

Swift e-Bulletin

Edition 11/20-21

Week – September 28th to October 2nd

Quote for the week:

“If you fail, never give up because FAIL means “First Attempt in Learning.”

- Dr. APJ Abdul Kalam.

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 as mentioned below:

❖ **Ministry of Corporate Affairs (“MCA”) circulars on the following**

- Extension of Companies Fresh Start Scheme up to December 31, 2020
- Extension of LLP Settlement Scheme up to December 31, 2020
- Relaxation of time for form filing related to creation and modification of charges
- Clarifications regarding passing of ordinary and special resolutions under the Companies Act, 2013
- Clarifications under Section 73(2) of the Companies Act, 2013 and Rule 18 of the Companies (Share Capital and Debenture Rules), 2014
- Relaxations for filings under section 124 and 125 of the Companies Act, 2013
- Amendments to Companies (Appointment and Qualifications of Directors Rules), 2014

- Amendments to Companies (Meetings of Board and its Powers Rules), 2014

❖ **Securities and Exchange Board of India (“SEBI”) circulars on the following:**

- Operating Guidelines for Investment Advisors
- Recovery of assets and funds from a defaulting member
- Guidelines for Preferential Issue and Institutional Placement of units by Real Estate Investment Trusts
- Guidelines for Preferential Issue and Institutional Placement of units by Infrastructure Investment Trusts
- Validity of SEBI observations and revision in issue size
- Framework for monitoring Foreign Holding in Depository Receipts
- Relaxation of timelines with respect to compliance with regulatory requirements
- Provisions regarding valuation of Debt and Money Market Instruments
- Standard Operating Procedures for all trading members/Clearing members for submission of the Undertaking cum Indemnity bond

and critical judgements and orders passed by the National Company Law Tribunal (“NCLT”), the National Company Law Appellate Tribunal (“NCLAT”), SEBI, Supreme Court and High Court.

❖ **National Company Law Tribunal (NCLT)**

- NCLT Mumbai bench admits the claim of operational creditor against Great Unison Contracts India Private Limited
- NCLT Kochi bench allowed the petition of impleading the auditor in the case of oppression and mismanagement against M/s. Dhanam Publications Private Limited.

❖ **National Company Law Appellate Tribunal (NCLAT)**

- NCLAT dismiss the Condonation of Delay of 338 Days.

❖ **Securities Exchange Board of India (SEBI)**

- Adjudication Order in the matter of National Stock Exchange of India Limited
- Adjudication Order in Respect of Devendra Gupta in the matter of NIIT Technologies Limited

❖ **High Court**

- Appeals filed challenging the judgement and award passed by the Principal District Judge and Motor Accident Claims Tribunal, stands dismissed.
- Civil Appeal was allowed directing the Insurance Company to pay amount as per the Insurance Policy with Clause on ‘Personal Insurance Cover

- High Court sets aside Director's disqualification & ordered reactivation of Director Identification Number ("DIN") and Digital Signature Certificate ("DSC")

❖ **Supreme Court**

- Financier directed to pay composite sum to the Complainant towards damages for 'deficiency' in service and costs for omission to give proper notice before taking repossession of the vehicle

We have prepared a comprehensive summary for quick reference of such updates and Judgements / orders issued during the week of September 28, 2020 to October 2, 2020.

**Thank you,
Swift Team**

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REGULATORY UPDATES

MCA UPDATES

1. **MCA extends the Companies Fresh Start Scheme ("CFSS") 2020 vide General Circular No. 30/2020 dated September 28, 2020**



- ❖ In continuation to General Circular No.12/2020 dated March 30, 2020 on CFSS allowing stakeholders to complete their pending compliances by filing necessary documents with the ministry and granting immunity from launching of prosecution and proceedings on account of delay in certain filings dated March 30, 2020, in view of the large scale disruption caused by the COVID-19 pandemic and after due examination, it has been decided to extend aforesaid scheme till **December 31, 2020** from earlier limit of **September 30, 2020**. All other requirements provided in the said Circular shall remain unchanged.

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

2. **MCA extends the LLP Settlement Scheme ("LLPSS"), 2020 vide General Circular No. 31/2020 dated September 28, 2020**



- ❖ In continuation to General Circular No.13/2020 dated March 30, 2020 on LLPSS allowing any defaulting Limited Liability Partnerships ("LLPs") to file documents in accordance with provisions of this scheme, and in view of large scale disruption caused by the COVID-19 pandemic and after due examination, it has been decided to extend aforesaid scheme till **December 31, 2020** from earlier limit of **September 30, 2020**. All other requirements provided in the said Circular shall remain unchanged.

