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
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Week – November 30th to December 4th

Quote for the week:

"Too many of us are not living our dreams because we are living our fears."

- Les Brown

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 Ministry of Corporate Affairs ("**MCA**") and the Securities and Exchange Board of India ("**SEBI**"), and critical judgements and orders passed by the National Company Law Tribunal (**"NCLT"**), 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 30, 2020 to December 4, 2020.

Thank you,
Swift Team

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REGULATORY UPDATES

Ministry of Corporate Affairs

1. **MCA further relaxes additional fees and extends last date of filing of CRA-4 (form for filing cost audit report) for Financial year 2019-20 under the Companies Act, 2013 vide General Circular No 38/2020 dated December 01, 2020**

- In continuation to the Ministry's General Circular No. 29/2020 dated September 10, 2020 and in view of large scale disruption caused by COVID-19 pandemic and after due examination of the representations received from various stakeholders, the Ministry has decided to substitute the words and figures "30th November, 2020" with the words and figures "31st December, 2020" in the said general circular. Consequently, if the cost audit report for the financial year 2019-20 by the cost auditor to the Board of Directors of the Companies is submitted by December 31, 2020, then the same would not be viewed as violation of Rule 6 (5) of Companies (cost records and audit) Rules, 2014. The other requirements of the said circular shall remain unchanged.

  To read the Circular in detail, please click here.

Securities and Exchange Board of India

1. **SEBI relaxes timelines for compliance with regulatory requirements vide Circular dated December 01, 2020**

- Keeping in view the situation arising due to COVID-19 pandemic, lockdown imposed by the Government and representations received from Stock Exchanges, SEBI had earlier provided relaxations in timelines for compliance with various regulatory requirements by the trading members / clearing members / depository participants, vide circulars dated April 16, 2020, April 21, 2020 and April 24, 2020.

- Later, vide circulars dated May 15, 2020, June 19, 2020, June 30, 2020, July 29, 2020 and October 01, 2020, timelines / period of exclusion were further extended for certain compliance requirements.

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- In view of the prevailing situation due to Covid-19 pandemic and representation received from the Stock Exchanges, SEBI has decided to extend the timelines for compliance with the following regulatory requirements by the trading members / clearing members, as under:

S.No	Compliance requirements for which timelines are extended	Extended timeline
1	Internal Audit for half year ended on September 30, 2020.	December 31, 2020.
2	System Audit for half year ended on September 30, 2020.	
3	Half yearly net worth certificate as on September 30, 2020.	
4	Cyber Security and Cyber Resilience Audit for half year ended on September 30, 2020.	January 31, 2021.

- In view of the request received from the Depositories, SEBI has decided to extend the timelines for compliance with the following regulatory requirements by depository participants (DPs), as under:

S.No	Compliance requirements for which timelines are extended	Extended timeline
1.	Submission of half yearly Internal Audit Report by DPs for the half year ended on September 30, 2020.	December 31, 2020.
2.	KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days.	Period of exclusion shall be from March 23, 2020 till December 31, 2020. A 15-day time period after December 31, 2020 is allowed to Depository / DPs, to clear the back log.
3.	Systems audit on annual basis for the financial year ended March 31, 2020.	December 31, 2020.

To read the Circular in detail, please click here.

2. **SEBI lays down operational guidelines for Transfer and Dematerialization of re-lodged physical shares vide circular dated December 02, 2020:**

- SEBI, vide circular dated September 07, 2020, has fixed March 31, 2021 as the cut-off date for re-lodgment of transfer requests and has stipulated that such transferred shares shall be issued only in Demat mode.

- The operational guidelines for crediting the transferred shares into the respective Demat account of the investor, with inputs from stakeholders, are as under:

  - Guidelines to credit the transferred physical shares in Demat mode:

    - Subsequent to processing of the re-lodged transfer request, the RTA shall retain the physical shares and intimate the investor (transferee) about the execution of transfer through Letter of Confirmation. This letter shall be sent through Registered / Speed Post or through email with digitally signed letter and shall, inter-alia, contain details of endorsement, shares, folio of investor (required on Demat request form) as available on the physical shares.

    - The investor shall submit the Demat request, within 90 days of issue of Letter of Confirmation, to Depository participant (DP) along with the Letter of Confirmation. RTA shall also issue a reminder at the end of 60 days of issue of Letter of Confirmation, informing the investor to submit the Demat request as above.

    - Depository Participant will process the Demat Request on the basis of Letter of Confirmation, as this letter is a confirmation of holding of physical shares on behalf of the investor by RTA.

    - The suggested format of the Letter of Confirmation is given at **Annexure – A** to this circular.

  - In case of the shares that are required to be locked-in as per the SEBI Circular dated November 06, 2018, the RTA while approving / confirming the Demat request, shall also incorporate / intimate the Depository about the lock-in and

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its period. Such shares shall be in lock-in Demat mode for 6 months from the date of registration of transfer.

- In case of non-receipt of Demat request from the investor within 90 days of the date of Letter of Confirmation, the shares will be credited to Suspense Escrow Demat Account of the Company.

- Depositories shall:

    - make necessary amendments to the relevant byelaws, rules and regulations for the implementation of the above directions, as may be applicable; and.

    - bring the provisions of this circular to the notice of their participants and also disseminate the same on their websites.

To read the Circular in detail, please click here.

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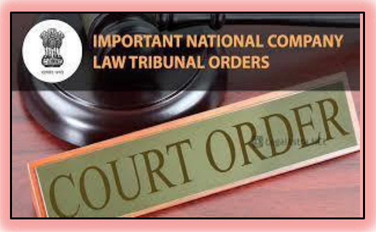
JUDGEMENTS/ ORDERS

National Company Law Tribunal

1. National Company Law Tribunal allows the Restoration of Skytone Foods Private Limited



National Company Law Tribunal, Mumbai 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. Skytone Foods Private Limited.

