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CHANGE IN NAME FROM SWIFTINDIAINC CORPORATE SERVICES LLP AS ON 07.02.2017

Swift e-Bulletin
Edition 21/20-21
Week – December 7th to December 11th

Quote for the week:

"If people like you, they'll listen to you, but if they trust you, they'll do business with you."

- Zig Ziglar

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 Ministry of Finance (**"MOF"**) and the International Financial Service 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 December 07, 2020 to December 11, 2020.

Thank you,
Swift Team

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REGULATORY UPDATES

SEBI UPDATES

1. **SEBI introduces Additional Payment Mechanism (i.e. ASBA, etc.) for Payment of Balance Money in Calls for partly paid specified securities issued by the listed entity vide Circular dated December 08, 2020**

- SEBI, in its goal to protect investors' interest and reduce investor grievances relating to refund, introduced Application Supported by Blocked Amount ("**ASBA**") as the sole payment mechanism in the Initial Public offering ("**IPO**") and Rights issues.

- Considering that payment through ASBA mechanism is investor friendly and enables faster completion of the process, SEBI has decided to introduce additional payment mechanism (i.e. ASBA, etc.) for making subscription and/or payment of calls in respect of partly paid specified securities through SCSBs and intermediaries such as Trading Members/ Brokers - having three in one type account and Registrar and Transfer agents ("**RTA**")

- Additional Channels for making subscription and/or paying call money:

  - For the purpose of making payment of balance money for calls in respect of partly paid specified securities, the additional channels are tabulated below:

Additional Channels for making subscription and/or paying call money		
Channel I	**Channel II**	**Channel III**
Online ASBA: Through an online portal of the SCSB. The SCSBs shall send the application to RTA and block funds in shareholders account	Physical ASBA: Physically at the branch of a SCSB The SCSBs shall send the application to RTA and block funds in shareholders account.	Additional Online mode: using the facility of linked online trading, Demat and bank account (3-in-1 type accounts), provided by some of the brokers.

- **Period of subscription**: The payment period for payment of balance money in Calls shall be kept open for fifteen days.

- **Disclosures in the Letter of Offer:** The intermediaries including the issuer company and its RTA shall provide necessary guidance to the specified security holders in use of ASBA mechanism while making payment of calls.

- This Circular shall be applicable for all Call Money Notice wherein the payment period opens on or after January 01, 2021.

  To read the Circular in detail, please click here.

2. **SEBI enables e-Voting facility provided by Listed Entities to all the Demat account holders, by way of a single login credential, through their demat accounts/ websites of Depositories/ Depository Participants vide Circular dated December 09, 2020**

- Listed entities are required to provide remote e-voting facility to its shareholders, in respect of all shareholders' resolutions. However, the participation by the public non-institutional shareholders/retail shareholders is at a negligible level under Regulation 44 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

- Currently, there are multiple e-voting service providers ("**ESPs**") providing e-voting facility to listed entities in India. This necessitates registration on various ESPs and maintenance of multiple user IDs and passwords by the shareholders

- In order to increase the efficiency of the voting process, pursuant to a public consultation, SEBI has decided to enable e-voting to all the Demat account holders, by way of a single login credential, through their Demat accounts/ websites of Depositories/ Depository Participants. Demat account holders would be able to cast their vote without having to register again with the ESPs, thereby, not only facilitating seamless authentication but also enhancing ease and convenience of participating in e-voting process. The same shall be implemented in a phased manner as under:

- **Phase 1:** Following process for e-voting shall be implemented within 6 months of the date of the Circular.

  - **Direct registration with Depositories:** Shareholders can register directly with the depository. Shareholders would be able to access the e-voting page of various ESPs through the websites of the Depositories without further authentication by ESPs for participating in the e-voting process.

Or

- **Through Demat Accounts with Depository Participants:** Demat account holders will have the option of accessing various ESP portals directly from their Demat accounts. They would be routed to the webpage of the respective Depositories from their Demat accounts, which in turn would enable access to the e-voting portals of various ESPs without further authentication by ESPs for participating in the e-voting process.