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

3. **MCA introduces an extension of time- Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 vide General Circular No 32/ 2020 dated September 28, 2020**



- ❖ In continuation to General Circular No.23/2020 dated June 17, 2020 on "Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 and after due examination and it has been decided to extend scheme till December 31, 2020. Accordingly, the figures **"30.09.2020" and "01.10.2020"** wherever they appear in the circular, shall be substituted with figures **"31.12.2020" and "01.01.2021"** respectively. All other requirements provided in the said Circular shall remain unchanged.

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

4. **MCA introduces clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 read with rules made thereunder on account of COVID-19 vide General Circular No 33/ 2020 dated September 28, 2020**



- ❖ In continuation to General Circulars No.14/2020 dated April 8, 2020, No.17/2020 dated April 13, 2020 and No.22/2020 dated June 15, 2020 and after due examination and it has been decided to allow companies to conduct their Extraordinary General Meetings ("EGMs") through Video Conferencing ("VC") or Other Audio Visual Means ("OAVM") or transact items through postal ballot in accordance with the framework provided in the aforesaid Circulars up to **December 31, 2020** from the earlier limit of **September 30, 2020**. All other requirements provided in the said Circulars shall remain unchanged.

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

5. **MCA introduces clarification regarding creation of Deposit Repayment Reserve of 20% under Section 73(2)(c) of the Companies Act 2013 and to invest or Deposit 15 % of amount of Debentures under Rule 18 of the Companies (Share capital and Debentures) Rules 2014 vide General Circular No 34/2020 dated September 29, 2020**



- ❖ In continuation of General Circulars No. 11/2020 dated March 24, 2020 and General Circular No. 24/2020 dated June 19, 2020 and keeping in view the requests received from various stakeholders seeking extension in time for compliance account of COVID-19, it has been decided to further extend the time in respect of matters referred to in paragraphs V (Requirement under Section 73(2)(c) of the Companies Act 2013 to create Deposit Repayment Reserve of 20% of deposits maturing during Financial year 2020-21) and VI (Requirement under Rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 to invest or deposit at least 15% of amount of Debentures maturing in specified methods of investments or deposits before April 30, 2020) of the aforesaid circular dated March 24, 2020 from **September 30, 2020 to December 31, 2020**. All the other requirements of the Circular remain unchanged.

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

6. **MCA introduces relaxation for filings under Section 124 and 125 of the Companies Act, 2013 read with Investor Education and Protection Fund Authority Rules (Accounting, Audit, Transfer and Refund) Rules vide General Circular No. 35/2020 dated September 29, 2020**



- ❖ MCA has already extended the CFSS, 2020 till December 31, 2020 through General Circular No 30/ 2020 dated September 28, 2020. In relation to this necessary relaxation, in so far as filing of various IEPF e-forms (IEPF-1, IEPF-1A, IEPF-2, IEPF-3, IEPF-4 and IEPF-7) and e-verification claims filed in Form IEPF-5 without any additional fees till **December 31, 2020** has also been provided in the said circular. The stakeholders are advised to plan their other actions accordingly.

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

7. **MCA introduces amendments to Companies (Appointment and Qualification of Directors) Rules, 2014 vide Gazette Notification dated September 28, 2020**



- ❖ In the Companies (Appointment and Qualification of Directors) Rules, 2014, in Rule 6 pertaining to compliances required by a person eligible and willing to be appointed as an independent director, which states any person who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of 10 (Ten) months from such commencement; apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company
- ❖ In the following sub-rule (1), in clause (a), for the words “ten months” the words “thirteen months” shall be substituted.

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

8. **MCA introduces amendments to Companies (Meetings of Board and its Powers) Rules, 2014 vide Gazette Notification dated September 28, 2020**



- ❖ In the Companies (Meetings of Board and its Powers) Rules, 2014, in Rule 4(2) relating to Matters not to be Dealt with in a meeting through Video Conferencing (“VC”) or Other Audio Visual Means (“OAVM”), in sub-rule (2) which states that the meetings on matters referred to in sub-rule (1) may be held through VC or OAVM in accordance with Rule 3, for the figures, letters and word **“September 30, 2020”**, the figures, letters and word **“December 31, 2020”** shall be substituted.

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

SEBI UPDATES

1. SEBI introduces Operating Guidelines for Investment advisors in International Finance Service Center (IFSC) vide Circular dated September 28, 2020:



- ❖ SEBI, vide Circular dated January 09, 2020 issued Operating Guidelines for Investment Advisers in International Financial Services Centre. Subsequently, certain clarifications on Operating Guidelines were issued vide Circular dated February 28, 2020.
- ❖ Pursuant to SEBI Circular dated August 21, 2020 and developments thereafter, it has been decided to amend the provisions of the aforesaid operating guidelines, as under.

