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<u>Swift e-Bulletin</u>
Edition 30/20-21
Week – February 08th to February 12th

<u>Quote for the week:</u>

"The question isn't who is going to let me; it's who is going to stop me."

- Ayn Rand

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, the various regulatory authorities have been granting 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**"), the Securities and Exchange Board of India ("**SEBI**"), and the Reserve Bank of India ("**RBI**"), 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 February 08, 2021 to February 12, 2021.

Thank you,
Swift Team

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REGULATORY UPDATES

MCA UPDATES

1. **The Union Minister of State for Finance & Corporate Affairs has informed that Incorporation of Companies in current fiscal increased 21% as compared to corresponding period in previous fiscal vide Press Release dated February 09, 2021**

- Shri Anurag Singh Thakur, Union Minister of State for Finance & Corporate Affairs in a written reply to a question in Rajya Sabha informed that number of companies incorporated has actually increased from **93,754** from April, 2019 to December, 2019 in the Financial Year 2019-20 (till December 31, 2019) to **1,13,033** in April, 2020 till December, 2020 (COVID 19 period) in the Financial Year 2020-21 (till December 31, 2020) which signifies an increase of about 21%.

- He also informed the Upper House on the steps taken by Ministry of Corporate Affairs ("**MCA**") to extend help and support to the companies incorporated. Some of the steps taken, among others, mentioned in the press release are detailed as under:

  - *In order to provide relief to the companies in view of COVID-19 pandemic, the companies have been allowed to conduct Board Meetings through Video Conference ("**VC**") or Other Audio-Visual Means ("**OAVM**") for passing resolutions in respect of matters which were earlier required to be passed in meetings which required physical presence of directors by amending the Companies (Meetings of Board and its Powers) Rules 2014 from time to time during COVID-19 pandemic. Such facility to the companies has been allowed till June 30, 2021. (initially it was till June 30, 2020, then extended to September 30, 2020 and then to December 31, 2020).*

  - *The "Companies Fresh Start Scheme, 2020" was launched to make a fresh start for companies to be a fully compliant company by allowing them to file belated documents in MCA-21 Registry without any additional fees from April 01, 2020 to December 31, 2020. The said scheme has also given immunity from prosecutions and proceedings for imposition of penalty which might arise on account of such delayed filing of documents.*

- *The companies have been allowed to conduct their Annual General Meetings ("**AGMs**") by Video Conferencing ("**VC**") or Other Audio-Visual Means ("**OAVM**") whose AGMs were due to be held in the year 2020 or become due in the year 2021 to conduct their AGMs on or before December 31, 2021. Owing to the difficulties in sending physical copies of the financial statements, the companies are also allowed to send the financial statements, along with Board's reports, Auditor's reports and other documents required to be attached therewith, only through email.*

- *Time allowed to Auditors and Audit Firms with the National Financial Reporting Authority ("**NFRA**") for filing NFRA-2 form has been extended till a total period of 270 days in view of the difficulties faced during COVID-19 related disruption.*

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

2. **The Union Minister of State for Finance & Corporate Affairs informs the Rajya Sabha of the amendments made to Companies Act 2013 to mitigate blow by COVID-19 pandemic vide Press release dated February 09, 2021**

- MCA has taken various measures to address the COVID-19 pandemic by making amendments in the Companies Act, 2013, Rules made thereunder and by issuing various circulars from time to time. The details of such measures taken by the Ministry are attached as **Annexure** to the press release.

- Some of the steps, among other mentioned in the press release, taken by Ministry of Corporate Affairs ("**MCA**") to address the COVID-19 pandemic are detailed as under:

  - *The Companies Fresh Start Scheme, 2020 was launched to make a fresh start for companies to be a fully compliant company by allowing them to file belated documents in MCA 21 registry without any additional fees from April 01, 2020 to December 31, 2020. The said scheme has also given immunity from prosecutions and proceedings for imposition of penalty which might arise on account of such delayed filing of documents.*

  - *The MCA introduced an LLP Settlement Scheme, 2020 to provide one-time relaxation in additional fees to the defaulting Limited Liability Partnerships ("**LLPs**") to make good their defaults by filing pending documents with the*

