Swift e-Bulletin
Edition 41^{ST} 21-22
Week – January 17^{th} to January 21^{th}

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

"Talent wins' games, but teamwork and intelligence win championships."

–Michael Jordan."

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.

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 International Financial Service Center Authority ("IFSCA"), and critical judgements and orders passed by the National Company Law Appellate Tribunal (NCLAT), SEBI, High Court and Supreme Court.

The Regulatory authorities provided various updates/relaxations, some of which being:

- RBI vide press release dated January 20, 2022 issues regulations under the amended Factoring Regulation Act, 2011.
- Amendment to Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of January 17, 2022 to January 21, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

RBI UPDATES

1. **RBI vide press release dated January 20, 2022 issues regulations under the amended Factoring Regulation Act, 2011**

- In exercise of the powers conferred under Factoring Regulation Act, 2011, the Bank has issued the following regulations:

    - Registration of Factors (Reserve Bank) Regulations, 2022 issued vide Notification No. DOR.FIN.080/CGM(JPS) – 2022 dated January 14, 2022 (published in Official Gazette – Extraordinary – Part-III, Section 4 dated January 17, 2022).
    - Registration of Assignment of Receivables (Reserve Bank) Regulations, 2022 issued vide Notification No. DOR.FIN.081/CGM(JPS) – 2022 dated January 14, 2022 (published in Official Gazette – Extraordinary – Part-III, Section 4 dated January 17, 2022).

- The Act which widens the scope of companies that can undertake factoring business. The Act Permits Trade Receivables Discounting System (TReDS) to file the particulars of assignment of receivables transactions with the Central Registry on behalf of the Factors for operational efficiency.

- Under the provisions, all existing non-deposit taking NBFC-Investment and Credit Companies (NBFC-ICCs) with asset size of ₹1,000 crore & above will be permitted to undertake factoring business subject to satisfaction of certain conditions.

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

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SEBI Updates

1. **Amendment to Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.**

- In exercise of the powers conferred by 2[clause (da) and clause (f) of sub-section (2) of section 29] of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Central Government hereby amended the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 .

- These rules majorly deal with
    - Appointment of adjudicating officer for holding inquiry.
    - Procedure for holding an inquiry.
    - Serving of notice and order under.

To read the circular in detail, please click here.

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JUDGEMENTS/ ORDERS

SEBI

1. **SEBI imposes penalty for the violations under PFUTP Regulations, 2003 in the matter of dealings in Illiquid Stocks Options at the BSE.**

Securities and Exchange Board of India **("SEBI")** observed large scale reversal of trades in the Stock Options segment of the Bombay Stock Exchange ("BSE") leading to the alleged creation of artificial volume in the stock options segment. In this regard, SEBI conducted an investigation into the trading activity in the illiquid Stock Options segment at BSE.

It was observed during the course of investigation that a total of 2,91,744 trades comprising 81.38% of all the trades executed in the Stock Options Segment at the BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was observed that Ms. Madhumita Gupta **("Noticee")** was one such client whose reversal trades involved squaring off open positions with a significant difference without any basis for such change in the contract price. The aforesaid reversal trades allegedly resulted into generation of artificial volumes, leading to allegations that the Noticee had violated the provisions of regulations of the SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 **(" PFUTP Regulations, 2003").**

The Adjudicating Officer **("AO")** issued a Show Cause Notice **("SCN")** to which the Company Secretary responded with various reason which can be referred in detail in order and AO after analyzing the facts of the case penalized the Noticee for violation under PFUTP regulations.

To read the order in detail, please click here

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NCLAT

1. **National Company Law Appellate Tribunal (NCLAT) New Delhi dismisses the appeal made ANR International Private Limited (Corporate Debtor) under section 61 of Insolvency and Bankruptcy Code, 2016 (Code)**

Aggrieved by the Order dated September 23, 2021,
passed by the National Company Law Tribunal **("NCLT"),** New Delhi, Court-II) the Appellants, M/s. Ericsson India Private Limited‟ (the 'Transferor Company') and M/s. Ericsson India Global Services Limited‟ (the 'Transferee Company') preferred this Appeal. The NCLT had dismissed the Application under Sections 230 to 232 of the Companies Act, 2013, **('Act')** praying to dispense with convening and holding of the Meeting of Shareholders and Creditors in relation to the 'Transferor and Transferee Companies' for approval of the Scheme of Amalgamation and main reason was that the affidavit filed under section 230 (2) a of the Act was defective and incomplete and NCLT, was not inclined to dispense with meeting of Unsecured Creditors.

