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CHANGE IN NAME FROM SWIFTINDIAINC CORPORATE SERVICES LLP AS ON 07.02.2017

Swift e-Bulletin
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Week – March 15th to March 19th

Quote for the week:

"No matter how good you get you can always get better, and that's the exciting part."

- Tiger Woods

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**"), Department for Promotion of Industry and Internal Trade ("**DPIIT**") and Insolvency and Bankruptcy Board of India ("**IBBI**") and critical judgements and orders passed by the National Company Law Tribunal (**"NCLT"**), SEBI, 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 15, 2021 to March 19, 2021.

Thank you,
Swift Team

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REGULATORY UPDATES

MCA UPDATES

1. **MCA issues commencement notification for certain sections of the Companies (Amendment) Act, 2020 (No 29 of 2020) vide Gazette Notification dated March 18, 2021**

- Central Government hereby designates March 18, 2021 as the date on which the provisions of Section 32 and Section 40 of the Companies (Amendment) Act, 2020 (No. 29 of 2020) shall come into force. Below is a brief description of the aforementioned Sections that came into effect.

- **Section 32:** This section amends Section 149 (9) relating to remuneration of independent directors of the principal act (“**Companies Act, 2013**”). In Section 149 (9), the following proviso shall be inserted, namely:

  "Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V."

- **Section 40:** This Section Amends Section 197 of the Companies Act, 2013 relating to overall maximum Managerial Remuneration and Managerial Remuneration in case of absence or inadequacy of profits. In Section 197 of the principal Act, in sub-section (3), after the words "whole-time director or manager,", the words "or any other non-executive director, including an independent director" shall be inserted. Accordingly, Section 197(3) shall be read as:

  “Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole time director or manager or any other non-executive director, including an independent director, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of schedule V.”

  To read the Notification, please click here.

To read the Companies (Amendment) Act, 2020 (No 29 of 2020), please click here.

2. **MCA amends Schedule V of the Companies Act, 2013 relating to remuneration vide Gazette Notification dated March 18, 2021**

- In Schedule V of the Companies Act, 2013, in PART II, under the heading REMUNERATION following changes have been made:

  - In Section I relating to remuneration payable by companies having profits, in the first para, after the words managerial person or persons", the words "or other director or directors" shall be inserted. Accordingly, the modified section shall be read as under:

    "Remuneration payable by companies having profits: Subject to the provisions of Section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons or other director or directors not exceeding the limits specified in such section."

  - In Section II relating to remuneration payable by companies having no profit or inadequate profit, after the words "managerial person", wherever occurred, the words "or other director" shall be inserted;

    For Table (A) relating to limits of payment of remuneration to the managerial person in case a company has no profits or its profits are inadequate, the following shall be substituted, namely:

(1)		(2)	(3)
Sr.No	**Where the effective capital (in rupees) is**	**Limit of yearly remuneration payable shall not exceed (in Rupees) in case of a managerial person**	**Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director**
(i)	Negative or less than 5 crores.	60 lakhs	12 Lakhs
(ii)	5 crores and above but less than 100 crores.	84 lakhs	17 Lakhs

(iii)	100 crores and above but less than 250 crores.	120 lakhs	24 Lakhs
(iv)	250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores:	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores

➢ in Section III relating to remuneration payable by companies having no profit or inadequate profit in certain special circumstances:

- after the words" managerial person", wherever occurred, except in clause (i) of the proviso, the words "or other director" shall be inserted;
- after the words "managerial persons", wherever occurred, the words "or other directors" shall be inserted
- following explanation shall be inserted at the end, namely:

  "Explanation. For the purposes of Section, I, Section II and Section III, the term "or other director" shall mean a non-executive director or an independent director."

To read the Notification in detail, please click here.

3. **Central Government establishes a Central Scrutiny Centre (CSC) for carrying out scrutiny of Straight Through Processes (STP) e-forms filed by the companies under the Act and the rules made thereunder vide Gazette Notification dated March 18, 2021**

- The Central Scrutiny Centre ("**CSC**") will function under the administrative control of the e-governance Cell of the Ministry of Corporate Affairs.

