

**Swift e-Bulletin**

**Edition 10/20-21**

**Week – September 21<sup>st</sup> to September 25<sup>th</sup>**

**Quote for the week:**

*“The secret of success is to do the common thing uncommonly well.”*

*- John D. Rockefeller Jr.*

**Introduction**

We welcome you to our weekly newsletter!

The ‘Swift e-Bulletin’ - weekly newsletter, covers all regulatory updates and critical judgements passed during the week. We hope that you liked our previous editions and found it to be of great value in its content. We want this newsletter to be valuable for you so, please share your feedback and suggestions to help us improve.

In the wake of COVID-19, we all are witnessing many relaxations, exemptions and amendments to the various legislations by regulatory authorities to ease out the operations during this time of crisis.

Further, various regulatory authorities have been proactive in bringing significant regulatory changes in recent challenging times. This week’s newsletter covers various circulars/notifications issued by certain regulatory authorities such as the Ministry of Corporate Affairs (“MCA”), Securities and Exchange Board of India (“SEBI”) and the Insolvency and Bankruptcy Board of India (“IBBI”), and critical judgements and orders passed by the National Company Law Tribunal (“NCLT”), SEBI, Supreme Court and High Court. With a constant endeavor to cover all regulatory updates and judgements/orders at one place, we have prepared a comprehensive summary for quick reference of such updates and Judgements / orders issued during the week of September 21, 2020 to September 25, 2020.

**Thank you,  
Swift Team**

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## REGULATORY UPDATES

### MCA UPDATES

1. Parliament passes the Companies (Amendment) Bill, 2020 on September 22, 2020



- ❖ The Lok Sabha on Saturday, September 19, 2020 passed a bill to further amend around 48 Sections of the Companies Act, 2013 (“The Act”) by decriminalizing various non-compoundable offences in case of defaults, but not involving frauds, omitting imprisonment for various offences which were considered procedural and technical in nature. The bill was then passed by Raja Sabha on September 22, 2020.
- ❖ The bill comes at a time when companies are reeling under stress due the coronavirus pandemic as a major relief for the stressed corporates and is aimed at increasing the ease of doing business measures for the companies in India.
- ❖ The bill removes the penalty, imprisonment for 9 offences which relate to non-compliance with orders of the National Company Law Tribunal (“NCLT”), and reduces the amount of fine payable in certain cases. These include matters relating to winding-up of companies, default in publication of NCLT order relating to reduction of share capital, rectification of registers of security holders, variation of rights of shareholders and payment of interest and redemption of debentures.
- ❖ Among other changes, some of the few highlighted in the bill are:
  - *The bill proposes to introduce a new chapter XXIA in the Act in relation to ‘Producer Companies’, which was earlier part of the Companies Act, 1956*
  - *To empower the Central Government to exclude, in consultation with the SEBI, certain class of companies from the definition of “listed company”, mainly for listing of debt securities mainly for Direct overseas listing of securities;*
  - *To clarify the jurisdiction of trial court on the basis of place of commission of offence under Section 452 of the Act for wrongful withholding of property of a company by its officers or employees, as the case may be;*
  - *To set up additional benches of the NCLT to hear appeals under Competition Act, 2002 and the Insolvency and Bankruptcy Code, 2016;*

- *To make provisions for allowing payment of adequate remuneration to non-executive directors in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases;*
- *The bill seeks to extend the exemptions to certain classes of non-banking financial companies and housing finance companies from filing of certain resolutions passed to grant loans or give guarantees or to provide security in respect of loans under clause (f) of sub-section (3) of Section 179 of the Act in the ordinary course of their business;*
- *The bill proposes to extend the applicability of Section 446B of the Act which deals with 'lesser penalties for small companies and one-person companies', to all provisions of the Act which attract monetary penalties and also extend the same benefits to Producer Companies and start-ups;*
- *To reduce timelines for applying for rights issues so as to speed up such issues under Section 62 of the Act;*
- *To extend exemptions to certain classes of non-banking financial companies and housing finance companies from filing certain resolutions under Section 117 of the Act;*
- *To provide relaxations around Corporate Social Responsibility provisions (CSR) in terms of constitution of CSR Committee and setting off excess CSR Spends;*

To read the bill in detail, please click [here](#).