The Learned Counsel appearing for the Appellants strenuously argued that the Tribunal erred in construing the Scheme to be entered pursuant to Section 230(1)(a) and Section 230(2)(b) of the Act, that is the Scheme of Amalgamation between the Appellant Companies and its respective Shareholders and Creditors, though the Appellant Companies have not made Creditors parties to the Scheme, as the Scheme is pursuant to Section 230(1)(b) of the Act. Dispensation has been granted by this Tribunal in several cases where the case is of a merger of a Wholly Owned Subsidiary and Parent Company as is in the present case, where net worth of both Companies was highly positive; 'Unsecured Creditors' are paid off in the ordinary course of business; the Scheme is not pre-judicial to their interest as their liability is not proposed to be reduced or extinguished.

Section 230(2)(a) of the Act read with Rule 6(3)(viii) of the Rules shows that the scope and intent is to require Companies to disclose all investigations/proceedings which are 'material' and relating to the Company. NCLAT was of the view that the wording of Section 230(2)(a) should be interpreted as „all material facts relating to the Companies, such as, pendency of any investigation of any proceeding against the Company‟. The Affidavit filed by the Appellant Companies discloses all the duly Audited Financial Statements along with the investigations and enquiries which are material to the implementation of the Scheme.

Further the Tribunal in a catena of Judgements has dispensed with the Meeting of the Shareholders wherein the case is of a merger of a Wholly Owned Subsidiary and Parent

Company, wherein, the net worth of both Companies is positive and ‘Unsecured Creditors’ are paid off in the ordinary course of business and their liability is not affected as it is neither reduced nor extinguished and hence this Appeal was allowed and the Impugned Order dated September 23, 2021 passed by NCLT was set aside.

To read the order in detail, please click here.

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HIGH COURT

1. **Sole arbitrator is appointed to adjudicate the dispute between Envirad Project Private Limited and NTPC Limited over NTPC – Tanda Project.**

Envirad Project Private Limited	Petitioner
NTPC Limited	Respondent

<u>Date of Judgement</u>: January 18, 2022

Envirad Project Private Limited, being the petitioner company registered under the Companies Act 1956 and is engaged in the business of undertaking civil construction projects, files the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole arbitrator to adjudicate the disputes inter-se the parties.

The respondent, NTPC Limited also a company registered under the Companies Act, 1956, working as a Central Public Sector Undertaking to implement power projects in the country. NTPC Limited had invited the bid/tender for the subject package namely “3rd Raising of Dyke of Ash Pond ‘A’ & ‘B’ at NTPC-Tanda Project” and the final bid for the work was awarded to the petitioner vide its Letter of Award in form of Purchase Order.

The petitioner mobilised the machineries and manpower to execute the awarded works from day one, yet due to many reasons of delay work of Dyke ‘A’ and divide bund was handed over to the respondent even when the respondent was well aware of the reasons of delay which were not in control of petitioner, respondent deducted huge amount of about Rs.67.51 lacs towards the Liquidated Damages, holding amount from the due payments of running account bills of the petitioner which were raised for the works and divide bunds and the same was in complete violation and de hors to terms and conditions of the said Contract Agreement.

The present petition was allowed and sole arbitrator was appointed to adjudicate the dispute between the parties.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **Supreme Court awards additional compensation to the claimants of the subject lands in question to be acquired under the Land Acquisition Act, 1984, for the public purpose for ONGC.**

Ambalal Babulal Patel Etc. Etc.	Appellant(s)
The Group General Manager, ONGC & Anr	Respondent(s)

Date of Judgement: January 19, 2022

Being dissatisfied with the amount of compensation awarded by the Division Bench of the High Court under the impugned judgement, the appellants who were the claimants had approached the Supreme Court over the subject lands in question situated at villages Pansar, Dhamasana, and Isand which came to be acquired under the provisions of the Land Acquisition Act, 1894, for the public purpose for ONGC. The Reference Court awarded additional compensation, over and above the compensation awarded by the Special Land Acquisition Officer, ONGC, Ahmedabad, under its resoective orders along with interest and other statutory benefits under Section 23(1)(A) of the Act.

The Supreme Court after hearing to the parties, had a considered view that, the Reference Court in exercise of its power under Section 18 of the Act, after appreciating the material available on record, awarded additional compensation to the claimants over and above the compensation awarded by the Special Land Acquisition Officer, ONGC, Ahmedabad and the interference made by the High Court under the challenged judgement so far as the additional compensation assessed by the Reference Court is concerned, is neither supported by the material on record nor sustainable in law.

Consequently, additional compensation awarded by the Reference Court in the respective orders stands restored. Accordingly, the challenged judgement of the High Court to the limited extent was modified.

To read the Judgement in detail, please click here.

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About Swift

Swift India Corporate Services LLP ("Swift") (Formerly known as SwiftIndiaInc Corporate Services Private Limited) established in the year 2005, is an associate entity of Nishith Desai Associates — Legal & Tax Counseling Worldwide (legal and tax consulting firm).

We are a team of professionals with rich corporate, legal and secretarial backgrounds. We are a premier corporate compliance firm that caters to the needs and demands of our global clients. Swift aims to provide quick and pragmatic corporate solutions alongside high-quality compliances.

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