- The authentication of shareholders would happen at the depository level and ESPs shall allow the Demat account holders to cast their vote based on the validation carried out by the Depository. Depository shall send a confirmatory SMS to the shareholders that the vote has been cast based on the confirmation received from the ESP.

- The listed entity shall provide the details of the upcoming AGMs requiring voting to the Depository. The depository shall send SMS/email alerts in this regard, to the Demat account holders, at least 2 days prior to the date of the commencement of e-voting.

- **Phase 2:** In order to further enhance the convenience and security of the e-voting system, the depository shall validate the Demat account holder through a One Time Password ("**OTP**") verification process as under:

  - **Direct registration with Depositories:** Depositories shall allow login through registered Mobile number / E-mail based OTP verification as an alternate to login through username and password.
  - **Through Demat Accounts with Depository Participants**: A second factor authentication using Mobile / E-mail based OTP shall be introduced before the Demat account holders can access the websites of the Depositories through their Demat accounts. The above shall be implemented within 12 months from the completion of the process in phase 1.

- Depository may advise the Demat account holders to update their mobile number and email ID in order to access the e-voting facility. Depositories shall establish a dedicated helpline to resolve technical difficulties faced by shareholders relating to the e-voting facility. Further, the listed company shall ensure that the ESPs engaged by them also provide a dedicated helpline in this regard.

- In order to enable better deliberation and decision making by the shareholders while casting their votes, ESP Portals shall provide specific web links to the following:

- disclosures by the company on the websites of the stock exchanges
- report on the websites of the proxy advisors

- The aforementioned facility shall be available to all individual shareholders holding the securities in Demat mode. ESPs may continue to provide the facility of e-voting as per the existing process to all physical shareholders and shareholders other than individuals viz. institutions/ corporate shareholders.

- All listed companies are advised to notify the above process available to Demat account holders for e-voting in the notice sent to the shareholders. Depositories and Exchanges are advised to bring the Circular to the notice of its Depository Participants and listed companies respectively

  To read the Circular in detail, please click here.

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MOF UPDATES

1. **Ministry of Finance amends the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 vide Gazette Notification dated December 08, 2020:**

वित्त मंत्रालय
MINISTRY OF
FINANCE
सत्यमेव जयते

- These rules may be called the Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules, 2020.

- In the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, in rule 6, in clause (a), after the third proviso, the following proviso shall be inserted, namely.

  Provided also that a Multilateral Bank or Fund, of which India is a member, shall not be treated as an entity of a particular country nor shall any country be treated as the beneficial owner of the investments of such Bank or Fund in India.

- In the principal rules, in Schedule 1, in the Table

  "(i) for serial number 6 and the entries relating thereto, the following serial number and entries shall be substituted, namely:

S. No (1)	Sector/Activity (2)	Sectoral Cap (3)	Entry Route (4)
"6	Defence		
6.1	Defence Industry subject to Industrial license under the Industries (Development and Regulation) Act, 1951 and Manufacturing of small arms and ammunition under the Arms Act, 1959	100%	Automatic up to 74% Government route beyond 74% wherever it is likely to result in access to modern technology or for other reasons to be recorded
6.2	Other Conditions		

	a) FDI up to 74% under automatic route shall be permitted for companies seeking new industrial licenses. b) Infusion of fresh foreign investment up to 49%, in a company not seeking industrial license or which already has Government approval for FDI in Defence, shall submit a declaration with the Ministry of Defence in cases of change in equity/shareholding pattern or transfer of stake by existing investor to new foreign investor, for FDI up to 49%, within a period of thirty days of such change and any proposal for raising FDI beyond 49% from such companies shall require Government approval. c) License applications will be considered by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, in consultation with Ministry of Defence and Ministry of External Affairs. d) Foreign investment in the sector shall be subject to security clearance by the Ministry of Home Affairs and as per guidelines of the Ministry of Defence. e) Investee company shall be structured to be self-sufficient in the areas of product design and development and the investee or joint venture company along with the manufacturing facility, shall also have maintenance and life cycle support facility of the product being manufactured in India. f) Foreign investments in the Defence sector shall be subject to scrutiny on grounds of national security and Government reserves the right to review any foreign investment in the Defence sector that affects or may affect national security.”