Clause 3 of the Operating Guidelines read with para 3 of Circular dated February 28, 2020 is amended as follows-

“3. The following persons shall be eligible to apply to the Board for registration as an Investment Adviser in IFSC:

- a. Any entity, being a company or a limited liability partnership (LLP) or any other similar structure recognised under the laws of its parent jurisdiction, desirous of operating in IFSC as an Investment Adviser (IA), may form a company or LLP to provide investment advisory services.*
- b. The formation of a separate company or LLP shall not be applicable in case the applicant is already a company or LLP in IFSC.”*

Clause 4 of the Operating Guidelines is amended as follows-

“4. Persons seeking registration under the Investment Adviser Regulations read with these Guidelines shall provide investment advisory services only to those persons referred in Clause 9 (3) of the IFSC Guidelines. Further, IAs shall ensure Page 2 of 2 to comply with the applicable guidelines issued by the relevant overseas regulator/ authority, while dealing with persons resident outside India and non-resident Indians seeking investment advisory services from them.”

Clause 8(c) of the Operating Guidelines is amended as follows-

“c. The IA/ parent entity shall fulfil the aforesaid net worth requirement, separately and independently for each activity undertaken by it under the relevant regulations.”

Clause 9 of the Operating Guidelines is amended as follows-

“9. An IA shall ensure to conduct annual audit in respect of compliance with Investment Adviser Regulations and these guidelines from a chartered accountant or a company secretary.”

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

2. SEBI issues clarifications for recovery of assets of defaulter member and recovery of funds from debit balance clients of defaulter member for meeting the obligations of clients / Stock Exchange / Clearing Corporation vide Circular dated September 28, 2020:



- ❖ SEBI, vide Circular dated December 17, 2018 had specified early warning mechanism to prevent diversion of client's securities and consequential action(s) to be initiated by the Stock Exchanges (“SEs”), Clearing Corporations (“CCs”) and Depositories were also specified in the said Circular.
- ❖ Further, SEBI vide Circular dated July 01, 2020 (“SOP Circular”) had specified Standard Operating Procedure in the cases of Trading Member (“TM”) / Clearing Member (“CM”) leading to default. SEBI Circular dated June 22, 2017 and the SOP Circular have inter alia specified that all SE/CC shall initiate the process to settle debit balance client accounts by selling their securities if such clients fail to clear their debit balance after giving notice period for 5 days.
- ❖ As per Section 2(j) of the Securities Contracts (Regulation) Act, 1956 (“SCRA”) a stock exchange is an entity which is established for the purposes of assisting, regulating or controlling the business of buying, selling or dealing in securities. A Stock Exchange is recognized by SEBI in terms of Section 4 of SCRA as a first level regulator in securities market
- ❖ In the case of default by TM/CM, it has been noted that in certain cases there is shortfall of funds/securities with defaulter member to meet the obligation of clients / SE / CC. The bye-laws of SE/CC provide for the procedure for declaring a member

as defaulter when, amongst other reasons, the member is not able to fulfil its obligations and also provide for initiation of proceedings in a court of law whenever a member is declared as a defaulter and there is a shortfall of funds/securities with the defaulter member.

- ❖ The SE/CC are advised to initiate suitable actions for liquidating the assets (movable and immovable) of defaulter member including that of debit balance clients (to the extent of debit balance), within six months of declaration of defaulter, for recovery of the assets not in possession of the SE/CC, before appropriate court of law.

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

3. SEBI issues amendments to guidelines for preferential issue and institutional placement of units by a listed Real Estate Investment Trusts (“REITs”) vide Circular dated September 28, 2020:



- ❖ SEBI issued Circular dated November 27, 2019 providing guidelines for preferential issue and institutional placement of units by listed REITs (“Guidelines”). The guidelines were subsequently revised vide Circular dated March 13, 2020.
- ❖ In view of the situation emerging out of the COVID-19 pandemic SEBI has granted certain relaxations for raising of equity capital. On similar lines the extant guidelines for preferential issue and institutional placement of units by listed REITs stand modified as set out in the **Annexure** to this Circular.

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

4. SEBI issues amendments to guidelines for preferential issue and institutional placement of units by a listed Infrastructure Investment Trusts (“InvITs”) vide Circular dated September 28, 2020:



- ❖ SEBI issued Circular dated November 27, 2019 providing guidelines for preferential issue and institutional placement of units by listed InvITs (“Guidelines”). The guidelines were subsequently revised vide Circular

dated March 13, 2020.

- ❖ In view of the situation emerging out of the COVID-19 pandemic SEBI has granted certain relaxations for raising of equity capital. On similar lines, the extant guidelines for preferential issue and institutional placement of units by listed InvITs stand modified as set out in the **Annexure** to this Circular.