*Registrar of Companies ("**ROC**" or "**Registrar**") to ease the hassle of business enterprises. The said scheme was initially rolled out from March 16, 2020 to March 31, 2020 for certain filings by LLPs. However, due to the COVID 19 pandemic the modified further expanded scheme to cover all eforms was rolled out from April 01, 2020 to December 31, 2020. Under the said scheme, the defaulting LLPs were permitted to file belated documents and the LLPs shall not be subjected to prosecution for such defaults.*

- *In the wake of COVID 19 and to provide relief to law abiding companies a scheme was launched for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 during the period from March 01, 2020 to December 31, 2020.*

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

3. MCA releases details regarding number of Indian and Foreign companies which have availed the benefits of the Companies Fresh Start Scheme (CFSS), 2020 vide Press Release dated February 09, 2021

- The Ministry of Corporate Affairs (**MCA**) through the General Circular No. 12/2020 dated March 30, 2020 launched the Companies Fresh Start Scheme (**CFSS**), 2020 which inter- alia provides opportunities to Companies to make good any filing related defaults, regardless of duration of defaults, and make a fresh start as a fully compliant entity.

- As per records available with the Ministry of Corporate Affairs (**MCA**), 4,73,131 number of Indian Companies and 1,065 number of Foreign Companies have been benefited by availing the Companies Fresh Start Scheme (**CFSS**), 2020 for filing their pending documents.

- No additional fees were charged for late filing during a moratorium period from 1st April to December 31, 2020 in respect of documents, returns etc. required to be filed in MCA-21 Registry. The detailed breakup of number of companies that availed the scheme State/UT-wise has been mentioned per **Annexure- A** to the press release.

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

4. MCA amends the Producer Companies (General Reserve) Rules, 2003 vide Gazette Notification dated February 11, 2021

- These rules may be called the Producer Companies Rules, 2021 and shall apply to a Producer Company as referred in clause (l) of Section 378A of the Companies Act, 2013.

- The Rules 27 (Notice and verification of change of situation of the registered office), 30 (Shifting of registered office from one State or Union territory to another State) and 31 (Filing of copy of the order of the Central Government, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, in Form No.INC.28) of the Companies (Incorporation) Rules, 2014, including the forms stated therein shall be applied for the purpose of change of place of registered office of a Producer Company from one State to another.

- A Producer Company shall make investments from and out of its general reserves in any one or in combination of the following:

  - in approved securities, fixed deposits, units and bonds issued by the Central Government or State Governments or co-operative societies or scheduled bank; or
  - in a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or
  - with any other scheduled bank; or
  - in any of the securities specified in Section 20 of the Indian Trusts Act, 1882 (02 of 1882); or
  - in the shares or securities of any other inter-State co-operative society or any co-operative society; or
  - in the shares, securities or assets of public financial institutions specified under clause (72) of Section 2 of the Companies Act, 2013.

To read the Notification in detail, please click here.

5. **MCA amends the Companies (Share Capital and Debentures) Rules 2014 to reduce the timeline for acceptance of offer for rights issue under section 62(1)(a)(i) vide Gazette Notification dated February 11, 2021**

- These rules shall be called the Companies (Share Capital and Debentures) Amendment Rules, 2021 and shall come into force with effect from April 01, 2021.

- In the Companies (Share Capital and Debentures) Rules 2014, after rule 12, the following rule shall be inserted, namely:

  "12A. Period for notice under sub-clause (i) of clause (a) of sub-section (1) of section 62.- For the purposes of sub-clause (i) of clause (a) of sub-section (1) of section 62, the time period within which the offer shall be made for acceptance shall be not less than seven days from the date of offer."

- It is to be noted that the new rule 12A has revised the timeframe to 7 days as compared to the limit of 15 days prescribed in Sec. 62(1)(a)(i) of Companies Act, 2013 for acceptance of offer under rights issue.

  To read the Notification in detail, please click here.

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SEBI UPDATES

1. **SEBI issues revised disclosure formats under Regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") vide Circular dated February 09, 2021**

- This Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with regulations 4(3) and 11 of the PIT Regulations and to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

- SEBI, vide Circulars dated May 11, 2015 and September 16, 2015, had specified the formats for disclosures under Regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") relating to Disclosures by certain persons.

- This Circular amends the disclosure formats specified in (***Forms B to D***) which were specified in the SEBI circular dated May 11, 2015 and September 16, 2015 respectively under Regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations') dealing with Disclosures by certain persons.

- The disclosure formats have been revised considering amendments to the PIT Regulations effecting the ***inclusion of member of the promoter group, and designated person in place of employee***.