To read the Notification in detail, please click here.

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IFSCA UPDATES

1. **IFSCA amends guidelines for Alternative Investment Funds (AIFs) in International Financial Services Centres (IFSC) vide Circular dated December 09, 2020:**

- In terms of the guidelines for setting up an Alternative Investment Fund ("**AIF**") in IFSC as issued vide SEBI (International Financial Services Centres) Guidelines, 2015 ("IFSC Guidelines") and the operating guidelines dated November 26, 2018, the AIFs are being set up in GIFT-IFSC.

- Subsequently, representations have been received from various stakeholders to review the framework so as to align it with international framework. Based on the above review, IFSCA has decided to amend the norms pertaining to AIFs in IFSC as follows:

  - **Leverage:** An AIF in IFSC may borrow funds or engage in leveraging activities, subject to the following conditions:

    - The maximum leverage by the AIF, along with the methodology for calculation of leverage, shall be disclosed in the placement memorandum;
    - The leverage shall be exercised subject to consent of the investors;
    - The AIF employing leverage shall have a comprehensive risk management framework appropriate to the size, complexity and risk profile of the fund

  - **Investments:** An AIF in IFSC is permitted to:

    - co-invest in a portfolio company through a segregated portfolio by issuing a separate class of units and shall ensure that the investments by such segregated portfolios shall, in no circumstance, be on terms more favorable than those offered to the common portfolio of the AIF; and Appropriate disclosures have been made in the placement memorandum regarding creation of segregated portfolio; and
    - invest in an AIF registered with SEBI in India, alongside other permissible investments.

- The investment diversification requirements provided under regulation 15(1)(c) and 15(1)(d) of the SEBI (Alternative Investment Funds) Regulations, 2012, shall not apply to AIFs in IFSC, subject to the conditions that appropriate disclosures have been made in the placement memorandum and the investments by AIFs are in line with the risk appetite of the investors.

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 M/s Dethlefsen and Balk (South India) Private Limited**

National Company Law Tribunal, Kochi 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 Dethlefsen and Balk (South India) Private Limited.

The Appellant Company had been struck off from the Register of Companies by Registrar of Companies **("RoC"),** Kochi due to non-filing of Financial Statements and Annual Returns for the Financial years 1999-2000 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 registered office of the Appellant Company was functioning in a rented property of Cochin Port Trust. The Cochin Port Trust seized, locked and sealed all the documents, all the books of accounts, records and other related documents of the group companies along with Appellant Company in pursuance to order under Sub Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act. Consequently, the Appellant Company was not in a position to finalize the Financial Statements from the year 2000 onwards due to seizure of the Books of Accounts and other relevant records/documents of the Appellant Company. The learned counsel further submitted that Company was in operation and had duly convened Board Meetings and General Meetings during the period 1999 to 2019 in compliance with the provisions of the Companies Act, 2013. The Annual General Meetings for the Financial Years 1999 to 2019 were duly convened and the item with respect to the approval of Financial Statements and Boards report were adjourned due to non-finalization of the Financial Statements of the respective period. Also, the learned counsel stated that the non-filing of statutory returns was not done willfully by the Appellant Company.

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 ordered the Appellant Company to pay INR 50,000/- towards costs.
To read the order in detail, please click here.

National Company Law Appellate Tribunal

1. **NCLAT states that by swearing an affidavit in the nature of NOC by the shareholders, compliance is made with the requirements to consider and approve the Scheme of Amalgamation, which warrants dispensing with the convening of the meeting of the shareholders of the transferor and transferee companies.**

In the matter of Lifestyle Magazines Private Limited & Anr. (Appellants) filed an appeal against the impugned order passed by the National Company Law Tribunal ("**Tribunal**"), Special Bench at New Delhi and in that order the Tribunal declined to dispense with the meeting of the shareholders/ members of the transferor and the transferee companies seeking amalgamation.