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

5. **SEBI issues relaxation with respect to validity of SEBI observations and revision in issue size vide Circular dated September 29, 2020**



- ❖ Securities and Exchange Board of India (“SEBI”), vide Circular dated April 21, 2020 had given certain relaxations with respect to validity of SEBI observations and filing of fresh offer document in case of increase or decrease of issue size beyond a particular threshold.
- ❖ There have been representations for continuation of the relaxations granted in April 21, 2020 in view of the prevailing conditions due to COVID- 19.
- ❖ After due consideration, it has been decided that the relaxation mentioned at Sr. No. 1(ii) of **SEBI Circular no. SEBI/HO/CFD/DIL1/CIR/P/2020/66** dated April 21, 2020 for revision in issue size up to 50% shall continue till **March 31, 2021** from the earlier timeline of **December 31, 2020**.
- ❖ Secondly, the validity of the SEBI observations expiring between **October 1, 2020 and March 31, 2021 shall be extended up to March 31, 2021**, subject to an undertaking from lead manager to the issue confirming compliance with Schedule XVI of the ICDR Regulations, 2018 while submitting the updated offer document to the Board.
- ❖ This Circular shall come into force with effect from October 01, 2020.

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

6. SEBI introduces framework for monitoring of foreign holding in Depository Receipts ('DRs') vide Circular dated October 01, 2020:



- ❖ SEBI had notified the framework for issuance of Depository Receipts ('DRs') by a Listed Company vide its Circular dated October 10, 2019.
- ❖ The said Circular, at Para 2.19 to 2.21, inter-alia, provided the obligations of Indian Depository and Domestic Custodian, whereby, Indian Depositories were required to develop a system to monitor the foreign holding, including that held by way of DRs, as per the limits prescribed under the Foreign Exchange Management Act, 1999 and applicable SEBI Regulations, and disseminate the information regarding outstanding DRs and available limit for conversion. For this purpose, the Circular provided that Indian Depositories shall have necessary arrangement with the Domestic Custodian and / or Foreign Depository.
- ❖ Based on discussion with market participants, the broad operational guidelines for the above purpose have been placed at Annexure to this circular. Indian Depositories, in consultation with each other and market participants, may prescribe the formats and other details, as may be necessary to operationalize the above

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

7. SEBI issues relaxation in timelines for compliance with regulatory requirements vide Circular dated October 01, 2020:



- ❖ In view of the situation arising due to COVID-19 pandemic, lockdown imposed by the Government and representations received from Stock Exchanges, SEBI had earlier provided relaxations in timelines for compliance with various regulatory requirements by the trading members / clearing members / depository participants,
- ❖ In view of the prevailing situation due to COVID-19 pandemic and representation received from the Stock Exchanges, SEBI has decided to further extend the timelines for compliance with the regulatory requirements by the trading members / clearing members, mentioned in the SEBI circulars, as under:

Compliance requirements for which timelines were extended vide SEBI circular SEBI/HO/MIRSD/DOP/CIR/P/2020/61 dated April 16, 2020.	S. No. for which timeline is extended	Extended timeline / Period of exclusion
Maintaining call recordings of orders / instructions received from clients.	XI	December 31, 2020
Compliance requirements for which timelines were extended vide SEBI circular SEBI/HO/MIRSD/DOP/CIR/P/2020/62 dated April 16, 2020	S. No. for which timeline is extended	Extended timeline / Period of exclusion
KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days.	III	Period of exclusion shall be from March 23, 2020 till December 31, 2020.
Compliance requirements for which timelines were extended vide SEBI circular SEBI/HO/MIRSD/DOP/CIR/P/2020/141 dated July 29, 2020.	S. No. for which timeline is extended	Extended timeline / Period of exclusion
Cyber Security & Cyber Resilience Audit for the year ended March 31, 2020.	-	December 31, 2020

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

8. SEBI reviews the provisions regarding valuation of debt and money market instruments due to the COVID - 19 pandemic vide Circular dated October 01, 2020



- ❖ In terms of the SEBI Circular dated September 24, 2019, valuation agencies engaged by Association of Mutual Funds in India ('AMFI') recognize default of a security under clause 5.1.1.2 and 9.1.2. The said provisions were relaxed vide SEBI Circular dated April 23, 2020 till the period of moratorium permitted by Reserve Bank of India ('RBI'). SEBI vide Circular dated August 31, 2020 has provided relaxation to Credit

Rating Agencies in recognition of default for restructuring by the lender/ investors solely due to COVID-19 related stress.

- ❖ In line with the same, discretion needs to be provided to valuation agencies engaged by Asset Management Companies ('AMCs') /AMFI for recognition of default in case proposal of restructuring of debt is solely due to COVID-19 related stress.
- ❖ Further, if the valuation agency, based on its assessment of the proposal, is of the view that the proposed restructuring is solely due to fallout of COVID-19 pandemic then the valuation agency may not consider the restructuring / non receipt of the dues as a default for the purpose of valuation of money market or debt securities held by Mutual Funds. Further, valuation agencies shall ensure that change in terms of investment, financial stress of the issuer and the capability of issuer to repay the dues/borrowings on the extended dates are reflected in the valuation of the securities.
- ❖ In the scenario as stated above, if there is any difference in the valuation of securities provided by two valuation agencies, the conservative valuation shall be accepted. The above modifications permitted to SEBI Circular dated September 24, 2019 shall be in force till **December 31, 2020**.
- ❖ As per the Principles of Fair Valuation specified in Eighth Schedule of SEBI (Mutual Funds) Regulations, 1996, and other circulars issued, AMCs shall continue to be responsible for true and fairness of valuation of securities.

