Swift India
CORPORATE SERVICES LLP

MUMBAI SILICON VALLEY BANGALORE MUMBAI BKC NEW DELHI

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com
CHANGE IN NAME FROM SWIFTINDIAINC CORPORATE SERVICES LLP AS ON 07.02.2017

Swift e-Bulletin
Edition 19/20-21
Week – November 23rd to November 27th

Quote for the week:

"When everything seems to be going against you, remember that the airplane takes off against the wind, not with it."

- Henry Ford

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**") and the Reserve Bank of India (**"RBI"**) and critical judgements and orders passed by the 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 23, 2020 to November 27, 2020.

Thank you,
Swift Team

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com

Table of Contents

REGULATORY UPDATES

Securities and Exchange Board of India

1. **SEBI introduces Unified Payments Interface (UPI) mechanism and application through Online interface and Streamlining the process of Public issues of securities under various regulations vide Circular dated November 23, 2020**

- SEBI, through the Unified Payments Interface has streamlined the process of public issue of securities under various regulations namely:

  - SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS Regulations)
  - SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (NCRPS Regulations)
  - SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 (SDI Regulations) and
  - SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 (ILDM Regulations)

- SEBI Circular dated August 16, 2018 (hereinafter to be referred as 'ASBA Circular') lays down the process for payment for applications in public issue of debt securities through the facility of Application Supported by Blocked Amount ("**ASBA**")

- After consultation with stakeholders, SEBI has decided to introduce the following in addition to the already specified modes under the ASBA Circular:

  - Providing an option to investors to apply in public issues of debt securities through the app / web interface of Stock Exchange(s) with a facility to block funds through Unified Payments Interface (UPI) mechanism for application value up to INR. 2 Lac;

  - Permitting the UPI mechanism to block funds for application value up to INR. 2 Lac submitted through intermediaries (Syndicate members, Registered Stock Brokers, Registrar and Transfer agent and Depository Participants).

- The process flow for applying through online interface of stock exchanges or intermediaries and availing the option of blocking funds though UPI mechanism is placed at ***Annex I*** to this Circular.

- Following are the new entities which are part of the Public issue process using UPI:

  - National Payments Corporation of India ("**NPCI**");
  - Unified Payments Interface ("**UPI**"); and
  - Sponsor Bank,

- The details of investor viz. PAN, DP ID / Client ID, entered on the Stock Exchange platform at the time of bidding, shall be validated by the Stock Exchange/s with the Depositories on real time basis. Stock Exchanges and Depositories shall put in place necessary infrastructure for this purpose.

- The additional text of data fields required to be included in the Application-and-bidding-form relating to UPI is placed at ***Annex II*** to this Circular. The roles of the Issuer, Registrar and Collecting Banks is given at ***Annex III*** of this Circular.

- The provisions of this Circular shall be applicable to a public issue of securities under the captioned Regulations which opens on or after January 01, 2021. Stock Exchanges, NPCI, Sponsor Banks and Self Certified Syndicate Banks shall make required changes to implement the same from January 1, 2021. SEBI Circular no. CIR/IMD/DF-1/20/2012 dated July 27, 2012 shall stand repealed from that date

  To read the Circular in detail, please click here.

2. **SEBI issues Consultative Paper on Re-Classification of promoter(s) / promoter group entities and disclosure of the promoter group entities in the shareholding pattern, on November 23, 2020**

- Regulation 31A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations / LODR") provides for conditions with respect to re-classification of any person as promoter/public.

- A detailed review of the above regulation was undertaken in 2018, with an aim to simplify, streamline and bring greater clarity in the provisions specified therein. In this regard, certain provisions that were prone to misuse were also strengthened.

- A brief summary of the present re-classification process is given below (relevant extract of regulation is placed at ***<u>Annexure-A</u>*** to the consultative paper):

  - A listed entity makes an application to Stock Exchanges for reclassification of any person as promoter.
  - The application for re-classification to the stock exchanges shall be made by the listed entity consequent to the following procedures and not later than thirty days from the date of approval by shareholders in general meeting:

    - The promoter(s) seeking re-classification make a request for re-classification to the listed entity.

    - The board of directors of the listed entity analyze the request and place the same before the shareholders in a general meeting for approval along-with the views of the board of directors on the request. There should be a time gap of at least three months but not exceeding six months between the date of board meeting and the shareholder's meeting considering the request of the promoter(s) seeking re-classification.