- The CSC will carry out scrutiny of the aforementioned forms and forward findings thereon, wherever required, to the concerned jurisdictional Registrar of Companies for further necessary action under the provisions of the Act and the rules made thereunder.

- The location of CSC will be at the Indian Institute of Corporate Affairs (IICA), Plot No. 6, 7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code- 122050.

- This Notification shall come into force from the March 23, 2021.

To read the Notification in detail, please click here.

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SEBI UPDATES

1. **SEBI streamlines the process of IPOs with Unified Payment Interface (UPI) in Application supported by Blocked Amount (ASBA) and redressal of investor grievances vide Circular dated March 16, 2021**

- The provisions of this Circular would come into force for Initial Public Offering ("**IPOs**") opening on/after **May 01, 2021.**

- SEBI vide Circular dated November 01, 2018 had introduced the use of Unified Payment Interface as an additional payment mechanism with Application Supported by Blocked Amount ("**ASBA**") for Retail Individual Investors along with timelines for listing within six days of closure of issue (**T+6**). Subsequently the Board mandated Unified Payment Interface ("**UPI**") for applications by Retail Individual Investors submitted through Intermediaries in Phase II effective from July 01, 2019 vide SEBI circular dated June 28, 2019.This timeline for implementation of Phase II was further extended vide Circular dated November 08, 2019.

- The intermediaries in the IPO ecosystem have agreed to the standard operating procedure as well as the level of security for all messaging protocols from different nodes. This has addressed a lot of investor issues.

- However, with the current system also certain issues were identified Therefore, a need has been felt to put in place measures to have a uniform policy and to further streamline the reconciliation process among intermediaries/Self Certified Syndicate Banks ("**SCSBs**").

- From past experiences of the market with the current UPI system, the following issues were identified based on the consultation with market participants which needed to be addressed:

  - *Delay in receipt of mandate by investors for blocking of funds due to systemic issues at Intermediaries/SCSBs;*
  - *Failure to unblock funds for cancelled/withdrawn/deleted cases in the Stock Exchanges platform;*
  - *Failure to unblock the funds in cases of partial allotment by the next working day from the finalization of basis of allotment ("**BOA**");*
  - *Failure to unblock the funds in cases of non-allotment by BOA+1;*

- *SCSB blocking multiple amounts for the same UPI application;*
- *SCSB blocking more amount in the investors account than the application amount.*

.

- Accordingly, a need has been felt to put in place measures to have a uniform policy and to further streamline the reconciliation process among intermediaries/SCSBs. This Circular also provides a mechanism of compensation to investors.

- This Circular issues guidelines and instructions in the following areas:

  - *Streamlining the IPO Process;*
  - *Reinitiation of UPI Bids;*
  - *Cancelled/Withdrawn/Deleted applications; and*
  - *Unblocking of UPI Mandates.*

- The following Annexures have been provided at the end of the Circular:

  - ***Annexure I:*** *Details of Nodal officers of SCSBs for IPO applications processed through UPI;*
  - ***Annexure II:*** *I Details of SMS to be sent to investors by SCSBs;*
  - ***Annexure III:*** *Format of report to be submitted by SCSB(s) with Registrar and Share Transfer Agent;*
  - ***Annexure IV:*** *Certification of Compliance by SCSB(s) for completion of unblock of funds on the next working day from the finalization of basis of allotment by Registrar to the Issue (Boa+1);*
  - ***Annexure V:*** *Compensation Mechanism for Investor Grievances; and*
  - ***Annexure VI:*** *Additional Compensation Mechanism for Investor Grievances.*

To read the Circular in detail, please click here.

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DPIIT UPDATES

1. **Government of India issues clarification on Downstream Investments vide Press Note No 1 (2021 series) dated March 19, 2021**

- The Government of India has extensively reviewed the FDI policy in relation to investments made by an Indian company owned and controlled by Non-Resident Indians ("**NRIs**") on a non-repatriation basis and in order to provide clarity on downstream investments has made following additions in the consolidated FDI Policy Circular of 2020 ("**FDI Policy"**) effective from October 15, 2020, and as amended from time to time.