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## SEBI UPDATES

### 1. SEBI prescribes Alternate Risk Management Framework (“ARMF”) applicable in case of Near Zero and Negative Prices for the Commodity Derivatives Segment (CDS) vide circular dated September 21, 2020:



- ❖ SEBI, vide circulars dated October 01, 2015 and September 01, 2016, has, inter alia, prescribed the Risk Management Framework for the Commodity Derivatives Segment (CDS). In addition to circulars issued in the interregnum, the framework was further strengthened vide circular no. SEBI/HO/CDMRD/ DRMP/CIR/P /2020/15 dated January 27, 2020.
- ❖ In recent times, extreme volatility has been observed in commodity prices globally, particularly in the case of Crude Oil, wherein the prices had unprecedentedly gone down to zero and subsequently, even negative. In such a scenario, margins equivalent to even 100% of the futures price would not have been sufficient to cover the steep upward or downward price variations in the futures market.
- ❖ In order to enable risk management framework to handle such a scenario of 'near zero' and negative prices, SEBI constituted a Task Force of Clearing Corporations (CCs) and market participants to review the risk management framework in such cases. The following has been decided based upon the recommendations of the said Task Force:
  - *ARMF shall be applicable in such cases of near zero and negative prices for any underlying commodities/futures. Details of the ARMF are given at Annexure-I to this circular.*
  - *To begin with, the commodities having the following characteristics may be in principle treated as susceptible to the possibility of near zero and negative prices namely Commodities that need specialized storage space in physical markets, which, if not followed, may cause environmental hazards or have other external implications and Commodities that can't be disposed of/ destroyed with ease i.e. disposal/destruction of such commodities may cause an environmental hazard or may incur significant cost.*
- ❖ The CCs shall ensure the readiness of their systems to implement the prescribed ARMF within 60 days of the date of this circular. However, CCs who do not presently

provide for the clearing and settlement services of any such susceptible commodity, are not required to update their systems for the prescribed ARMF. This is subject to certification by their Risk Management Committee

- ❖ The exchanges are also advised to take steps to make necessary amendments, if any, to the relevant bye-laws, rules and regulations for the implementation of the same, bring the provisions of this circular to the notice of their members and also to disseminate the same on their website and communicate to SEBI, the status of implementation of the provisions of this circular.

To read the circular in detail, please click [here](#).

**2. SEBI issues operational guidelines for Foreign Portfolio Investors ("FPIs") and Designated Depository Participants ("DDPs") under SEBI (Foreign Portfolio Investors), Regulations 2019 vide circular dated September 21, 2020:**



- ❖ SEBI, vide circular dated November 05, 2019, had issued an Operational Guidelines for FPIs and DDPs under SEBI (Foreign Portfolio Investors), Regulations 2019.
- ❖ In the said Operational Guidelines, write-off of securities held by FPIs who wish to surrender their registration was permitted only in respect of shares of companies which are unlisted/illiquid/suspended/delisted. However, in view of the requests received from various stake holders, it has been decided to permit said FPIs to write off shares of all companies which they are unable to sell. In this regard, the process detailed at para 17 of Part C of the said Operational Guidelines shall be complied with.

To read the circular in detail, please click [here](#).

**3. SEBI issues circular on Resources for Trustees of Mutual Funds dated September 23, 2020:**



- ❖ SEBI, vide dated August 10, 2020, has issued guidelines on resources for Trustees of Mutual Funds.
- ❖ Upon consideration of the subsequent representation received from AMFI, it has

been decided that compliance of the aforesaid Circular shall be applicable from January 01, 2021 and all other conditions specified in SEBI circular dated August 10, 2020 shall remain unchanged.

To read the circular in detail, please click [here](#).

4. **SEBI issues clarification in implementation of System-Driven Disclosures (SDD) under SEBI Substantial Acquisition of Shares and Takeovers (SAST) Regulations, 2011 vide circular dated September 23, 2020:**



- ❖ In reference to SEBI circular dated December 01, 2015 and December 21, 2016 pertaining to processes to be followed by Depositories, Exchanges and Registrar & Share Transfer Agents (“RTAs”) for implementation of SDD. Subsequently, SEBI vide circular dated September 09, 2020 under Regulation 7(2) SEBI (PIT) Regulations, 2015 has provided a detailed procedure for SDD implementation. The circular dated September 09, 2020 requires that the capture of the PAN of the entities be done from the listed company itself, rather than through the RTAs as provided in the circular dated December 01, 2015.
- ❖ In order to align the practices, it has been decided to use the procedure of capturing the PAN of the promoters from listed companies as mentioned in para 2,3 & 4 of the **Annexure A** of the circular dated September 09, 2020 for SAST disclosures too.