The Appellant Company had been struck off from the Register of Companies by Registrar of Companies (**"RoC"**), Mumbai due to non-filing of Financial Statements and Annual Returns for the Financial years 2016-17 to 2018-19, 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 failure to file the annual returns by the company was purely an inadvertent omission and without any mala fide intention and further submitted that that the Company has been functioning since its incorporation. The learned counsel also submitted that the Company had generated Revenues, had Non-Current Assets, Current Assets & Long-Term Borrowings in its Books of Accounts in financial years 2016-17 and 2018-19.

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 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.

Securities and Exchange Board of India

1. Adjudication Order in respect of Rays Global Corporation in the matter of Karuturi Global Limited

Securities and Exchange Board of India (‘**SEBI**’) observed from the quarterly shareholding pattern of Karuturi Global Limited (“**KGL**”), National Stock Exchange **(“NSE”)** company, for the quarter ending period June 2015 and September 2015, that the shareholding of Rays Global Corporation (“**Noticee**”) which held 5.06% of the share capital of KGL as at the quarter ending period June 2015, had decreased to 1.16% of the share capital of KGL as at the quarter ending period September 2015, which triggered disclosure requirements under SEBI (Substantial Acquisition of Shares & Takeovers), 2011 (“**SAST Regulations**”) and Noticee was failed to make the requisite disclosures under SEBI (SAST) Regulations to the NSE and to the target company. Therefore, it was alleged that the Noticee had violated the provisions of Regulation 29 (2) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011.

Based on the above examination, SEBI initiated Adjudication Proceedings against the Noticee and appointed the Adjudicating Officer (**AO**) to inquire into and adjudge the alleged violation committed by the Noticee,under Section 15A (b) of the SEBI Act and issued show cause notice and was given a time frame of 21 days to reply, if any and SEBI noted that the Noticee did not file its reply.

AO relied upon the observations of The Hon’ble Securities Appellate Tribunal (**SAT**) in the matter of Classic Credit Ltd vs. SEBI, wherein the Hon’ble SAT, inter alia, observed that - "*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*”.

Based on the facts and circumstance made in the order, SEBI observed that the Noticee failed to make the requisite disclosures under the relevant provisions of SEBI (SAST) Regulations, 2011 and impose a penalty of INR 2,00,000/- (INR Two lakhs only) on the Noticee.

To read the order in detail, please click here.

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High Court

1. **Delhi High Court accepts the petition for encashment of the Fixed Deposit Receipt from State Bank of India**

Youth Hostel Association of India & Others	**Petitioner**
Youth Hostel Association of India, Haryana state Branch & ANR	**Respondent**

Date of Judgement: December 04, 2020

The Hon'ble Delhi High Court accepted the application filed by the Respondent for seeking directions for encashment of the Fixed Deposit Receipts from State Bank of India Atlas Cycle Branch, Model Town, Sonepat from the Respondent's account.

The learned counsel of the Respondent submits that the Fixed Deposit Receipts were not lying with Mr. Maninder Singh Narang but with Mr. T.C. Alakh, the Chairman of Youth Hostel Association of India. He further submitted that despite repeated requests to the Bank, the said Fixed Deposit Receipts are not being encashed.

Based on the facts presented, the Hon'ble Delhi High Court, while pronouncing its order reiterated that without going into the issue as to who the Fixed Deposit Receipts were lying with, and considering that there is a timeline which has been fixed by this Court for the conduct of elections and payment to the Election Officer, directed the Bank Manager encash the two Fixed Deposit Receipts on December 05, 2020 itself along with the interest which has accrued thereon.

To read the order in detail, please click here.

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Supreme Court

1. **Supreme court held that the provisions of the EPF Act are applicable to a private security agency engaged in the expert service of providing personnel to its client, if it meets the requirement of the EPF Act.**

M/S. Panther Security Service Private Limited	**Appellant(s)**
The Employees' Provident Fund Organisation And Another	**Respondent(s)**

Date of Judgement: December 02, 2020

The appellant is engaged in the business of providing private security guards to its clients on payment basis. The appellant aggrieved by the order of the High Court, affirming the order dated July 28, 2008 of the Assistant Provident Fund Commissioner, Kanpur under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act,1952 ("the EPF Act") wherein it was held that the appellant liable for compliance with the provisions of the EPF Act.

learned counsel for the appellant submitted that the appellant was not covered by notifications dated May 17, 1971 issued under Section 1(3)(B) of the EPF Act, since it was not engaged in rendering any expert services. It merely facilitated in providing Chowkidars to its clients and the appellant had only 5 (Five) persons on its rolls. Therefore, EPF Act was not applicable to it.

it was submitted that since the salary was paid by the client and who had the ultimate control over the security guards deployed with them, the appellant was not the employer of these security guards and neither were they employees of the appellant and reliance was placed on the decided case Krantikari Suraksha Rakshak Sanghatana Vs. Bharat Sanchar Nigam Limited and others.

learned counsel for the respondents submitted that the appellant renders expert services by way of providing trained personnel as security guards. It is fully covered by the Notification dated May 17, 1971 and Despite repeated notices the appellant never furnished its wage and salary registers.

The Supreme Court held that, the appellant never made available the statutory registers under the Act of 2005 to the authorities under the EPF Act and the appellant's balance sheet seized for the financial years 2003-04, 2004-05, 2005-06 and 2006-07 showing payment of wages running into lacs. Hence, it was concluded that, the appellant has more than 20 employees on its roles. The provisions of the Act applicable to the private security agency engaged in the expert service of providing personnel to its client, if it meets the requirement of the EPF Act and dismissed the appeal.

To read the judgement in details please click here.