National Company Law Appellate Tribunal ("NCALT") after hearing found that there are no secured or unsecured creditors in the Appellant Companies, hence question of convening their meeting would not arise. All the shareholders in the transferor company and the transferee company had consented to and approved the Scheme of Amalgamation. Also found the transferor and transferee companies are closely held Private Limited Companies and all the shareholders of both the Companies have given their No Objection Certificates (NOC) by way of Affidavit. Such NOC in the form of Affidavits were placed on record of the Tribunal.

Learned counsel for the Appellants referred two judgments, one rendered in DLF Phase-IV Commercial Developers Limited & Ors. with DLF Ltd. and the other in "Alovera Tradelink Private Limited & Ors. with Ostwal Physchem (India) Limited, to prove its point that by swearing affidavit in the nature of NOC by the shareholders, compliance is made with the requirements to consider and approve the Scheme of Amalgamation which warrants dispensing with the convening of the meeting of the shareholders of the transferor and transferee companies.

Based on the submission made on behalf of the Appellants, NCLAT convinced that it is a fit case for intervention by the Appellate Tribunal as a case for dispensing with the convening of the meetings of the shareholders of the transferor and transferee companies and allowed the appeal and set aside the impugned order to the extent of directions passed with regard to convening of the meeting of the shareholders of the Appellant Companies.
To read the order in details please click here.

SEBI

1. Adjudication Order in respect of Ms. Sushila Devi in the matter of Maithan Alloys Limited

In the matter of Maithan Alloys Limited (“**MAL**”), Securities and Exchange Board of India ("**SEBI**") conducted investigation in the affairs of the company during the period from April 13, 2015 to June 12, 2015 and observed that the promoter shareholding decreased from 73.86% in quarter ended March 2015 to 72.46% in quarter ended June 2015. It was further observed that the transactions made exceeded the limits prescribed in SEBI (Prohibition of Insider Trading) Regulation 1992 **(“PIT Regulations”)** and disclosures were required to be provided by Ms. Sushila Devi **(“Noticee”)** to the concerned exchanges where the shares of the company are listed and to the company within 2 working days as per the provisions of Regulation 13(4A) read with 13(5) of the PIT Regulations.

The details of disclosure were sought from the noticee, company and Exchanges. From the reply of the Noticee, exchanges and the company, it was observed that the Noticee had failed to make disclosures required under PIT Regulations for the transactions mentioned in the order.

SEBI vide a communication-order dated October 05, 2020, informed that the competent authority in SEBI is satisfied that there are sufficient grounds to inquire into the affairs and adjudicate upon the alleged violations and informed that competent authority has appointed the Adjudicating Officer under Section 15-I (1) of the SEBI Act, 1992 read with Rule 3of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘the Adjudication Rules’) to inquire into and adjudge the alleged violations by the Noticee under Section 15A (b) of the SEBI Act and issued show cause notice **(“SCN”)** as to why an inquiry should not be held against her and penalty be not imposed for alleged violations

In response to the SCN, Company Secretary of MAL, informed that the Noticee had passed away on January 08, 2020 in Kolkata. In support of the claim, a copy of the Certificate of Death dated January 08, 2020 issued by the Kolkata Municipal Corporation was provided by the Company Secretary of MAL along with the said letter dated December 02, 2020. In view of this fact, no reply /submissions can be procured for considering this case under Rule 4(2) of the Adjudication Rules for further inquiry qua this Noticee. SEBI had the opinion that matter does not deserve further inquiry and proceedings against the Noticee are liable

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to be abated without going into the merits of the case qua her and the SCN dated November 05, 2020 issued against her was disposed of accordingly.

To read the order in details please click here.

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High Court

1. **Appeal filed challenging the order passed in the Arbitration Case passed by the Court of Principal District Judge, Raichur, was allowed.**

The Hatti Gold Mines Company Limited	**Appellant**
1. S. Madavreddy, S/o. S. Narayanareddy	**Respondent 1**
2. K.N. Venkatesh, Chief Engineer, KPWD (Rtd.)	**Respondent 2**

<u>Date of Judgement</u>: December 07, 2020

Appeal filed under Section 37(b) of the Arbitration and Conciliation Act, 1996 calling in question the order passed in Arbitration Case passed by the Court of the Principal District Judge, Raichur, was allowed. Further the Court ordered that the parties are at liberty to espouse the dispute before the Arbitral Tribunal as per the terms of agreement entered between them for fresh consideration in accordance with law.