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

9. **SEBI issues Standard Operating Procedure ("SOP") in the cases of Trading Member / Clearing Member leading to default - Extension of timeline for submission of the Undertaking cum Indemnity bond by the Trading members (TMs) / Clearing Members (CMs) for all the bank accounts vide Circular dated October 01, 2020**



- ❖ In terms of clause 9 of SEBI circular dated July 01, 2020 on the captioned subject, TMs / CMs are required to provide a list of all their bank accounts to the Stock Exchanges (SEs) / Clearing Corporations (CCs) and the SEs / CCs shall obtain an

Undertaking cum Indemnity bond from the TM within 90 days from the date of the said SEBI Circular.

- ❖ In view of the prevailing situation due to COVID-19 pandemic and representation received from the Stock Exchanges, SEBI has decided to extend the timeline for submission of the Undertaking cum Indemnity bond by the TM / CM for all the bank accounts by a period of one month i.e. till **October 31, 2020** and has also decided to provide flexibility to the SEs / CCs for modifying the Undertaking cum Indemnity bond they need to take from TMs / CMs and suitably modify the draft undertaking wherever required.

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

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JUDGEMENTS/ ORDERS

NCLT

1. **NCLT Mumbai bench admits the claim of operational creditor against Great Unison Contracts India Private Limited**

NCLT admits operational creditor's claim application against the corporate debtor, though the said claim was filed beyond the stipulated period.



NCLT notes that Corporate Debtor undertook inland and overseas contracts for various third parties. It placed orders with other parties for the purpose of executing contracts as well as supply of goods and services. One of the other operational creditor named International Marine and Energy DMCC of Dubai, UAE brought in an application under Section 9 of the Insolvency and Bankruptcy Code (“IBC”) alleging default of an operational debt worth US\$ 4,69,598 (INR 3,02,51,882/-), which was admitted by the tribunal by an order dated January 08, 2019, hence initiating Corporate Insolvency Resolution Process (“CIRP”) of the Corporate Debtor.

Mr. Gaurav Sharma was appointed as the Interim Resolution Professional (“IRP”) and subsequently by an order dated February 19, 2019 Ms. Dipti Mehta was appointed as the Resolution Professional (“RP”), however despite all possible steps taken, no viable Resolution Plan was received and accepted by the Committee of Creditors (“COC”).

The COC by its meeting held on November 20, 2019 by 100 per cent voting share resolved to liquidate the Company as a non-going concern. Tribunal by an order dated January 23, 2020 directed that the Company is to be liquidated and appointed the Ms. Dipti Mehta as the Liquidator. The Liquidator made a public announcement under Regulation 12 of IBC seeking claims from the stakeholders on or before March 11, 2020.

The applicant was unaware about the initiation of CIRP against the Corporate Debtor, and once being aware of the same, the applicant on June 03, 2020 submitted its claim before the Liquidator for payment of its dues via email. The said claim was declined by the Liquidator via email of the even date outlining the fact that the said claim was filed beyond the time limit prescribed for it.

The applicant stated in its application before the Tribunal that it was unaware of the public advertisement for liquidation of the Corporate Debtor, and its failure to submit its claim before the Liquidator was neither deliberate nor intentional. Further it requested the Tribunal to direct the RP to admit its claim against the Corporate Debtor.

Based on the above facts, the Tribunal observed that, the admission of the sub sequential claim of the applicant will not be prejudicial to the interest of any party as the Corporate Debtor has already been put under liquidation and the liquidation process has not been completed. Hence, ordered the RP to admit the claim of said Operational Creditor.

The said admission of claim is subject to the condition that the applicant submits its claim in proper form within a period of two weeks from the date of this order. Further, the RP is directed to deduct INR. 1,00,000/- (INR One Lakh) from the admitted claim, if any, towards the cost of this Application and credit it to the account of the Corporate Debtor.

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

2. NCLT Kochi bench allowed the petition of impleading the auditor in the case of oppression and mismanagement against M/s. Dhanam Publications Private Limited.