- Following forms in the Annexure to this Circular have been revised:

  - FORM B - Disclosure on becoming a Key Managerial Personnel/Director/Promoter/Member of the promoter group.
  - FORM C - Continual Disclosure relating to change in holding of Securities of Promoter, Member of the Promoter Group, Designated Person or Director of a listed company and immediate relatives of such persons and other such persons as mentioned in Regulation 6(2).
  - FORM D - Details of trading in securities by other connected persons as identified by the company

To read the Circular in detail, please click here.

RBI UPDATES

1. **RBI releases guidelines on Investment in Non-Banking Financial Company (NBFCs) from Financial Action Task Force (FATF) non-compliant jurisdictions vide Notification dated February 12, 2021**

- The Financial Action Task Force ("**FATF**") has periodically identified jurisdictions with weak measures to combat money laundering and terrorist financing (AML/CFT) in its following publications:

  - High-Risk Jurisdictions subject to a Call for Action, and
  - Jurisdictions under Increased Monitoring

  Jurisdictions, whose names does not appear in the two aforementioned lists, shall be referred to as a FATF compliant jurisdictions and Investments in Non-Banking Financial Company ("**NBFCs**") from FATF non-compliant jurisdictions shall not be treated at par with that from the compliant jurisdictions.

- Investors in existing NBFCs holding their investments prior to the classification of the source or intermediate jurisdiction/s as FATF non-compliant, may continue with the investments or bring in additional investments as per extant regulations so as to support continuity of business in India.

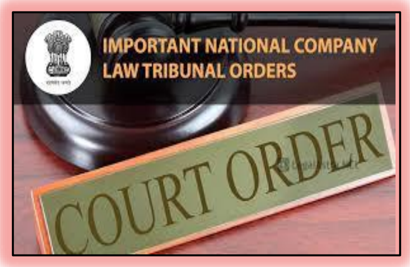
- New investors from or through non-compliant FATF jurisdictions, whether in existing NBFCs or in companies seeking Certification of Registration (COR), should not be allowed to directly or indirectly acquire 'significant influence' in the investee, as defined in the applicable accounting standards. In other words, fresh investors (directly or indirectly) from such jurisdictions in aggregate should be less than the threshold of 20 per cent of the voting power (including potential voting power) of the NBFC.

  To read the Notification in detail, please click here.

JUDGEMENTS/ ORDERS

NCLT

1. **National Company Law Tribunal passes voluntary liquidation order for M/s. Jubilant Innovation (India) Limited**



NCLT, Allahabad Bench ("Tribunal") admits the application filed by the voluntary liquidator under Section 59 (7) of Insolvency and Bankruptcy Code ("IBC"), 2016 read with Rule 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation process) Regulations,2017 seeking dissolution of M/S Jubilant Innovation (India) Limited.

The Applicant Company was not carrying out any business activities during past two financial years, as per its audited financial statements of the company and it did not have any employee whose interest would have been affected by the said order.

Post approval of Board of Directors and shareholders of the Applicant company, Mr. Ravi Kumar, an Insolvency Professional was appointed as a voluntary liquidator. The voluntary liquidator published a notification in multiple newspapers having wide circulation at the location of the registered and corporate office of the Company notifying the intention of the company to get voluntarily liquidated.

The voluntary liquidator did not receive any claim from any stakeholder and no liability had been reported as per the books of accounts of the company. Voluntary liquidator had submitted its preliminary report to the company in the prescribed format giving details of capital structure, assets, liabilities etc. of the company in accordance to the Regulation 9 of IBBI Regulations. Further, upon completion of the liquidation process and after making all the payments towards the liquidation expenses and others, liquidator had prepared his final report in accordance to Regulation 38 of the Voluntary Process Regulations, which was filed with ROC, Kanpur in e- Form GNL – 2 and with IBBI by e-mail.

Based on the facts presented, Tribunal was satisfied that the necessary compliances of Section 59 and other relevant provisions of IBC, 2016 read with the regulations have been duly made and the application was duly supported by the affidavit of the voluntary liquidator stating that the funds available in the Bank account of the company was utilized towards payment to the shareholders of the Applicant Company after deducting the cost of the liquidation expenses and other expenses and no funds were left in the bank account of the company. Further, on receipt of final report from the liquidator, the Tribunal resolved to pass the liquidation order and dissolved the Applicant Company with effect from the date of said order.

To read the order in detail, please click here.

