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CHANGE IN NAME FROM SWIFTINDIAINC CORPORATE SERVICES LLP AS ON 07.02.2017

Swift e-Bulletin
Edition 34/20-21
Week – March 08th to March 12th

Quote for the week:

"You only have to do a few things right in your life so long as you don't do too many things wrong."

- Warren Buffett

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 Securities and Exchange Board of India ("**SEBI**") and the Ministry of Finance ("**MOF**") 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 March 08, 2021 to March 12, 2021.

Thank you,
Swift Team

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REGULATORY UPDATES

SEBI UPDATES

1. **SEBI amends provisions on Unique Client Code (UCC) and mandatory requirement of Permanent Account Number (PAN) vide Circular dated March 08, 2021**

- Provisions of this Circular shall come to force from **April 01, 2021**.

- SEBI had provided guidelines on use of **Unique Client Code ("UCC")** and mandatory requirement of **Permanent Account Number ("PAN")** for trading on commodity derivative exchanges vide Circular dated September 16, 2016. However, the Union budget of 2020 launched the instant PAN facility and subsequently Income Tax ("**IT**") Department launched the facility of **e-PAN** which is generated instantly through Aadhaar based e-KYC.

- To rationalize the compliance requirement of collecting and maintaining copies of PAN of clients by their respective members and enhance the use of e-PAN following amendments have been made to the Guidelines by SEBI.

- Amendments to the guidelines are:

➢ ***Clause 3*** *of the Circular shall be read as follows:*

"It shall be mandatory for the members of the exchanges having commodity derivatives segment to use Unique Client Code (UCC) for all clients transacting on the commodity derivative segment. The exchanges with commodity derivatives segment shall not allow execution of trades without uploading of the UCC details by the members of the exchange. For this purpose, members shall collect after verifying the authenticity and maintain in their back office the copies of Permanent Account Number (PAN) issued by the Income Tax (IT) Department, for all their clients. However, ***in case of e-PAN, members shall verify the authenticity of e-PAN with the details on the website of IT Department and maintain the soft copy of PAN in their records****.*

➢ ***Clause 5*** *of the Circular shall be read as follows:*

The exchanges having commodity derivatives segment shall ensure that the members of their exchanges shall:

- *Collect copies of PAN cards issued to their existing as well as new clients after verifying with the original.*
- *Cross-check the aforesaid details collected from their clients with the details on the website of the Income Tax (IT) Department.*
  ***However, in case of e-PAN, verify the authenticity of e-PAN with the details on the website of IT Department and maintain the soft copy of PAN in their records.**"*
- *Upload details of PAN or **e-PAN** so collected to the Exchanges as part of Unique Client code.*
- *Verify the documents with respect to the unique code and retain a copy of the document.*

To read the Circular in detail, please click here.

2. **SEBI reviews norms regarding investment in debt instruments with special features and issues clarification on valuation of perpetual bonds vide Circular dated March 10, 2021**

- Provisions of this Circular shall come to force from **April 01, 2021.**

- Mutual Funds invest in certain debt instruments with special features namely **subordination to equity (absorbs losses before equity capital)** and /or **convertible to equity upon trigger of a pre-specified event for loss absorption** some other instruments include Tier I bonds and Tier 2 bonds issued under Basel III framework and such debt instruments having special features which are other Non-Convertible Debentures may also be treated as Debt Instruments until Converted to Equity.

- However, SEBI realizing that there are no specified investment limits for these instruments with special features decided to notify prudential investment limits for such instruments specially on the ground that they maybe riskier than other debt instruments.

- The Prudential investment limits decided and notified by SEBI are:

- *No Mutual Fund ("**MF**") shall under all its schemes shall own more than **10%** of such instruments issued by a single issuer.*
- *MF shall not invest:*

  - *More than **10**% of its Net Asset Value ("**NAV**") of the debt portfolio of the scheme in such instruments; and*
  - *More than **5%** of its NAV of the debt portfolio of the scheme in such instruments issued by a single issuer.*

- However, any investments of MF schemes in such instruments in excess of the limits specified above as on the date of this circular may be **grandfathered** and such MF schemes shall not make any fresh investment in such instruments until the investment comes below the specified limits as mentioned.

- Debt schemes which have investment in such instruments or which have provisions to invest in such instruments shall ensure that the Scheme Information Document ("**SID**") of the scheme has provisions for segregated portfolio subject to compliance with Regulation 18(15A) of SEBI (Mutual Funds) Regulations, 1996.

