shall have exclusive jurisdiction over all matters of dispute. The parties have expressed their clear and unmistakable intent in writing that the juridical seat of the arbitration shall be at Durgapur, West Bengal with vesting of exclusive jurisdiction on the courts at Durgapur, West Bengal.

For convenience sake, the hearing of arbitration was held at New Delhi, the juridical seat remained to be Durgapur, West Bengal as per the arbitration clause, where the petitioner has failed to disclose any circumstances or any instrument in writing denoting any change in the choice of seat of the arbitration and further, there was no any agreement between the parties to alter the seat of the arbitration. The parties only chose to hold the proceedings in New Delhi for the sake of convenience.

The objection raised on the maintainability of the petition needs to be accepted and it was held that the High Court has no jurisdiction to entertain the petition and directed the Registry to return the petition/ application (s)/ document (s) to the petitioner to enable the petitioner present the same before the appropriate court of jurisdiction in accordance with law.

To read the Judgement in detail, please click here.

3. **Appeal filed by Edelweiss was maintainable by the Delhi High Court and objection to maintainability, as advanced by the respondent was rejected.**

+ ARB. A. (COMM) 13/2020 & I.A. 4322/2020

Edelweiss Asset Reconstruction Company Limited,
Acting in its capacity as Trustee of the EARC Trusts
SC-338,343,366 AND 389 Petitioner
GTL Infrastructure Limited and ANR. Respondents

Date of Judgement: November 18, 2020

The appeal stands allowed with no orders as to costs and concluded that the at the instance of Edelweiss, the present appeal is maintainable and the objection to maintainability, as advanced by the respondents, is rejected.

Edelweiss Asset Reconstruction Company Limited. invokes Section 37 of the Arbitration and Conciliation Act, challenging the order passed by the learned Arbitral Tribunal, which directed M/s. GTL Infrastructure Ltd. to pay ₹ 240 crores to M/s. GTL Limited and to deposit ₹ 200 crores in an Escrow account, to be maintained by GIL.

M/s. GTL Infrastructure Limited. and M/s. GTL Limited. were the claimant and respondent, before the learned Arbitral Tribunal, respectively and Edelweiss was not a party before the learned Arbitral Tribunal, but claims to be vitally affected by the impugned directions. In fact, it is claimed, by Edelweiss, that M/s. GTL Infrastructure Limited and M/s. GTL Limited. are in collusion, and that they misled the learned Arbitral Tribunal into passing the impugned Order, suppressing the fact that Edelweiss had a first charge over the monies which M/s. GTL Limited has been directed to pay to M/s. GTL Infrastructure Limited, or to deposit in the Escrow account.

To read the Judgement in detail, please click here.

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Supreme Court

1. **Supreme Court disposed of the applications filed in the case where CBI conducted a joint surprise raid in factory premises of Fertico Marketing and Investment Private Limited and found that the coal purchased under the Fuel Supply Agreement (FSA) was sold in the black market**

M/S Fertico Marketing and Investment Private Limited. and ORS. etc. **Appellant (s)**
Central Bureau of Investigation and Another etc. **Respondent (s)**

<u>**Date of Judgement**</u>: November 17, 2020

The criminal appeals are disposed of along with all pending applications. All these appeals challenged the common judgement and order passed by the learned Single Judge of the Allahabad High Court.

Coal India Limited had introduced a new policy, where under the Fuel Supply Agreement was required to be entered into by coal companies and purchasers of coal.

In pursuance of the said policy, a Fuel Supply Agreement was entered into between the appellants in appeals and the Coal India Limited. A joint surprise raid was conducted by the CBI in factory premises of Fertico Marketing and Investment Private Limited and it was found that the coal purchased under the Fuel Supply Agreement was sold in the black market. It was further found by CBI that this was done in connivance with the unknown government officials which led to loss of INR.36.28 crore to the Central Government.

In the present case, there are no pleadings by the public servants with regards to the prejudice caused to them on account of non-obtaining of prior consent under Section 6 of the Delhi Special Police Establishment Act, 1946 qua them specifically in addition to the general consent in force, nor with regard to miscarriage of justice. The Supreme Court concluded that we find no reason to interfere with the finding of the High Court with regards to not obtaining prior consent of the State Government under Section 6 of the Delhi Special Police Establishment Act, 1946.

To read the Judgement in detail, please click here.

2. **Financial Creditor's appeal was allowed, who was aggrieved by the order passed by the Company Court (High Court of Allahabad), refusing to transfer the winding up petition pending before the National Company Law Tribunal (NCLT)**

M/S Kaledonia Jute and Fibres Private Limited	Appellant (s)
M/S Axis Nirman and Industries Limited. & ORS..	Respondent (s)

Date of Judgement: November 19, 2020

Appeal filed by the financial creditor, aggrieved by the order passed by the Company Court (High Court of Allahabad), refusing to transfer the winding up petition pending therein to the National Company Law Tribunal (NCLT), was allowed, and the impugned order is set aside and the proceedings for winding up pending before the Company Court (Allahabad High Court) against the first respondent herein, is ordered to be transferred to the NCLT, to be taken up along with the application of the appellant therein under Section 7 of the IBC. There will be no order as to costs.

The 2nd respondent Company, which had filed a petition in Company Petition before the High Court of Allahabad under Section 433 of the Companies Act, 1956, for the winding up of the 1st respondent Company, on the ground that the Company was unable to pay its debts. The Company Court ordered notice to the 1st respondent, who failed to appear before the Company Court. Further, by an Order, the Company Court ordered the admission of the Company Petition and directed publication of the advertisement of the petition in accordance with Rule 24 of the Companies (Court) Rules, 1959. Pursuant to the said order, the 2nd respondent being the petitioning creditor effected a publication of the advertisement in the Official Gazette and newspaper publications were also made, indicating the date of hearing of the Company Petition.

Thereafter, the Company Court passed an order directing the winding up of the 1st respondent Company on the grounds that the Company has been unable to pay its debts and that it was just and equitable to wind up the 1st respondent Company. By the aforesaid order, the Company Court appointed the official liquidator attached to the High Court of Allahabad as the Liquidator and directed him to take over the assets and books of accounts of the Company.

To read the Judgement in detail, please click here.

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