- The changes have been made in Annexure 4 to the FDI Policy which relates to Guidelines for calculation of total foreign investment i.e. direct and indirect foreign investment. Clause (c) under Para 1.2 (ii) has been inserted:

  "(c) Investments by NRI(s) on a non-repatriation basis as stipulated under Schedule IV of Foreign Exchange Management (Non-Debt Instruments) Rules 2019 are deemed to be domestic investments at par with the investments made by residents. Accordingly, an investment made by an Indian entity which is owned and controlled by NRI(s) on a non-repatriation basis shall not be considered for calculation of indirect foreign investment."

- In light of this, an investment made by an Indian entity which is owned and controlled by NRI(s) on a non-repatriation basis shall not be considered for calculation of indirect foreign investment. The changes made vide this press note shall be effective from the date of FEMA Notification.

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

  To read the FDI Policy of 2020 in detail, please click here.

IBBI UPDATES

1. **IBBI issues guidelines on reporting of status of ongoing Corporate Insolvency Resolution Process (CIRP) vide Circular dated March 18, 2021**

- Regulation 40A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('**CIRP regulations**') provides a model timeline for carrying out various activities envisaged in CIRP and Regulation 40B of the CIRP regulations require an interim resolution professional ("**IRP**") / resolution professional ("**RP**") to file a set of forms (CIRP 1 to CIRP 6) <u>within seven days</u> of completion of specific activities to enable monitoring progress of CIRP.

- However, forms (CIRP 1 to CIRP 6) would not be filed until the related activity were completed and this would ultimately make monitoring of the CIRP process difficult and inaccurate.

- Regulation 40B now requires filing of **Form CIRP 7** <u>within three days of due date of completion of any activity</u> as mentioned in the table below and shall continue to file <u>Form CIRP 7 every 30 days until the said activity remains incomplete</u>.

- Details on timelines for filing of Form CIRP 7 in various cases:

Sr. No	Activity requiring filing of Form CIRP 7, if not completed by the specified date	Timeline for filing Form CIRP 7 for the first time	Timeline for subsequent filing of Form CIRP 7
1	Public announcement is not made by T+3rd day	Date specified in column (2) + 3 days	X+30th day, X+60th day, X+90th day, and so on, till the activity is completed.
2	Appointment of RP is not made by T+30th day		
3	Information memorandum is not issued within 51		

	days from the date of public announcement		
4	RFRP is not issued within 51 days from the date of issue of information memorandum		
5	CIRP is not completed by T+180th day		

T = Insolvency commencement date, and X = Date of filing of Form CIRP 7 for the first time under column (3).

- Form CIRP 7 shall not be subsequently filed until thirty days have lapsed from the filing of an earlier Form CIRP 7. However, only one form shall be filed at any time whether one or more activity is not completed by the specified date

- The Form CIRP 7 shall be available for filing three days prior to the due date. The format for Form CIRP 7 is at ***Annexure A*** to this circular. This circular is applicable for all the processes ongoing as on the date of this Circular.

To read the Circular in detail, please click here.

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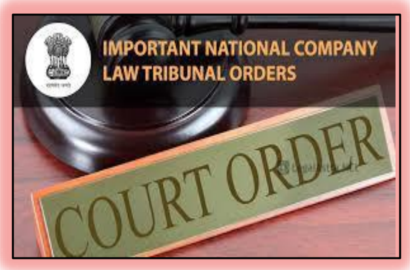
JUDGEMENTS/ ORDERS

NCLT



1. National Company Law Tribunal allows the Restoration of M/s. Sterling RHE Printographics Private Limited

National Company Law Tribunal, New Delhi Bench **("Tribunal")** accepts the appeal filed by the directors of the M/s. Sterling RHE Printographics Private Limited **("Appellant Company")** under section 252 of the Companies Act, 2013 **("the Act")** and allows the restoration of the Appellant Company.