The Kochi Bench of National Company Law Tribunal (“**Tribunal**”) has allowed the Company petition filed by some of the minority shareholders (“**Petitioners**”) of Dhanam Publications Private Limited (“**Respondent**”). Petitioners contended that they are being oppressed due to the mismanagement of the Company as a result of non-compliance of various statutory duties. Further the management of the Respondent have failed to hold Annual General Meeting for the FY 2015-16 and 2016-17, and the decisions taken by the Directors/Respondents on September 30,2017 are null and void, which includes signing of Audit Records / signing of Tax returns, cheque signing, execution of contracts etc.

In order to appraise the above facts, the petitioners had issued a letter to Mr. Paul Sebastian (“**auditor**”) stating that he too had failed in discharging his statutory as well as fiduciary duties and obligations to the shareholders and if the Auditor had been diligent, such anomalies and illegalities would not have been happened.

The Respondents in their counter affidavit stated that, they were not aware of such letter and it is not proper to state above aspects since the Auditor is not a party to the Company Petition. In response to which, the Petitioners pleaded that it is necessary to

implead the Auditor of the Respondent company in the above Company Petition as a respondent, in order to bring out more true and actual aspects about Respondent company.

The Respondents further stated that the said Interlocutory application is not maintainable as the statutory auditor of the company is a third party and it is settled law that the third parties who are not members in the Company cannot be impleaded in or brought under the purview of Petition filed under Sections 241-242 of the Companies Act, 2013. In addition, the respondent argued that even if the third party could be impleaded into this Company Petition, the same cannot be done as the Statutory Auditor has in no way faulted to discharge statutory as well as fiduciary duties and obligations towards the Respondent company.

Based on the facts and circumstance mentioned by the Petitioners and Respondents, Tribunal while pronouncing its order stated that the respondents cannot take two stands in its counter, i.e. on one hand Respondents say, Auditor has not been made a party to the proceedings but on the other hand they contend that the Auditor cannot be made a party to the proceedings as he is not a Member of the respondent company. Due to this, the Tribunal finds it necessary to hear the contentions/views of the Auditor who is to be impleaded to the Company Petition, in order to arrive a correct decision in the main Company Petition filed under Sections 241-242 of the Companies Act, 2013.

In the view of the same, the Tribunal directed that Mr. Paul Sebastian (the auditor of the Respondent Company) be impleaded as Respondent No.5 in the above Company Petition and further directed the Registry to carry out the impleadment in the Company Petition and issue notice to the additional Respondent No.5 to file his counter in the C.P. within four weeks from the date of receipt of the notice.

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

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NCLAT

1. NCLAT dismiss the Condonation of Delay of 338 Days.



The Appellant filed the Appeal under Section 421 of the Companies Act, 2013 against the order passed by the National Company Law Tribunal, Chennai Bench, whereby the name of the Company M/s Chikara Eco Ventures Limited is restored to the Register of Companies maintained by the RoC, Chennai.

The Registrar of tribunal observed that the Appellant was required to refile the Appeal within 7 days from the date of intimation of the defects. But the Appellant has refiled the Appeal after a delay of 338 days.

Learned Counsel for the Appellant submits that the delay in filing the Appeal is only four (4) days and the delay of refiling of the Appeal is 338 days as certain documents were to be obtained and translated and thereafter, Covid-19 lockdown was imposed with effect from March 24, 2020. Therefore, there is a delay in refiling the Appeal and further submits that once an Appeal has been numbered, it means the delay in refiling Appeal has already been condoned and placed reliance on the Judgment of the Hon'ble Supreme Court in the Case of P. Ram Bhoopal Vs. Pragnya River Bridge Developers Ltd. & Ors.

Based on the facts and circumstance mentioned in the order, it was observed that Tribunal cannot condone the delay beyond 45 days. Thus, the Application for condonation of delay of 338 days was dismissed.

To read the Order in details, please click [here](#).

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SEBI

1. Adjudication Order in the matter of National Stock Exchange of India Limited



Securities and Exchange Board of India ("SEBI") conducted an examination to ascertain whether National Stock Exchange of India Limited ("NSE" or "the Noticee") had engaged in unrelated or non-incidental activities which are not related to its activities as a stock exchange without approval of SEBI as required under Regulation 41(3) of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 ("SECC 2012") and Regulation 38(2) of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 ("SECC 2018").

Noticees objected that (i) Investment is by its wholly owned subsidiary and not by Noticee, and (ii) Wholly owned subsidiary is not in control over the investee company. In support of its first objection the Noticee has relied upon a ruling in TELCO matter.

The objection seems to be that a subsidiary company is independent of its holding company. The courts have laid down principles when a corporate veil can be lifted or pierced, to look at and take into account, the shareholders or entities in actual control of the company concerned. In this regard, the Hon'ble Supreme Court in LIC Vs. Escorts took the opportunity to set out the basic conditions and principles to be applied and the various circumstances under which the corporate veil of a company could be pierced. Applying the said principles, AO is of the view that this case is a fit case for lifting of corporate veil as the Noticee and its 100% owned subsidiary NSICL is closely connected.