- If the instrument is to be written off or converted to equity pursuant to any proposal, the date of said proposal may be treated as the trigger date. However, if the said instruments are written off or converted to equity without proposal, the date of write off or conversion of debt instrument to equity may be treated as the trigger date. Furthermore, on the said trigger date, Asset Management Companies ("**AMCs**") may, at their option, create segregated portfolio in a mutual fund scheme subject to compliance with relevant provisions of SEBI Circulars dated December 28, 2018, November 07, 2019 issued with respect to 'Creation of segregation portfolio in mutual fund schemes' and any other relevant Regulations/Circulars/Guidelines issued in the future from time to time.

- AMC'S/Valuation Agencies shall ensure that the financial stress of the issuer and the capabilities of issuer to repay the dues are reflected in the valuation of the securities from the trigger date onwards.

- In context of Valuation of Perpetual Bond:

- *the maturity of all perpetual bonds shall be treated as 100 years from the date of issuance of the bond for valuation purpose and bonds shall be valued in line with the SEBI circular dated September 18, 2000 irrespective of the nature of issuer.*

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- *Close ended debt schemes shall not invest in perpetual bonds and shall only be permitted to invest in such securities which mature on or before the date of the maturity of the scheme in compliance with SEBI circular dated December 11, 2008.*

To read the Circular in detail, please click here.

3. **SEBI rolls out Legal Entity Template for Legal Entities (LE) for uploading the KYC records with the Central KYC Records Registry (CKYCR) vide Circular dated March 10, 2021**

- SEBI vide Circular dated July 21, 2016 on Operationalization of Central KYC Records Registry ("**CKYCR**") had directed the Registered Intermediaries ("**RI**") to upload the Know Your Customer ("**KYC**") records with CKYCR, in respect of all individual accounts opened on or after August 01, 2016. Changes to the template, as and when required are released by Central Registry of Securitisation Asset Reconstruction and Security Interest of India ("**CERSAI**").

- Since CKYCR is fully operational for individual clients, SEBI has decided to extend CKYCR to Legal Entities ("**LE**") as well. Accordingly, RIs shall upload the KYC records of LE accounts opened on or after April 01, 2021 on to CKYCR in terms of Rule 9 (1A) of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005.

- The LE Template and the Annexure thereof have been attached as ***Annexure "A"*** and ***Annexure "B"*** respectively to this circular.

- RIs shall ensure that in case of LE accounts opened prior to April 1, 2021, the KYC records are uploaded on to CKYCR when the updated KYC information is obtained/received from the client. RIs shall ensure that during such receipt of updated information, the clients' KYC details are migrated to current Client Due Diligence ("**CDD**") standards.

- Further, to ensure that all existing KYC records of individual clients are incrementally uploaded on to CKYCR, RIs shall upload the KYC records pertaining to accounts of individuals opened prior to August 01, 2016, as and when updated KYC information is obtained/received from the client.

- Where a client, for the purpose of establishing an account based relationship, submits a KYC Identifier to a RI, with an explicit consent to download records from

CKYCR, then such RI shall retrieve the KYC records online from CKYCR using the KYC Identifier and the client shall not be required to submit the same KYC records or information or any other additional identification documents or details, unless there is a change in the information of the client as existing in the records of CKYCR.

- Once KYC Identifier is generated by CKYCR, the RIs shall ensure that the same is communicated to the individual/legal entity.

- The provisions of this Circular are not applicable to Foreign Portfolio Investors ("**FPIs**").

To read the Circular in detail, please click here.

4. SEBI issues additional guidelines for votes cast by Mutual Funds (MF)

- SEBI, vide Circulars dated March 15, 2010, March 24, 2014, August 10, 2016 and December 24, 2019, has prescribed guidelines for votes cast by Mutual Funds.

- To further improve transparency as well as to encourage Mutual Funds("**MF**")/ Asset Management Companies ("**AMCs**") to diligently exercise their voting rights in best interest of the unitholders, additional guidelines have been prescribed by SEBI for votes to be cast by Mutual Funds based on the discussions of Mutual Fund Advisory Committee ("**MFAC**").