    - The request of the promoter(s) seeking re-classification shall be approved in the general meeting by an ordinary resolution in which the promoter(s) seeking re-classification and persons related to the promoter(s) seeking re-classification shall not vote to approve such re-classification request.

- Certain pre-requisites in terms of shareholding, control, special rights of the person seeking reclassification are specified in regulation 31A (3) (b) of the LODR. Further, Regulation 31A (3) (c) of the LODR prescribes certain conditions for the listed entity, aimed at ensuring that only compliant listed entities are eligible to apply for re-classification.

- With respect to disclosure of promoter(s)/ promoter group entities, Regulation 31(4) of SEBI (LODR) Regulations, 2015 mandates a listed entity to disclose separately, all entities falling under promoter and promoter group, in the shareholding pattern appearing on the website of all stock exchanges having nationwide trading terminals where the specified securities of the entity are listed, in accordance with the formats specified by SEBI. Further, SEBI circular dated

November 30, 2015 specifies detailed format for disclosure of specified holdings of promoter and promoter group, public and Non Promoter Non-public shareholders in dematerialized form.

- SEBI has received feedback regarding cases where promoters have desired re-classification but have found it difficult under current regulatory regime. Relaxation from existing requirement on a case to case basis was given by SEBI. It is therefore desirous that the existing provisions may be revisited to minimize the number of exemptions provided on a case to case basis.

- The matter was discussed by Primary Market Advisory Committee ('PMAC') of SEBI in its meeting held on November 11, 2020. Accordingly, the proposals with respect to review of reclassification of the promoter/promoter group entities as public shareholder are as under:

  - Condition pertaining to minimum threshold of voting rights
  - Time period between board and shareholders meeting
  - Reclassification pursuant to an order/ direction of Government / regulator
  - Reclassification of existing promoter pursuant to open offer
  - Time period for listed companies to place the reclassification request before board
  - Disclosure of names of promoter group entities in the shareholding pattern

- Considering the implications of the said matter on the market participants including listed companies, promoters/promoter group of the said companies and investors, comments on the policy framework proposed above are solicited, which may be sent to SEBI not later than December 24, 2020.

  To read the Consultative Paper in detail, please click here.

3. SEBI revises the requirements for testing of software used in or related to Trading and Risk Management vide Circular dated November 24, 2020:

- SEBI vide Circulars dated August 19, 2013 and February 7, 2014 came out with guidelines on 'Testing of software used in or related to Trading and Risk management'. Subsequent to the above, SEBI has received various suggestions/ representation from stakeholders seeking relaxation from the requirement of software testing, prescribed in the aforementioned Circulars.

- After due examination and consultation with stakeholders, SEBI has decided that requirement of mandatory mock trading sessions to facilitate testing of new software or existing software that has undergone any change of functionality shall be optional if a Stock Exchange provides suitable simulated test environment to test new software or existing software that has undergone any change of functionality and ensures the following:

  - The test environment shall be made available to all the members.
  - The test environment shall be made available for at least two hours after market hours and at least on two trading days in a week.
  - For the purpose of testing, Stock Exchange shall make available data from at least one trading day in all segments and the same shall not be older than one month from the day of the testing environment.
  - All trading members (excluding those who use only Exchange provided front end and/or ASP services) having approved Algorithms available with the member, irrespective of the algorithm having undergone change or not, shall participate in the Simulated Environment at least on one trading day during each calendar month at all the exchanges where they are members. This shall be audited and reported in the System Auditors report.
  - Exchange shall provide a daily log, including Algos used, of member's participation in Simulated Environment to all participating members. The Exchange shall provide summary report of such activity to SEBI in the monthly development report (MDR).
  - Other conditions prescribed in SEBI Circulars dated August 19, 2013 and February 07, 2014 shall remain unchanged

  To read the Circular in detail, please click here.

4. **SEBI Chairman launches Securities Market Trainers (SMARTs) Program – a new SEBI initiative for enhancing Investor Education activities vide Press Release No 58/2020 dated November 25, 2020:**

- Shri Ajay Tyagi, Chairman, SEBI launched the Securities Market Trainers (SMARTs) programme in Mumbai on November 25, 2020. The SMARTs programme is a new initiative of SEBI for enhancing the Investor Education activities. The individuals who have been empaneled under the SMARTs program attended the launch via web conferencing.