The Appellant Company had been struck off from the Register of Companies by Registrar of Companies **("RoC"),** NCT of Delhi and Haryana due to non-filing of financial statements and annual returns for the financial year ended on March 31, 2013 onwards, in accordance with section 248 of the Act, giving rise to the surmise that the business of the company was not in operation 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 due to non-availability of a permanent employee and lack of professional guidance on the same, however the Appellant Company submitted the copies of its Financial Statements and Annual Returns for financial year 2012-2013 to 2015-2016 along with the petition. Further, Appellant Company affirmed that it has been complying with the filing requirement of annual returns and balance sheets since its inception, however it was unable to do so since last few years due to lack of coordination with the professional who was engaged to carry out said activities.

In order to support his plea, the learned counsel placed the audited accounts for the years 2013-14 onwards, copy of acknowledgements of Income Tax Returns for assessment year 2016-17 and 2017-18 and copy of Bank statements of the relevant period before Tribunal.

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Based on facts presented, the Tribunal was satisfied that during the relevant period, the Appellant Company has complied with the statutory requirements and has certain assets which necessitate and justify restoration of its name. Hence, Tribunal passed the restoration order subject to payment of costs of INR 25,000/- to the Prime Minister's Relief and filing of all statutory returns by the Appellant Company.

To read the Order in detail, please click here.

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SEBI

1. Adjudication Order in respect of Tradebulls Securities Private Limited in the matter of Dealing in Illiquid Stock Options at BSE

In respect of Tradebulls Securities Private Limited, Securities and Exchange Board of India (**SEBI**) observed that there was reversal of trades in stock options in large scale which lead to creation of artificial volume at BSE. In view of the same, SEBI conducted an investigation into the trading activities of certain entities in illiquid stock options at BSE and it was observed that Tradebulls Securities Private Limited (“**Noticee**”) was involved in execution of reversal trades in stock options segment of BSE and such trades were observed to be non-genuine in nature and created false or misleading appearance of trading in terms of artificial volumes in stock options and therefore were alleged to be manipulative and deceptive in nature.

In view of the same, SEBI initiated adjudication proceedings against the Noticee for violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (“**PFUTP Regulations**”) and appointed Adjudicating Officer (**AO**) to conduct adjudicating proceeding against the Noticee.

During the course of proceedings, the Noticee submitted that it had filed an Application for settlement with SEBI. Subsequently, an intimation was also received from the concerned department of SEBI communicating that an application for settlement from the Noticee was received and the AO was requested to keep the proceedings in abeyance till disposal of the settlement application.

In view of the facts that SEBI has passed settlement order under Settlement Scheme, SEBI had the opinion that no further inquiry is required and show cause notice issued against the noticee were disposed of.

To read the Order in detail, please click here

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HIGH COURT

1. **Proceedings under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was initiated by Jammu and Kashmir Bank Limited against the Trans Asian Industries Exposition Private Limited**

Jammu and Kashmir Bank Limited	**Petitioner**
Trans Asian Industries Exposition Private Limited	**Respondent**

Date of Judgement: March 15, 2021

Jammu and Kashmir Bank Limited ("**the Bank**") had filed the petition challenging the impugned order passed by the Id. Chief Metropolitan Magistrate ("**Id. CMM**"), South District, Saket Courts, New Delhi, vide which the application filed requesting for extension of time for taking over the physical possession of the properties of the Trans Asian Industries Exposition Private Limited ("**the borrower**"), being the debtor, was dismissed. The Id. CMM, in proceedings under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 **(hereinafter, "SARFAESI")**, which were initiated by the Petitioner Bank, against the Respondent borrower, had appointed three Court Receivers and had directed them to take possession of the mortgaged properties for securing the interests of the Bank. These Court Receivers were further directed by the Id CMM to file a compliance report within a period of 2 months, thereafter an extension was granted for a period of 3 months for taking over the physical possession of the properties of the borrower, upon the consent from the Court Receivers. The said order was further challenged before the Delhi High Court by the borrower and the Court upheld the order granting the said extension of 3 months.

Order was issued stating that the Court Receiver shall inform the borrower before execution and an authorized representative of the bank shall accompany the Court Receiver at the time of execution of orders of attachment/ possession for identification of the properties and the Station House Officers (SHOs) of the areas were directed to provide police assistance for smooth execution of the said order.

To read the Judgement in detail, please click here.