The AO observed that Noticee had engaged, directly and/ or through its wholly owned subsidiary NSICL, in activities that are unrelated/non-incidental to its activities as a stock exchange by way of acquisition of stake in PXIL, CAMS, NSEIT Limited, NEIL, MSIL, and RXIL without seeking approval of SEBI and further observed that each investment activities constitute an independent activity.

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

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2. Adjudication Order in Respect of Devendra Gupta in the matter of NIIT Technologies Limited

In the matter of NIIT Technologies Limited (NIIT), Securities Exchange Board of India (SEBI) conducted investigation to into the suspected insider trading in the shares of NIIT. During the course of investigation, it was observed that Mr. Devendra Gupta ('the noticee'), who was the Senior Vice President of NIIT Technologies, had allegedly failed to disclose the transactions carried out by him in the scrip of NIIT Technologies to the Company and to the Stock Exchanges, as required under Regulation 13(4) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations') read with Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations 2015').

Adjudicating officer observed that notice Allegedly entered into opposite transaction in the shares of the NIIT within the restricted period of six months, thereby violated the provisions of Clause 4.2 under Schedule I – Part A of Model Code of Conduct for Prevention of Insider Trading for Listed Companies read with Regulation 12(1) of the PIT Regulations, 2015.

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

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HIGH COURT

1. Appeals filed challenging the judgement and award passed by the Principal District Judge and Motor Accident Claims Tribunal, stands dismissed.



In M.F.A. No. 4927/2010:

Between

The Managing Director, KSRTC, Central Offices,
Bengaluru, Represented by its Divisional Controller,
KSRTC,

Mangaluru Division, Mangaluru

Appellant

1. National Insurance Company Limited

Respondents

2. K. Vishwanath Shetty

Respondents

And

In M.F.A. No. 4020/2010:

Between

M/s. National Insurance Company Limited,
Represented by its Regional Office, Administrative Officer

Appellant

1. The Managing Director, KSRTC, Central Offices,
Bengaluru, Represented by its Divisional Controller, KSRTC,
Mangaluru Division, Mangaluru

Respondents

2. K. Vishwanath Shetty

Respondents

Date of Judgement: September 28, 2020

The two appeals filed by the Managing Director, KSTRTC and the National Insurance Company Limited, respectively, challenging the judgement and award passed on the file of the Principal District Judge and Motor Accident Claims Tribunal, Dakshina Kannada, Mangalore, questioning the compensation awarded, was dismissed with

order to deposit the amount, if any be transmitted and the Registry is directed to send the records to the concerned Tribunal, forthwith.

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

2. Civil Appeal was allowed directing the Insurance Company to pay amount as per the Insurance Policy with Clause on 'Personal Insurance Cover

1. Smt. Mangala wd/o Vijay Khandar	Appellant	Ori. Petitioner
2. Ku. Pallavi d/o Vijay Khandar	Appellant	Ori. Petitioner
3. Sagar s/o Vijay Khandar	Appellant	Ori. Petitioner
4. Smt. Indubai wd/o Annaji Khanda	Appellant	Ori. Petitioner
National Insurance Company Limited	Respondents	Ori. Respondent

Date of Judgement: September 29, 2020

Civil appeal and Claim petition was allowed, and judgement delivered in Special Claim Petition was set aside.

The issue that involved in the appeal is about the liability of insurance company to pay as per the clause of 'personal insurance cover' as mentioned in the insurance policy. Based upon the facts of the case and the Judgements relied upon by the appellants and on behalf of the Insurance Company, conclusion was drawn, by observation in case of Laxmi Narain Dhut and relevant provisions of the Motor Vehicle Act, 1988 and final conclusion was drawn on the factual aspects and Order was passed.

The Court in its Order directed the respondent to pay the appellants towards the compensation on account of death of father of appellant 2 along with interest from the date of filing of petition till realization. Further, the Court ordered, directing the Motor Accident Claims Tribunal on depositing the amount to the appellants 1, 2 & 3 and payment of interest to be paid to appellant 1. It was also directed that the cost of the main petition and the appeal be paid by the respondent to the appellants and the amount be deposited within 15 days with the Motor Accident Claims Tribunal, Nagpur.