- Complementing the trainers who have been empanelled as SMARTs, Shri Tyagi highlighted the need of hand holding the retail investors since there has been a surge of new investors in the securities markets in the last few months. He recounted SEBI's efforts towards financial education through SEBI empanelled Resource Persons and investor education in association with Exchanges, Depositories and SEBI recognized Investors Associations.

- Chairman also raised the concern relating to convoluted distribution of active investors throughout the country and said that SMARTs program would aim to address this concern by increasing investor outreach in far flung areas. He exhorted SMARTs to keep abreast of developments in the securities market and also expressed his confidence that SMARTs would take investor education to all parts of the country.

- SMARTs is a new initiative of SEBI to enhance its investor education and awareness activities. The First batch of SMARTs empanelled by SEBI includes 40 individuals across 16 States and Union Territories covering 31 Districts on a Pan-India basis, who have also undergone four days training in National Institute of Securities Market ("**NISM**"). The SMARTs will conduct investor education programmes in their respective geographical areas.

- Under the SMARTs program, the trainers are empanelled for the district they belong to, subject to fulfilling the required eligibility criteria. In addition to individuals, organizations engaged in similar activity can also get enrolled as SMARTs. They undergo training in NISM and then they are eligible to conduct programmes. The programmes are conducted under the aegis of SEBI and are monitored by SEBI directly. These programmes will also be conducted in the local language. SMARTs programme is, therefore, likely to be a game changer as investor education programmes are taken directly to the investors. The education programs to be conducted by SMARTs will be free of cost to investors, while the cost of conducting the programme would be met from SEBI's Investor Protection and Education Fund.

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

5. **SEBI reviews regulatory measures introduced vide SEBI Press Release dated March 20, 2020 vide Press Release No 59/2020 dated November 25, 2020**

- SEBI vide Press Release dated March 20, 2020 had introduced certain regulatory measures as per Annexure A of the said Press Release, in view of the then ongoing market volatility and keeping in view the objective of ensuring orderly trading and settlement, effective risk management, price discovery and maintenance of market integrity. The same is in force till November 26, 2020. Based on market feedback and changed market environment, the above regulatory measures have been reviewed and the same shall stand revised as under:

  - **Stocks in derivatives segment (F&O stocks):** The regulatory measures mentioned at S. No. 1.(i) and 1.(ii) of **Annexure A** to SEBI Press Release dated March 20, 2020 shall stand withdrawn w.e.f. close of business on November 26, 2020, subject to the continuation of the following till further directions:

    With regard to S. No. 1.(i), in the event MWPL utilization in a security crosses 95%, derivative contracts enter into a ban period, wherein, all clients / trading members are required to trade in the derivative contracts of said scrips only to decrease their positions through offsetting positions. Any increase in open positions would attract appropriate penal and/or disciplinary action of the stock exchanges / clearing corporations.

    Accordingly, stock exchanges / clearing corporations shall put in place effective mechanism to monitor whether the market wide open interest for scrips meeting the aforesaid criteria exceeds 95% of the reduced market wide position limit as arrived at above. Further, the stock exchanges / clearing corporations shall check on an intra-day basis (monitoring of Peak intraday OI or Periodic intraday monitoring of OI) whether any member or client has exceeded his existing positions or has created a new position in the scrips in the new ban period.

  - **Increase in margin for Non-F&O Stocks in Cash Market**: This shall stand withdrawn w.e.f. close of business on November 26, 2020

  - **Index Derivatives**: The regulatory measures mentioned at S. No. 3 of Annexure A to SEBI Press Release dated March 20, 2020 shall continue to remain in force

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com

till further directions, subject to revised S. No. 3.(iii) which shall now read as under:

If any of the aforesaid entities exceed the respective limits prescribed at 3(i) and 3(ii) above, an additional deposit shall be payable by the entity equivalent to the amount of margin chargeable on excess position beyond the limits prescribed at 3(i) and 3(ii) above and the same shall be retained by stock exchanges / clearing corporations for a period of one month.