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SEBI

1. Adjudication order in respect of Jai Ambey Wire Private Limited

In respect of Jai Ambey Wire Private Limited, (‘**Noticee’)** Securities and Exchange Board of India (‘**SEBI**’) initiated an investigation for alleged violation of Regulations 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (**PFUTP Regulations**)

A Show Cause Notice (“**SCN**”) was served upon the notice in accordance to Rule 4(1) of the SEBI (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995 to show cause as to why an inquiry should not be held and penalty be not imposed against the Noticee under Section 15HA of the SEBI Act for the said alleged violations of (**PFUTP Regulations**).

The said SCN stated that Noticee was alleged to have engaged in 26 reversal trades in 11 unique contracts which led to generation of artificial volume of 39,88,072 units which created false and misleading appearance of trading and generated artificial volumes in the stock options segment of the BSE during the investigation period from April 1, 2014 to September 30, 2015.

The Adjudicating Officer affirmed that, he has received an intimation that SEBI has received an application for settlement from the Noticee and accordingly the said proceedings are to be kept in abeyance till disposal of the said settlement application.

Further, the Adjudicating Officer took note of the settlement order passed by the SEBI in accordance of Regulation 26 of the SEBI (Settlement Proceedings) Regulations, 2018 in respect of 1018 entities which also included the Noticee, for settlement of proceedings initiated for defaults specified in the SCN subsequent to payment of settlement amount by the Noticee. As per terms of settlement order, SEBI shall not initiate any enforcement action or continue any enforcement proceedings already initiated against Noticee for the settled defaults. On the basis of above-mentioned facts, the Adjudication Proceeding initiated against the Noticee was accordingly disposed of.

To read the order in detail, please click here.

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HIGH COURT

1. **Petition filed by 'Shapoorji Pallonji & Co. Private Limited' under Section 9 of the Arbitration and Conciliation Act, 1996 was disposed of, by declaring that 'The Indure Private Limited & ANR.' May not be in a position repay any of its debts considering its financial position.**

Shapoorji Pallonji & Co. Private Limited	**Petitioner**
The Indure Private Limited & ANR.	**Respondent**

Date of Judgement: February 08, 2021

Petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (A&C Act), was disposed of, where the petitioner – Shapoorji Pallonji & Co Private Limited (Shapoorji) had prayed for direction be issued to the respondent – The Indure Private Limited (Indure), to return the original Advance cum Performance Bank Guarantee as extended from time to time. The Shapoorji has also seek an order restraining Indure from invoking and encashing the said bank guarantee and Standard Chartered Bank be restrained from acting on any letter seeking extension or encashing the Performance Bank Guarantee.

The Court declared that Indure may not be in a position to repay any of its debts considering its financial condition and it is seen that the necessary pleadings required for seeking an order in the nature of attachment before judgement, as contemplated under Order of the Code of Civil Procedure, 1908, was absent. Thus, the Court observed and considers it apposite to grant liberty to the petitioner to approach the Arbitral Tribunal for such relief or any further interim measures as the petitioner considers expedient. Needless to state that all rights and contentions of the parties are reserved and if any such application is made, the same shall be considered on its own merits.

To read the Judgement in detail, please click here.

2. **High Court allows petition filed by Software Moguls India Private Limited for its voluntary winding-up.**

Software Moguls India Private Limited (In Vol. LIQN.)	**Petitioner**

Date of Judgement: February 08, 2021

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The present petition was filed by Software Moguls India Private Limited under Section 497 (6) of the Companies Act, 1956, praying for dissolution from the date of the filing of the instant petition, dated February 04, 2021. The said Company was incorporated on November 19, 1987 with the Registrar of Companies, NCT of Delhi & Haryana, bearing Corporate Identity Number (CIN) U74899DL1987PTC029822, having its registered office situated at New Delhi.

This being the case, the Board of Directors of the Company, in their meeting, executed and approved a declaration of Solvency under Section 488 of the Companies Act, 1956. Further full inquiry was conducted into the affairs of the company, and an opinion was formed that the company would be able to pay its debts in full, within a period of 3 months from the commencement of winding up.

Extra-ordinary general meeting was called upon and necessary special resolution for the voluntary liquidation of the Company was passed and Voluntary Liquidator was appointed, who filed notice of his appointment in Form 152, who further carried out the necessary winding up process. He then filed a No Dues Certificate stating that the company had paid the dues of the member and the statutory liabilities and that there were no outstanding statutory dues against the company and furnished the Official Liquidator with a No Objection Certificate from the Income Tax Department, stating that there are on any outstanding demand against the Company.