- Some additional guidelines introduced by SEBI are:

➢ *MFs including their including their passive investment schemes shall be required to cast votes compulsory in respect of the following resolutions namely Matters mentioned at Para no.4(iii) relating to disclosures on the website and in the Annual reports by* MFs / AMCs *of SEBI circular dated March 15, 2010:*

- *Corporate Governance matters including changes in the state of incorporation. Merger and other corporate restructuring, and anti-takeover provisions.*
- *Changes to capital structure, including increases and decreases of capital and preferred stock issuances.*
- *Stock option plans and other management compensation issues.*
- *Social and corporate responsibility issues.*

- *Appointment and Removal of Directors.*
- *Issues that may affect interest of Shareholders in general and Unit holders in particular.*
- *Related Party Transactions (excluding own group companies).*

- Other than Resolutions mentioned above, MFs needs to also compulsorily cast their votes for all other resolutions from **April 01, 2022** other than MFs having no economic interest on the day of voting.

- The vote shall be cast at Mutual Fund Level. However, in case Fund Manager of any specific scheme has strong view against the views of Fund Manager of the other schemes, the voting at scheme level shall be allowed subject to recording of detailed rationale for the same.

- Fund Managers/Decision makers need to submit a declaration on quarterly basis to the Trustees that the votes cast by them have not been influenced by any factor other than the best interest of the unit holders. Further, Trustees in their Half Yearly Trustee Report to SEBI, shall confirm the same.

- This Circular shall be effective from **April 01, 2021** except Paragraph/Point 4 mentioned above which will be applicable from the mentioned date i.e. **April 01, 2022**.

To read the Circular in detail, please click here.

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MOF UPDATES

1. **Ministry of Finance issues press release on Consultation paper on proposed regulations for issuance and listing of various securities in International Financial Services Centres in India known as IFSCA (Issuance and Listing of Securities) Regulations, 2021 by International Financial Services Centres Authority, dated March 10, 2021**

- The Union Budget for the financial year 2021-22 had detailed setting up of a **'world-class' Fintech hub at GIFT City** in a bid to bolster innovation in the Fintech industry. This proposed framework is expected to provide an ecosystem for capital raising and listing by Fintech and other start-up companies.

- Currently the listing of equity in International Financial Services Centres (**"IFSC"**) by companies incorporated in India and foreign jurisdiction is regulated by a combination of SEBI (IFSC) Guidelines, 2015, relevant provisions of SEBI (Issue of Capital and Disclosure requirements) Regulations, 2018, Companies Act, 2013 and Foreign currency depository receipt scheme and circulars issued thereunder. Further, listing of debt securities in IFSC is also currently regulated by SEBI (IFSC) Guidelines, 2015 and the framework provided by the recognized exchanges in IFSC. International Financial Services Centres Authority (**"IFSCA"**) has also provided the regulatory framework for listing of Depository Receipts by way of circular in October 2020.

- IFSCA in its endeavor to develop a comprehensive and consistent regulatory framework based on global best practices with a special focus on ease of doing business proposes to enact an all-encompassing framework to facilitate issuers to access world's capital markets.

- IFSCA has been established as a unified regulator to develop and regulate financial products, financial services and financial institutions in the IFSCs in India in its endeavor to develop a comprehensive and consistent regulatory framework it has proposed a unified regulatory framework called **IFSCA (Issuance and Listing of Securities) Regulations, 2021** specifying the requirements for:

    - *Issuance and listing of various types of securities; and*
    - *Initial and continuous disclosures.*

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- The framework proposed provides for issuance and listing of securities by Start-ups, Small and Medium Enterprises ("**SMEs**") and Special Purpose Acquisition Company ("**SPAC"**), the framework has also proposed for issuance and listing of debt securities including those focusing on Environment Social Governance ("**ESG**") and Smart-Cities.

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

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

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JUDGEMENTS/ ORDERS

NLCT

1. National Company Law Tribunal Initiates Corporate Insolvency Resolution Process ("CIRP") against Skytone Electricals (India) Limited.

NCLT, New Delhi Bench **("Tribunal")** admits the application filed by M/s. Parnami Security and Manpower Services Private Limited **("Operational Creditor")** under section 9 of the Insolvency and Bankruptcy Code, 2016 **("IBC")** and Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and initiates CIRP against the Skytone Electricals (India) Limited **("Corporate Debtor").**

The Corporate Debtor had entered into agreement with Operational Creditor for availing the security services wherein the Operational Creditor had provided security guards on regular basis to the Corporate Debtor. The Operational Creditor had raised various invoices in respect of the security services provided by it, however the Corporate Debtor failed to make any payments against such invoices, amounting to a default of INR 6,63,529/- including the interest component towards the security services supplied.