- **Flexing of dynamic price bands for F&O stocks**: The regulatory measures mentioned at S. No. 4 of Annexure A to SEBI Press Release dated March 20, 2020 shall continue to remain in force till further directions.

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

[This space is intentionally left blank]

Reserve Bank of India

1. **RBI prohibits establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign law firms vide Circular dated November 23, 2020:**

- Attention of the Authorised Dealer (AD - Category I) banks has been invited to AP (DIR Series) Circular No. 23 dated October 29, 2015, on the issue advising that no fresh permissions/ renewal of permission shall be granted by the Reserve Bank/AD Category-I banks to any foreign law firm for opening of Liaison Office in India, till the policy is reviewed based on, among others, final disposal of the matter by the Hon'ble Supreme Court.

- The Hon'ble Supreme Court has while disposing of the case, held that advocates enrolled under the Advocates Act, 1961 alone are entitled to practice law in India and that foreign law firms/companies or foreign lawyers cannot practice profession of law in India. As such, foreign law firms/companies or foreign lawyers or any other person resident outside India, are not permitted to establish any branch office, project office, liaison office or other place of business in India for the purpose of practicing legal profession. Accordingly, AD Category – I banks are directed not to grant any approval to any branch office, project office, liaison office or other place of business in India under FEMA for the purpose of practicing legal profession in India. Further, they shall bring to the notice of the Reserve Bank in case any such violation of the provisions of the Advocates Act comes to their notice.

- All other provisions of the BO/LO/PO policy shall remain unchanged. RBI has directed that AD Category - I bank may bring the contents of this circular to the notice of their constituents and customers.

- The **Master Direction No. 10 dated January 01, 2016** is also being updated by RBI simultaneously to reflect the changes

To read the Circular in detail, please click here.

[This space is intentionally left blank]

JUDGEMENTS/ ORDERS

National Company Law Appellate Tribunal

1. **NCALT dispose the appeal with liberty to the Appellants to raise the issue that there is mistake in Order impugned in the Appeal, before Appellate Court.**

Sundaram Brake Linings Limited	Appellant no.1
Mr. S. balaji	Appellant no.2
Mr. P. Bose	Appellant no.3
Competition Commission of India	Respondent No. 1
Chief Materials Manager, South Eastern Railway	Respondent No. 2

The present Appeal was filed under Section 53 B of Competition Act against the order passed by Respondent No. 1 in reference Case No. 3 (and others) of 2016 dated October 08, 2020 and the Appellants claim that the Application for rectification under Section 38 of the Act was erroneously dismissed by an almost non-seeking order.

The Learned Counsel for the Appellant states that amendment for rectification of the Order dated July 10, 2020 was sought seeking deletion of the sentence in Paragraph 47 (16) of the Order dated July 10, 2020 and another Amendment was sought in Paragraph 33 (i) of that Order. It is stated that the Appellant had sought amendment and rectification regarding the said sentences but the learned Respondent No. 1 erroneously dismissed the Application stating that considering record the Commission was satisfied that there was no mistake apparent from record.

NCLAT states that, when the Appeal is pending, the Appellant would be at complete liberty to point out mistake or error from the record to the Appellate Court. When the Appeal is already pending, we would not hold that the Impugned Order dismissing the Application under Section 38 of the Competition Act should be interfered with. For such reasons, we do not entertain the Appeal and dispose of the same with liberty to the Appellants to raise the issue that there is mistake in Order impugned in the Appeal, before Appellate Court.

To read the order in detail, please click here.

2. **NCLAT allowed the appeal and appointment of Directors of the Company and removal of Appellant as the Director of the Company is stayed till the decision of Company Petition by the Tribunal**

Jaideep Halwasiya	**Appellant**
AA Infraproperties Private Limited	
South City Projects (Kolkata) Limited;	
ManMohan Bagree;	**Respondents**
Jugal Kishore Khetawat;	
Rajendra Kumar Bachhawat;	
Pradeep Kumar Sureka.	

The present appeal was filed by 'Shri Jaideep Halwasiya', a minority shareholder of 'M/s AA Infra Properties Pvt. Ltd. ('**the Company'**) assails the impugned order passed by National Company Law Tribunal, Kolkata Bench, Kolkata ('**the Tribunal'**).