To read the circular in detail, please click [here](#).

5. **SEBI issues circular on Guidelines for Investment Advisers dated September 23, 2020**

- ❖ Securities and Exchange Board of India (SEBI), after considering the inputs from public consultation, reviewed the framework for regulation of Investment Advisers (IA) and notified Securities and Exchange Board of India (Investment Advisers) (Amendment) Regulations, 2020 (hereinafter referred as “amended IA Regulations”) on July 03, 2020. These amendments shall come into force on September 30, 2020.



❖ In addition to the above, Investment Advisers shall ensure compliance with the following guidelines:

- *Guidelines on Client Level Segregation of Advisory and Distribution Activities.*
- *Agreement between Investment Advisers (IA) and the client.*
- *Fees*
- *Qualification and certification requirements*
- *Registration as Non Individual Investment Advisor*
- *Maintenance of Records*
- *Audit*
- *Display of details on website and in other communication channels*

To read the circular in detail, please click [here](#).

6. **SEBI issues Rationalization of Eligibility criteria and Disclosure requirements for Rights Issues vide Press Release dated September 23, 2020:**



❖ SEBI has decided to amend SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 to rationalize eligibility criteria and disclosure requirements for Rights Issues' with an objective to make the fund raising through this route, easier, faster and cost effective.

❖ The Key Amendments include:

- *Issuer shall be eligible to make truncated disclosures in terms of Part B where it has been filing periodic reports/ statements/ information in compliance with Listing Regulations as applicable, for last one year instead of last three years as required earlier and where three years have passed after change in management pursuant to acquisition of control or Listing consequent to a scheme of arrangement.*
- *All other issuers not satisfying Part B eligibility conditions shall make disclosures in terms of new set of proposed disclosures i.e. Part B-1. Part B-1 disclosures would be more detailed than Part B, but truncated compared to Part A, which is meant for IPO/FPO offer document.*
- *Disclosure requirements under Part B have been rationalized to avoid duplication of information in letter of offer, especially the information which is already available in public domain and is disclosed by the*



*companies in compliance with the disclosure requirements under SEBI Listing regulations.*

- *Threshold increased from INR. 10 crores to INR. 50 crores, for filing requirement of Rights issue draft letter of offer with the Board for its observations.*
- *Mandatory 90% minimum subscription criteria for Rights Issue shall not be applicable to those issuers where object of the issue involves financing other than financing of capital expenditure for a project, provided that the promoters and Page 2 of 2 promoter group of the issuer undertake to subscribe fully to their portion of rights entitlement.*
- *Issuer shall be eligible to make Fast Track Rights Issue, in case of pending show cause notices in respect to adjudication, prosecution proceedings and audit qualification, provided that necessary disclosures along with potential adverse impact on the issuer are made in the letter of offer.*

To read the Press release in detail, please click [here](#).

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## IBBI UPDATES

1. **Parliament passes Insolvency and Bankruptcy Code ("IBC") Second Amendment Act, 2020 vide Gazette Notification Dated September 23, 2020:**



- ❖ After Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the principal Act), the following section shall be inserted, namely:

*"10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf. Suspension of initiation of corporate insolvency resolution process.*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*

*Explanation. –For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."*

- ❖ In Section 66 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely: —

*"(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A."*

To read the notification, please click [here](#).

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## JUDGEMENTS/ ORDERS

### NCLT

#### 1. NCLT Indore bench initiates Corporate Insolvency Resolution Process ("CIRP") against Suvidha Farming and Allied Limited



NCLT admits financial creditor's insolvency application and initiate CIRP against the corporate debtor, declares the moratorium period under section 14 of the Insolvency & Bankruptcy Code, 2016 ("IBC") and appointed Mr. Shaikh Nafis Anjum as Interim Resolution Professional ("IRP").