2. **Banquet hall owners were permitted by the Delhi High Court to make an application under Section 66 of the Disaster Management Act, 2005, for determining the compensation, if any, where the banquet hall were requisitioned for converting them into makeshift COVID-19 designated hospitals/zones.**

Community Welfare Banquet & ORS	Petitioner
Government of National Capital Territory Of Delhi & ORS	Respondents

And

Ready Mint Private Limited	Petitioner
Government of National Capital Territory of Delhi and ANR.	Respondents

Date of Judgement: March 17, 2021

The petitions were filed quashing the orders, whereby banquet halls were requisitioned for converting them into makeshift COVID-19 designated hospitals/zones. After filing of the petition, all the banquet halls have been re-requisitioned and handed back, however, the question as to the legality of the subject order or the right of the respondent to pass such an order still survived.

The Petitioner further submits that in terms of Section 66 of the Disaster Management Act, 2005, the concerned officer who requisitioned the property was also required to determine the compensation to be paid for such purpose.

The Delhi High Court held that, in view of the above, the petitions are disposed of, permitting the banquet owners to make an application under Section 66 of the Disaster Management Act, 2005 to the concerned officer providing the details as stipulated in the said Section for the purpose of determination of compensation, if any. The Court further added that, on receipt of the application, the concerned officer will dispose of the same within a period of six months of the receipt of the application.

To read the Judgement in detail, please click here.

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3. **Petition filed by the Indian Oil Corporation Limited challenging the Arbitral Award was dismissed as the Court finds no ground for interference**

Indian Oil Corporation Limited	**Petitioner**
The Great Eastern Shipping Co. Limited. & ANR.	**Respondents**

Date of Judgement: March 17, 2021

The Delhi High Court could not find any ground to interfere with the impugned Arbitral Award made by the Arbitral Tribunal comprising of three members, were the arbitration was conducted under the aegis of the Indian Council of Arbitration and in accordance with the Maritime Arbitration Rules of the Indian Council of Arbitration.

Indian Oil Corporation Limited, being a Public Sector Undertaking engaged in the business of import, distribution and sale of pretroleum and other ancillary products had filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the Arbitral Award.

The Court held that, the contention that the impugned award is patently illegal on the face of the record or it violates the fundamental policy of Indian Law, is wholly unmerited. Reliance was placed on the decision of the Supreme Court in Associate Builders v. Delhi Development Authority (Supra) is misplaced and on the contrary, the Supreme Court in its decision held that the arbitrator is the final adjudicatory authority for determining questions of fact and the said findings even though may be erroneous, are not amenable to judicial review.

To read the Judgement in detail, please click here.

4. **Future Coupons Private Limited and Future Retail Limited were directed by the Delhi High Court to not to take any further action in violation of the interim order passed by the Emergency Arbitrator, where the petition application was filed by Amazon.Com NV Investment Holdings LLC**

Amazon.Com NV Investment Holdings LLC	**Petitioner**
Future Coupons Private Limited & ORS.	**Respondents**

Date of Judgement: March 18, 2021

Amazon.Com NV Investment Holdings LLC, ("**Amazon.Com**") being the petitioner, had filed the petition under Section 17(2) of the Arbitration and Conciliation Act, 1996 read with Order XXXIX read with Rule 2A and Section 151 of Code of Civil Procedure for enforcement of the interim order passed by the Emergency Arbitrator. Amazon.Com had invested in Future Coupons Private Limited ("**FCPL**") based on certain special, material protective/negative rights available to FCPL in Future Retail Limited ("**FRL**"), namely, that the Retail Assets of FRL would be alienated without the petitioner's prior written consent, and never to a Restricted Person.

The Delhi High Court, considering the facts of the case, directed the respondents, Future Coupons Private Limited (Respondent-1) and Future Retail Limited (Respondent-2) to not to take any further action in violation of the interim order and directed to approach all the competent authorities for recall of the orders passed on their applications in violation of the interim order within two weeks' time. It was further directed to file an affidavit to place on record the actions taken by them and informed that the respondents no. 3 to 11 shall be present for the next date of hearing.

To read the Judgement in detail, please click here.