In impugned order the Tribunal declined to record findings on the factual controversy about serving of notices of Annual General Meeting ('**AGM'**) and Extra Ordinary General Meeting ('**EoGM'**) to the Appellant before trying the main petition though at the same time and it was observed that there was prima facie evidence on record indicating that the notices of both the meetings were given to the Appellant. The Tribunal further observed that allowing interim relief as claimed in the Company Petition would tantamount to allowing the main petition. Resultantly pending inquiry in main petition stands rejected.

In this case, there are two groups of shareholders in the Company. Minority shareholders group comprises of the Appellant holding 12.5% shares whereas the majority group comprises of Respondent No. 2 holding 87.5% shares in the Company. Several allegations of oppression and mismanagement about management and operations of the Company leveled by the Appellant with some instances in the nature of not being served notice of AGM and notice of EoGM. It is during the pendency of the Company Petition that the Appellant sought interim relief alleging that Respondents No. 2 to 6 in collusion and connivance with each other illegally appointed Respondent No. 4 to 6 in the Company as Directors in the AGM and ousted that Appellant from Directorship in the EoGM. All these acts of commission have been done without giving notice to the Appellant. Interim Relief was sought on the strength of these allegations claiming that the resolutions passed in such meetings were bad in law and void ab initio. Appellant further alleged that the acts of the Respondents, being oppressive in nature, are prejudicial to his interest in the Company. Respondents have refuted the allegations and pleaded that notice of the meetings in which the resolutions inducting appointment in the Company as Directors and removing Appellant from the post of Director were passed, were given well in advance to the Appellant. It was

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com

further pleaded that the majority shareholder was within its rights to pass such resolutions appointing other persons as Directors and removing the existing Director including the Appellant.

The Tribunal observed that, the notices of AGM and EoGM were given to the Appellant. This observation is with references to some documentary evidence, genuineness and authenticity whereof besides proof of service is the subject of controversy in the Company Petition. However, on what basis the Tribunal made such observation has not been spelt out in the impugned order.

It further appears that the Tribunal, apart from treating the notices in regard to the meetings challenged by the Appellant, did not rely on any other substantive, circumstantial or corroborative proof to come to a prima facie finding that such notices were given to the Appellant. The approach adopted by the Tribunal is fundamentally flawed as it could not solely rely upon documents.

The NCLAT observed that the Respondents making all efforts to usurp control over the Respondent No. 1 through all means, fair or foul. It was stated by the Appellant that no resolution or any minutes of Board Meeting stated to be the edifice of the alleged AGM, is in existence which even suggest that the two Directors decided to hold AGM. It was contended that adherence to the statutory requirement under Section 118 of the Companies Act has not been established by Respondents which justifies drawing of an inference that neither any such Board Meeting was conducted nor any minutes were recorded of such Board Meeting. It was also pointed out that no notice or agenda was circulated in the prescribed manner and bearing signatures of Appellant.

The Appellant demonstrated all circumstances to show that it has raised a fair question which requires probe in the Company Petition. The arguments raised on this score cannot be dismissed offhand. Given the status of Appellant, it can be safely stated that with existence of prima facie case in his favour, balance of convenience lies to the side of Appellant who is faced with the prospect of his interests and legal rights being seriously jeopardized in the wake of impugned order.

Based on the facts and circumstances given in the order NCLAT considered that the impugned order suffers from grave legal infirmity besides factual frailty and same cannot be supported. Hence, the appeal was allowed and the impugned order was set aside and appointment of Respondents No. 4 to 6 as Directors of the Company and removal of Appellant as the Director of the Company is stayed till the decision of Company Petition by the Tribunal.

To read the order in detail, please click here.

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com

Securities and Exchange Board of India

1. Confirmatory order in the matter of Karvy Stock Broking Limited

Securities and Exchange Board of India (‘**SEBI’**) has passed an ex-parte ad interim order dated November 22, 2019 (“**ex parte order**”) against Karvy Stock Broking Limited (**KSBL**) and issued following directions:

(a) KSBL is prohibited from taking new clients in respect of its stock broking activities;

(b) The Depositories i.e. NSDL and CDSL, in order to prevent further misuse of clients' securities by KSBL, are hereby directed not to act upon any instruction given by KSBL in pursuance of power of attorney given to KSBL by its clients, with immediate effect;