Upon no objection being received from the Registrar of Companies, who stated that the necessary forms and documents have been filed by the Company, subject to its dissolution, the Official Liquidator furnished his certificate stating that no bank account exists in the name of the Company. Further, he was provided with an indemnity bond, basis which he submitted that affairs of the Company have been conducted in a manner, not prejudicial to the interest of the members and gave his opinion that the Company may be dissolved with effect from the date of the filing of the petition.

Considering the facts and circumstances and the record of the case, the prayer made by the Software Moguls India Private Limited in its petition for voluntary winding up, was allowed by the Delhi High Court and stated that the Company shall be deemed to be dissolved with effect from the date of the filing of the present petition. i.e., dated February 04, 2021.

To read the Judgement in detail, please click here.

3. **The Court extended the mandate of the learned Arbitral Tribunal, by a period of 12 months, where the petition was filed by the Interim Resolution Professional under Arbitration and Conciliation Act, 1996**

Reliance Communications Infrastructure Limited	**Petitioner**
Bharat Sanchar Nigam Limited	**Repondent**

Date of Judgement: February 09, 2021

The present petition application was filed under Section 29A (5) of the Arbitration and Conciliation Act, 1996, by an Interim Resolution Professional (IRP), appointed by the National Company Law Tribunal to oversee the affairs of M/s. Reliance Communications Infrastructure Limited, in terms of the Insolvency and Bankruptcy Code, 2016. The arbitral proceedings before a three-member Arbitral Tribunal was yet to be concluded, that the mandate in the interval got expired and due to such circumstances, the present petition was invoked, seeking for extension of the mandate to conclude the arbitral proceedings and render award.

The Court, considering the facts of the case, deemed it appropriate to extend the mandate of the learned Arbitral Tribunal, as prayed in the petition, by a period of 12 months.

The Court further made it clear that it has not expressed any final opinion on the proceedings before the IBC, the authority of Mr. Anish Niranjan Nanavaty as RP of the Company, or the effect on the arbitral proceedings, of the proceedings pending before the NCLT.

The Court allowed the petition considering the above facts and stated that all these aspects are left open and the learned Arbitral Tribunal would be at liberty to take a decision, as it deems appropriate after hearing the parties in that regard.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **The Supreme Court affirmed the conclusion of the judgement taken by the NCLAT in case of an appeal filed under Section 62 of the Insolvency and Bankruptcy Code, 2016 and dismissed the said appeal.**

Ramesh Kymal	**Appellant**
M/s Siemens Gamesa Renewable Power Private Limited	**Respondent**

<u>Date of Judgement</u>: February 09, 2021

The appeal made under the Section 62 of the Insolvency and Bankruptcy Code, 2016 ("IBC") has been invoked to challenge the judgement and order of the National Company Law Appellate Tribunal ("NCLAT" or "Appellate Tribunal"). The said decision of the National Company Law Tribunal ("NCLT" or "Adjudication Authority") was affirmed by the NCLAT.

The facts of the case being, the appellant had claimed that a INR 104,11,76,479 was due and payable to him pursuant to his resignation "from all capacities held by him in the M/s Siemens Gamesa Renewable Power Private Limited (Siemens) in accordance with the various Employment Agreements/Incentive Agreements" entered into by him with the (Siemens) during his tenure as Chairman and Managing Director.

The Supreme Court upon detailed scrutiny on the proceeding, dismissed the appeal by stating that, the view which has been taken by the NCLAT for the reasons which have been set out earlier in the course of this judgment are correct and stated that the Supreme Court affirms the conclusion of the NCLAT.

To read the Judgement in detail, please click here.

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CHANGE IN NAME FROM SWIFTINDIAINC CORPORATE SERVICES LLP AS ON 07.02.2017

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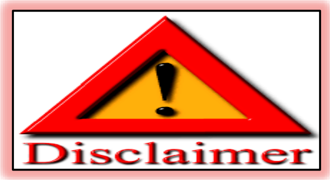

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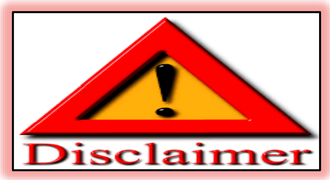

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