The appellant Company being a Karnataka State Government Undertaking Company, engaged in carrying out the activities of mining of gold, which was established for treating 900 tons of per day. It was decided to increase the production from the existing 900 tons of gold per day to 2000 tons per day and the main source of gold are from Hatti unit and UTI unit. Later it was planned to produce 800 metric tons and remaining 400 tons of gold ore to be planned from UTI mines.

There was a dispute that arose between the appellant Company and respondent No.1 Contractor, that even after several notices being issued to the respondent No. 1 Contractor in spite of rectifying himself for transportation of 400 tons of gold ore per day but continued the transportation to lesser quantify of gold ore to the appellant Company and it was contended that it was not able to produce the expected target of the production of the gold. This gave rise to the dispute and as per the stipulations in the said contract for resolving the said dispute, it was referred to the Arbitrator who being respondent No. 2 appointed as an Arbitrator resolving the issue.

The appellant Company being aggrieved by the award passed by respondent No. 2 Arbitrator has invoked Section 34 of the Act challenging the award filed before the Court of Principal District Judge, Raichur.

To read the Judgement in detail, please click here.

2. Petition filed by Nissan Motor India Private Limited was dismissed for want of merit

M/s. Nissan Motor India Private Limited	**Petitioner**
M/s. Fervent Communications Private Limited & ANR.	**Respondents**

Date of Judgement: December 10, 2020

Petition filed was dismissed for want of merit, were the Court observed that in the impugned order that both the defendants are liable for recovery of the alleged amount, if proved would not come in the way of the petitioner's defence that as he has paid the amount to its dealer respondent No.2, he is not liable to make double payment, who is one of the authorised dealers of the petitioner and the petitioner had approached respondent No.1/Plaintiff to organize and conduct events at the showroom of the respondent No.2. This would be a question which the Trial Court would consider at an appropriate stage and stated that it found no infirmity in the impugned order of the Trial Court.

To read the Judgement in detail, please click here.

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Supreme Court

1. **Supreme Court found no merit in the objections to One-Man Committee's Concluding Report**

Telangana Power Generation Corporation Limited. (TSGENCO) Appellant (s)
Andhra Pradesh Power Generation Corporation Limited. Respondent (s)
With Miscellaneous Applications

Date of Judgement: December 07, 2020

Supreme Court found no merit in the objections to One-Man Committee's concluding Report and it is obligatory for power utilities of both the States and all concerned to carry out and implement the directions of the One-Man Committee Report.

The High Court vide its judgment had decided the bunch of writ petitions raising the dispute pertaining to allocation of the employees of the power sector undertakings in the States of Telangana and Andhra Pradesh. The disputes arose in the wake of the division of the erstwhile State of Andhra Pradesh into two States, namely, the State of Telangana and the residuary state of Andhra Pradesh by Andhra Pradesh Reorganization Act, 2014. The High Court vide its judgment while upholding the judgment of the High Court with the agreement of the learned counsel for the parties appointed a One-Man Committee consisting of Justice D.M. Dharmadhikari, a former Judge of this Court for distributing the personnel between two States. After the judgment of this Court, One-Man Committee proceeded to formulate the modalities for distributing the personnel, prepared the reports allocating the personnel at several stages. The miscellaneous applications were filed in this Court in the civil appeal in pursuance of the liberty granted by this Court in its judgment permitting the parties to approach the Court by filing an interlocutory application, if any, clarification or further directions were required.

The Supreme Court upheld the allocation made by the One-Man Committee from Andhra Pradesh to Telangana State also, and found no merit, which stands rejected. It was noticed that with regards to other miscellaneous applications and clarified that the One-Man Committee was entrusted only with distribution of personnel between the two States, which distribution has been finalized by the One-Man Committee.

To read the Judgement in detail, please click here.

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