(c) The Depositories shall monitor the movement of securities into and from the DP account of clients of KSBL as DP to ensure that clients' operations are not affected;

(d) The Depositories shall not allow transfer of securities from DP account no. 11458979, named Karvy Stock Broking Ltd (BSE) with immediate effect. The transfer of securities from DP account no. 11458979, named Karvy Stock Broking Ltd (BSE) shall be permitted only to the respective beneficial owner who has paid in full against these securities, under supervision of NSE; and

(e) The Depositories and Stock Exchanges shall initiate appropriate disciplinary regulatory proceedings against the Noticee for misuse of clients' funds and securities as per their respective bye laws, rules and regulations;”

SEBI observed that exparte order was passed in view of the fact that KSBL had unauthorizedly pledged the securities belonging to its clients and directions given in the order issued during the pendency of the forensic audit of KSBL as ordered by NSE. Since, ex parte order was passed without hearing KSBL, therefore, KSBL can file its reply to the observations made in the ex parte order as well as avail opportunity of personal hearing if it so desires and SEBI noted that no reply to the ex parte order has been filed by KSBL till date and sought adjournment hearing in the matter.

Base on the facts and circumstances given in the order SEBI found that transfer of funds/securities made by the KSBL to its clients subsequent to SEBI order dated November 22, 2019, would not absolve KSBL or its directors from violations of the provisions of the securities laws, as have been found in the forensic audit report received in the matter. Further directed that KSBL shall not alienate any of its assets, except with the prior permission of NSE till the settlement of claims of the investors or under direction or order by any Court or Tribunal. Stock Exchanges and Depositories shall initiate appropriate action against KSBL and its directors, for the violations of their respective bye-laws, as have been found in the forensic audit report received in the matter.

To read the order in detail, please click here.

[This space is intentionally left blank]

High Court

1. Petition applications were dismissed with directions justified in view of the obligations cast upon respondents in the Facility Agreement.

+ O.M.P.(I) (COMM.) 459/2019

KKR India Private Financial Services Limited & ANR.	Petitioners
Williamson Magor & Co. Limited & ORS.	Respondents

Date of Judgement: November 23, 2020

Applications filed by the Petitioners was dismissed, where the petitioners had filed the application with the following prayers: *"The Applicants/Petitioners respectfully pray that this Hon'ble Court may be graciously pleased to: (a) Allow the present application and take on record the e-mails annexed with the present application; (b) Pass any other or further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

The present petition having been filed under Section 9 of the Arbitration and Conciliation Act, 1996 and not a Civil Suit. The petitioner No.1 is registered with the Reserve Bank of India as a non-deposit taking, systemically important Non-Banking Financial Company ('NBFC') as defined in 'Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015, issued by the Reserve Bank of India and involved in the business of providing loans and advances to companies and Petitioner No.2 is a company registered under the Companies Act, 1956 which is also registered as a debenture trustee with Securities Exchange Board of India and acts as a security trustee on behalf of the Petitioner No. 1.

Petitioners had entered into a Facility Agreement with respondents, were the Court did not consider the terms of the agreement and the judgment followed to be clearly distinguishable and with an interim order the Court has restrained the respondents in the following manner: (i). carrying out any change in its capital structure or, (ii) any corporate or debt restructuring and; (iii) restraint from selling, transferring, alienating, disposing, assigning, dealing or encumbering or creating third party rights on their assets.

The applications are dismissed with the above mentioned three directions which justified in view of the obligations which have been cast upon respondents in the Facility Agreement and the same cannot be interfered with.

To read the Judgement in detail, please click here.

2. Writ petition filed praying for the review application before the Assistant Provident Funds Commissioner ('APFC') under Section 7B of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 ('EPF Act'), stands disposed.

+ W.P.(C) 8977/2020 & CM APPLs. 28985-86/2020

Zas Tele Solutions Private Limited & ANR.	**Petitioners**
The Assistant Provident Funds Commissioner	**Respondent**

Date of Judgement: November 26, 2020

Writ petition filed praying for the review application before the Assistant Provident Funds Commissioner **('APFC')** under Section 7B of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 **('EPF Act')**, was disposed of along with all pending applications on below mentioned terms.