The Operational creditor had submitted various proofs evidencing that the said invoices were duly recorded in the Corporate Debtor's books of accounts. Since the Corporate Debtor did not respond to any of the reminders / emails addressed to make the pending payment, the Operational Creditor served a demand notice, demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. However, no reply was provided by the Corporate Debtor.

On the date of hearing, the Corporate Debtor made several arguments against the claim of Operational Creditor including casting doubts on the name and identity of the Operational Creditor. Accordingly, Operational Creditor responded to all averments made by the Corporate Debtor sufficiently.

Based on the facts presented, Tribunal was satisfied that the Corporate Debtor had made a default in payment of dues for security services provided by the Operational Creditor and didn't pointed out any dispute relating thereto.

Tribunal admitted the said application filed by the Operational Creditor and declared moratorium in accordance to section 14 of the IBC. Tribunal resolved to appoint Mr. Kumud Shekhar to act as the Insolvency Resolution Professional **("IRP").** Tribunal further directed the Operation Creditor to pay an advance amount of INR 2,00,000 to the IRP towards immediate expenses for CIRP which shall be fully accountable by the IRP and shall be reimbursed by the Committee of Creditors **("CoC")** to the Operational Creditor.

To read the order in detail, please click here.

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SEBI

1. Adjudication Order in respect of Ashapura Intimates Fashion Ltd.

The Securities and Exchange Board of India ("**SEBI**") conducted investigation to ascertain whether there was any disclosure violation by Ashapura Intimates Fashion Limited ("**AIFL**") of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**") and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('**LODR Regulations'**) and noted the below obervations:

Observations with regards to disclosure requirements by the promoters / Company:

SEBI noted that AIFL has failed to make necessary disclosures and/or made delayed disclosures under Regulation 7(2)(b) of the PIT Regulations with regard to the transactions by its Managing Director/ Promoters in several instances.

Observations with regards to failure to submit shareholding pattern:

SEBI noted that AIFL had not submitted quarterly shareholding pattern for the quarter ending December 2018 and March 2019, it has been alleged that the Company had violated the provisions of Regulation 31 of the LODR Regulations.

Based on the above observation, the SEBI appointed Adjudicating Officer (AO) and issued Show Cause Notice (**SCN**) to AIFL, however, it was undelivered. Further, in order to serve the SCN to AIFL, the details available on BSE website were analyzed and observed that the Hon'ble NCLT, Mumbai Bench, has passed an order of liquidation on October 05, 2020 against the AIFL.

SEBI further noted that, per the provisions of Section 33(5) of the IBC Code imposes a bar on the initiation of the suit or legal proceedings against the corporate debtor post the liquidation order. In view of the aforesaid observations, the present proceedings are not maintainable, and therefore, cannot be proceeded with. The matter was accordingly disposed of by the SEBI.

To read the order in detail please click here.

HIGH COURT

1. **Petition filed by Laxmi Civil Engineering Services Limited under Section 11(6) of the Arbitration and Conciliation Act, 1996 was allowed, in dispute with GAIL (India) Limited**

Laxmi Civil Engineering Services Limited & ORS.	**Petitioners**
GAIL (India) Limited	**Respondent**

<u>Date of Judgement</u>: March 08 2021

Request was made for quotation by GAIL (India) Limited for constructing a Raw Water Treatment Plant for GAIL Petrochemical Complex-II, Pata, Uttar Pradesh. Laxmi Civil Engineering Services Limited submitted its bid in terms of the conditions as set out in the tender documents and the bid was accepted and the contract for the Project was awarded and a Detailed Letter of Acceptance (DLoA) was issued by GAIL to Laxmi Civil Engineering Services Limited.

Dispute arise between the parties and this led the petitioners to file the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, inter alia, praying that a Sole Arbitrator be appointed to adjudicate disputes between the parties.

It was held that, there is no dispute as to the existence of an Arbitration Agreement between GAIL and Laxmi Civil Engineering Services Limited, the petitioner admittedly, invoked the Arbitration Clause and Laxmi Civil Engineering Services Limited and GAIL have not concurred on appointment of an Arbitrator. The Court is of the view and considers it opposite to allow the present petition to appoint an Arbitrator to adjudicate the disputes between Laxmi Civil Engineering Services Limited and GAIL.

To read the Judgement in detail, please click here.