NCLT notes that financial creditors' have invested various amount of money in the scheme floated by the Corporate Debtor under various plans which include recurring deposits, fixed deposits, monthly income and bonds plans, etc.

The Financial Creditors were entitled to receive the entire amount of investment by the end of March 2018, However, none of the financial creditors got their investment back and the Corporate Debtor committed a default in making payment of his financial debt of the total amount of INR. 90,44,010/-.

NCLT held that, the application made by the Financial Creditor is complete in all respects as required by law. Hence admits this petition and orders initiation of CIRP against the Corporate Debtor. The tribunal further directs the Financial Creditor to an advance of INR 50,000/- to the IRP within 2 weeks from the date of receipt of this order for the purpose of smooth conduct CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.

To read the order in detail, please click [here](#).

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## SEBI

### 1. Adjudication Order in the matter of Samarth International Finlease limited



In the matter of Non-Redressal of investor complaints on SCORES, it was alleged that Samarth International Finlease Limited (“**Noticee/Company**”) had failed to redress investor grievances pending therein and to submit the Action Taken Report (“**ATR**”) duly supported by documentary evidence in respect of the pending complaint seven after obtaining SCORES authentication, within the timelines stipulated by SEBI, therefore not complying with the SEBI Circulars.

The Adjudication officer (“**AO**”) was appointed to enquire into the afore-mentioned alleged violations by the notice and issued show cause notice (“**SCN**”) to the noticee. However, noticee did not submit any reply to the SCN.

The AO found that despite SEBI forewarning the Noticee repeatedly through issue of various Circulars and in letters in the matter, the Noticee did not pay heed to the same and consistently failed and neglected to comply with the SEBI Circulars for redressing pending grievances of the investors and It was observed that the Noticee failed to redress the investor grievances which were pending on the date of initiation of the instant proceedings within the time period stipulated under the SEBI Circulars and imposed penalty of INR 200,000/- (INR Two Lakh).

To read the order in detail, please click [here](#).

### 2. Adjudication Order in respect of Ms. Girija Kelath in the matter of Biocon Limited

In the matter of Biocon Limited, Securities Exchange Board of India (**SEBI**) conducted investigation to ascertain whether there was any disclosure and code of conduct violation of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (“**PIT Regulations**”) by Ms. Girija Kelath (“**Noticee**”), a designated person of Biocon Limited, with respect to her transactions during the trading window closure period. The noticee sold 15,000 shares on the market during the trading window closing period, thus violated the provisions of Clause 4 of Code of Conduct under Schedule B of Regulation 9(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015.

To read the order in detail, please click [here](#)

## HIGH COURT ORDERS

1. **Compensation was awarded under the Motor Vehicle Act, but no amount awarded under future prospects.**

United India Insurance Co. Ltd.	Appellant
1. Smt. Annapoorna	Respondents
2. Kum. Asha	Respondents
3. Smt. Mamata	Respondents
4. Raju	Respondents
5. Sadananda	Respondents



**Date of Judgement:** September 21, 2020

The appeal filed by the Insurance Company under Section 173(1) of Motor Vehicle Act against the judgement and award passed on the file of Presiding Officer, Fast Track Court, Bhadravathi, awarding a compensation from the date of petition till realization, was dismissed.

Claim petition was filed by the claimants and notice was issued against the respondents. The Tribunal, after considering both oral and documentary evidence placed on record, allowed the claim petition in part granting compensation of INR. 3,71,000/- (INR Three Lakhs Seventy-One Thousand) with interest at the rate of 6% (Six) per annum from the date of petition till realization. Being aggrieved by the judgement and award of the Tribunal, the Insurance Company is in appeal contending that the Tribunal has committed an error in fastening the liability on the Insurance Company.

To read the Judgement in detail, please click [here](#).

2. **Writ Petition disposed of for statistical purpose**

1. Far East Board Casting Association of India Church (FEBA)	Petitioners
2. Scorpion Security Limited	Respondent
Bharath Kumar Allur	

**Date of Judgement:** September 22, 2020

The Writ Petition filed under Article 227 of the Constitution of India, was disposed of for statistical purpose, with view of the writ petition is converted to miscellaneous first appeal and the Office was directed to assign the no as miscellaneous first appeal.

To read the Judgement in detail, please click [here](#).