Basis the circumstances and in view of the judgments and authorities cited, the review Petition filed under Section 7B of the 'EPF Act' was maintainable and deserves to be heard on merits. Accordingly, the Court directed that the review petition of the Petitioner shall be heard by the APFC and the same shall be disposed of within 3 months from the date of this judgement and stated that the recovery proceedings will be initiated based on the Section 7A order shall accordingly await the decision in the Review Petition.

To read the Judgement in detail, please click here.

3. Contempt petition stands disposed of as withdrawn with the liberty as prayed

M/s. H.M. Infra tech Private Limited	**Complainant**
(Early known as H M Estates & Properties)	
1. M/s. H M Tambourine Apartment Owner's Association	**Accused 1**
2. Shri Uma Mahesh	**Accused 2**

3.	Shri Piyush Agarwal	Accused 3
4.	Shri Hemendra Singh	Accused 4
5.	Shri Dwaipayan Das	Accused 5
6.	Shri Pradeep Roa	Accused 6
7.	Shri D Narasimha Murthy	Accused 7

Date of Judgement: November 24, 2020

The Contempt petition was filed under Sections 11 and 12 of the Contempt of Courts Act, 1971 praying to cognizance of the Contempt of Court committed by each of the respondents and prosecute the accused/respondents, their representatives of anybody claiming breach of the Order passed by the Court which amounts to willful disobedience of the Court Order and to take suitable and necessary action against them including prosecuting them as provided under the Contempt of Courts Act.

The said Contempt petition arguing on merits, seeking permission to withdraw the Contempt petition with a liberty to file appropriate proceedings in accordance with law, stands disposed of as withdrawn with the liberty as prayed.

To read the Judgement in detail, please click here.

[This space is intentionally left blank]

Supreme Court

1. **Appeal filed against the judgement of the High Court of Gujarat stands dismissed, subject to the modifications indicated.**

Chief Executive Officer and Vice Chairman Gujarat Maritime Board	**Appellant (s)**
Asiatic Steel Industries Limited and ORS.	**Respondent (s)**

Date of Judgement: November 23, 2020

Appeal was filed directing against a judgment of the High Court of Gujarat, where the respondent (***"Asiatic Steel"***) had filed a writ petition before the High Court seeking refund of contract consideration of ₹3,61,20,000 paid by them to the appellant ("**the Board**"). The said Writ petition was allowed by the High Court, in view of its earlier interim order, and was directed the Board to pay interest thereon.

Supreme Court dismissed this appeal, subject to the modification indicated therein, to the impugned judgement of the High Court of Gujarat on noting that, the payment of interest as directed by the High Court was evident that respondent ('**Asiatic Steel**') had not paid the entire amount and in fact the sum of principal consideration, excluding the earnest money deposit, that was deposited. Therefore, the impugned judgment erred in directing payment of interest on the entire amount.

To read the Judgement in detail, please click here.

2. **Supreme Court sets aside the impugned judgement and order passed by the Bombay High Court and allowed the appeal on such terms and costs quantified**

Noy Vallesina Engineering SpA, (now known as Noy Ambiente S.p.a)	**Appellant (s)**
Jindal Drugs Limited & Ors.	**Respondent (s)**

Date of Judgement: November 26, 2020

The impugned judgement and order passed by the Bombay High Court was set aside, and the appeal filed challenging the said judgment was erroneous because it concluded that proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 ("**the Act**") can be maintained to challenge a foreign award, defined as one, under that enactment, was allowed with said terms and the costs quantified at INR 1,50,000 which shall be paid by the Respondent No. 1.

The court has not considered the merits of the substantive challenge to the enforcement order, because the parties were not heard and therefore, it would not be fair to comment on it. Further, the respondent (‘***Jindal’***) has proceeded on the assumption that its appeal to the Division Bench on this aspect is pending. However, in view of the finding of the Supreme Court that such an appeal (against an order of enforcement) is untenable by reason of Section 50, the merits of Jindal's objections to the Single Judge's order, are open for it to be canvassed in appropriate proceedings. Such proceedings cannot also be a resort to any remedy under the Code of Civil Procedure. In the event Jindal chooses to avail of such remedy, the question of limitation is left open, as this court is conscious of the fact that *Fuerst Day Lawson36* is a decision rendered over 10 years ago; it settled the law decisively and has been followed in later judgments. It cannot be said that Jindal was ignorant of the law.

To read the Judgement in detail, please click here.