2. **Writ Petition filed by Ramgad Minerals and Mining Limited was declined to entertain by the Court on the ground of delay and the same was dismissed**

Ramgad Minerals and Mining Limited	Petitioner
Government of India, Ministry of Mines, New Delhi	Respondent 1
The Secretary to Government (Mining, SSI and Textiles) Commerce and Industries Department Government of Karnataka, Bengaluru	Respondent 2
The Director of Mines and Geology, Government of Karnataka, Department of Mines and Geology, Bengaluru	Respondent 3

Date of Judgement: March 08, 2021

Writ of Mandamus was filed by Ramgad Minerals and Mining Limited, firstly, praying to direct the respondents to consider the applications filed in the year 2004 and to grant mining lease by considering the applications made in the year 2012. Secondly, the prayer was made for grant of forest clearance for the already granted mining leases in the years 2004, 2006, 2008 and 2009.

The present petition was filed in June 2020, was declined to entertain on the ground of delay and the same was disposed of, as the representations on which the petitioner is relying upon were of the year 2015, for which the petitioner had offered no explanation for such a gross delay of more than five years in filing this petition.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **Supreme Court upheld the ultimate order of appointing a Sole Arbitrator, who being one of the retired Delhi High Court Judge, setting aside the judgement of the Delhi High Court**

Pravin Electricals Private Limited **Appellant**
Galaxy Infra and Engineering Private Limited **Respondent**

Date of Judgement: March 08, 2021

The Petition was filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of a Sole Arbitrator for adjudication of disputes between the parties, against which an appeal is filed by Pravin Electricals Private Limited, who operates in key industrial and commercial retail sectors and provides services for electrical supplies, etc. and the respondent being the Galaxy Infra and Engineering Private Limited, incorporated under the provisions of the Companies Act, 1956, registered in the State of Bihar, engaged in the business of providing consultancy services.

The Supreme Court observed in this case which eminently cries for the truth to come out between the parties through documentary evidence and cross-examination and further stated that large piece of the jigsaw puzzle that forms the documentary evidence between the parties remained unfilled.

The judgement of the Delhi High Court was set aside and the Supreme Court upheld the ultimate order of appointing a Sole Arbitrator, who being one of the retired Delhi High Court Judge, who shall first determine as a preliminary issue as to whether an Arbitration Agreement exists between the parties, and go on to decide the merits of the case only if it is first found that such an agreement exists. Further, the Supreme Court clarified that all issues will be decided without being influenced by the observations made by this court which are only prima facie in nature.

To read the Judgement in detail, please click here.

2. **The Supreme Court allowed the appeals filed by Bharat Sanchar Nigam Limited, by setting aside orders passed by the Delhi High Court and dismissed the application filed by the Respondent – M/s. Nortel Networks India Private Limited, under Section 11 of the Arbitration and Conciliation Act, 1996**

Bharat Sanchar Nigam Limited & ANR.	Appellants
M/s. Nortel Networks India Private Limited	Respondent

Date of Judgement: March 10, 2021

Bharat Sanchar Nigam Limited (BSNL) had made an appeal, where the present issues have arisen for our consideration is the issuance of a tender notification inviting bids for planning, engineering, supply, insulation, testing and commissioning of GSM based cellular mobile network in the southern region covering the Kerala, Karnataka, Tamil Nadu, Andhra Pradesh Circles, and the Chennai telephone district.

M/s. Nortel Networks India Private Limited (Nortel), being one of the bidders in the tender process, was awarded the purchase order. On completion of the Works under the purchase order, BSNL deducted / withheld the amount towards liquidated damages and other levies, and Nortel raised a claim for payment of the said amount, which BSNL rejected.

The present Appeals raised two important issues for consideration:

i. the period of limitation for filing an application under Section 11 of the Arbitration and Conciliation Act, 1996; and
ii. whether the Court may refuse to make the reference under Section 11 where the claims are ex facie time-barred?

The Supreme Court allowed the above appeals by setting aside the impugned orders passed by the Delhi High Court and dismissed the application filed by the respondent – Nortel, under Section 11 of the Arbitration and Conciliation Act, 1996. The Apex Court concluded and held that:

i. The period of limitation for filing an application under Section 11 would be governed by Article 137 of the First Schedule of the Limitation Act, 1963. The period of limitation will begin to run from the date when there is failure to appoint the arbitrator; It has been suggested that the Parliament may consider amending Section 11 of the 1996 Act to provide a period of limitation for filing an application under this provision, which is in consonance with the object of expeditious disposal of arbitration proceedings;

ii. In rare and exceptional cases, where the claims are ex facie time barred, and it is manifest that there is no subsisting dispute, the Court may refuse to make the reference.

To read the Judgement in detail, please click here.