**3. Encashment of the unconditional Bank Guarantees will not result on irretrievable injury to the appellant**

<b>Hindustan Construction Co. Limited</b>	<b>Appellant</b>
<b>National Hydro Electric Power Corporation Limited</b>	<b>Respondent</b>

**Date of Judgement:** September 22, 2020

Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015 against the judgement of the learned Single Judge dismissing the petition filed by the appellant/Hindustan Construction Co. Limited. under Section 9 of the Arbitration and Conciliation Act, 1996 seeking an injunction restraining the respondent/National Hydro-Electric Power Corporation Limited from invoking/encashing any or all its Bank Guarantees (BGs), stands dismissed as being devoid of merit.

It was considered that, encashment of the unconditional BGs will not result in irretrievable injury to the appellant/Hindustan Construction Co. Limited requiring the High Court to take a view different from the very well-considered view taken by the learned Single Judge.

To read the Judgement in detail, please click [here](#).

**4. Petition filed was withdrawn, with liberty to make a request invoking arbitration**

<b>HCL Infosystems Limited</b>	<b>Petitioner</b>
<b>The Oriental Insurance Company Limited</b>	<b>Respondent</b>

**Date of Judgement:** September 23, 2020

The Petition filed by the petitioner seek leave to withdraw the said Petition, with liberty to make a request invoking arbitration and suggesting the name of the arbitrator.

The Petition was disposed of, along with any pending application with aforesaid conditions that, the Petitioner shall forward a request to the respondent within three days from the

date of this judgement and the respondent was directed to respond to the said request within two weeks. It was also directed that the petitioner is at liberty to re-approach the High Court in case of any grievances.

To read the Judgement in detail, please click [here](#).

**5. Petition was dismissed and the interim order stands vacated, as Petitioner failed to satisfy all the conditions for becoming eligible for the exemptions.**

**Apeejay Infra-Logistics Private Limited  
Union of India & ORS.**

**Petitioner  
Respondent**

**Date of Judgement:** September 24, 2020

The petition filed by the Petitioner was dismissed. The Petitioner had challenged Regulation 5(2) of the Handling of Cargo in Customs Areas Regulations, 2009 and also questioned the Revenue's demand for Cost Recovery Charges towards cost of the Customs staff posted at the station.

The said judgment stood pending challenge by way of a Special Leave Petition before the Supreme Court, however there was no stay against the same and the only remaining prayer in the present petition that merits consideration is the one that has been made in the alternative, questioning the demand raised by the respondents for recovery of Cost Recovery Charges of customs employees posted at the Petitioner's station.

The Petition challenging the Regulation was dismissed on the ground of no merit in respect of the surviving prayers made in the petition and the interim order as confirmed stands vacated, as the Petitioner had failed to satisfy all the conditions for becoming eligible for the exemptions.

To read the Judgement in detail, please click [here](#).

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## SUPREME COURT ORDERS

1. Considering the Expert High Level Committee Report, the Judgement of the High Court, as also the review judgement was set aside on this ground alone.



**State of Kerala & ANR. ETC. ETC.**

**M/s. RDS Project Limited & ORS. ETC. ETC.**

**Appellants**

**Respondents**

**Date of Judgement:** September 22, 2020

Respondent had constructed the Palarivattom Flyover on the National Highway, Cochin City, State of Kerala. However, after one year of this Flyover being used, the Consultancy Agency for the Ministry of Road Transport and Highways, Government of India, on regular inspection of the bridge, reported that the bridge was in a distressed condition with several cracks as a result of which measures should be taken to rehabilitate the flyover. An expert agency was appointed by the IIT, Madras which upon inspection delivered several reports and according to it, the bridge could follow a carbon fibre fabric composite treatment and be repaired instead of being demolished.

A High-Level Committee was set up by the State Government, consisting of five persons, due to divergent streams of opinions of IIT, Madras and the experts having come to a particular conclusion, it is very difficult than to say that the Government, in accepting such Expert Committee Report could be said to have behaved arbitrarily.

Considering on this ground alone, the judgment of the High Court was set aside, as also the review judgment, and the appeals were allowed in the aforesaid terms and also directed that the Writ Petitions that are pending in the High Court may be disposed of within a period of six months from the date of this Judgement.

To read the Judgement in detail, please click [here](#).

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