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

3. High Court sets aside Director's disqualification & ordered reactivation of Director Identification Number ("DIN") and Digital Signature Certificate ("DSC")

Shri Thirunavukkarasu Ragunathan	Petitioner 1
Director of	
M/s.Chaya Industries Limited;	
M/s.Sunvis Systems Private Limited;	
M/s.Evcel Electrek Private Limited	
Shri Ragunathan Jothi	Petitioner 2
Director of	
M/s.Chaya Industries Limited;	
M/s.Sunvis Systems Private Limited;	
M/s.Evcel Electrek Private Limited	
Union of India	Respondent 1
Ministry of Corporate Affairs ("MCA")	Respondent 2
Registrar of Companies ("RoC") Kerala District	Respondent 3
Registrar of Companies ("RoC") Tamilnadu District	Respondent 4
The Recover Officers (Ernakulam District)	Respondent 5
Canara Bank (Kerala District)	Respondent 6
Industrial Development Bank of India Palakkad District	Respondent 7

The petition filed by the Directors of M/s. Chaya Industries Limited ("the Company"), praying to reactivate the DIN and DSC of the petitioners in order to avail the benefit of Company Fresh Start Scheme 2020 introduced by Ministry of Corporate Affairs vide its General Circular No. 12/2020 dated March 30, 2020 has been duly accepted by the Hon'ble High Court of Kerala.

The Company officially closed its business on January 01, 2008 on account of labour unrest. The Petitioners had filed the statutory returns of the Company with the Registrar of Companies till 2013 and were unable file the returns in subsequent years because the assets of the Company were taken over by the banks and part of the assets were sold for recovery of dues. Due to this the Petitioners were not in possession of sufficient data to file the statutory returns. As a result of non-filing of statutory returns for FY 2014-15, 2015-16, 2016-17, the Petitioners were disqualified in accordance to section 164 of the Companies Act, 2013 for a cumulative period commencing from November 01, 2017 to

October 31, 2022. On account of the said disqualification of the petitioners as Directors of the Company, the petitioners were not able to function as Directors of the M/s.Sunvis Systems Private Limited and M/s.Evcel Electrek Private Limited as well.

Since the MCA introduced the Company Fresh Start Scheme 2020, the Petitioners were desirous to avail the benefit of the scheme. The said scheme lists out the certain categories of Companies who are not eligible for the scheme, the Petitioners in their petition pointed out that the Company did not fall under any of such categories of Companies and prayed to the Hon'ble High Court to re-activate their DIN and DSC, enabling them to avail the benefit of the MCA's scheme and file the pending statutory returns.

Based on the above facts and perusal of the scheme the Hon'ble High Court came to a firm opinion that in order for the Scheme to be effective, the Directors of the Companies shall be given an opportunity to avail the benefit of the Scheme. The launch of scheme itself constitutes a fresh and continuing cause of action and therefore, the question of delay or limitation should not arise.

The Hon'ble High Court observed that the suspension of DINs would not only affect the petitioners and the Company but also the other Companies in which the petitioners are Directors. Hence, to disqualify Directors permanently and not allowing them to re-activate their DINs and DSCs could render the Scheme nugatory.

The Hon'ble High Court of Kerala disposed of the petition by directing the Respondents to reactivate the DINs and DSCs of the Petitioners forthwith so as to enable the Petitioners to avail the benefit of Company Fresh Start Scheme, 2020.

In addition to the aforesaid case, there is another judgement given by the Hon'ble High Court of Delhi dated 02nd September 2020 between 'SANDEEP AGARWAL & ANR and UNION OF INDIA & ANR' on the similar facts and resulted in a similar decision. In the said case, the petitioners Mr. Sandeep Agarwal and Ms. Kokila Agarwal were directors of two companies namely Koksun Papers Private Limited and Kushal Power Projects Private Limited out of which due to default in filing of financial statements by Kushal Power Projects Private Limited, such company was struck off by the registrar and directors were disqualified under section 164 of Companies Act, 2013 from even Koksun Papers Private Limited (hereinafter referred as "Koksun Papers") which was not struck off, as a result of such

disqualification the statutory filings of Koksun Papers could also not be done which is an active company.

Since Koksun Papers meets all the conditions to avail the Company Fresh Start Scheme 2020 ("Scheme") and still could not avail the scheme due to disqualification of DIN and deactivation of DSCs of its directors to which the Hon'ble High Court of Delhi citing similar reasons as aforementioned judgement of the Hon'ble High Court of Kerala on the intent of the scheme, set aside the disqualification of the petitioners along with directing the respondents to reactivate the DIN and DSCs of the directors within a period of three working days from the date of judgement so as to enable Koksun Papers to avail the benefit of said scheme.

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

To read the order of Delhi High Court in detail, please click [here](#)

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SUPREME COURT

1. Financier directed to pay composite sum to the Complainant towards damages for 'deficiency' in service and costs for omission to give proper notice before taking repossession of the vehicle.

M/s. Magma Fincorp Limited
Rajesh Kumar Tiwari

Appellant
Respondent



Date of Judgement: October 1, 2020

The appeal filed against the order passed by the National Consumer Disputes Redressal Commission dismissing Revision Petition of 2018, filed by the Appellant (Financier) under Section 21(b) of the Consumer Protection Act, 1986, against an order passed by the State Consumer Disputes Redressal Commission, Uttar Pradesh, dismissing the Appeal filed by the Financier and affirming the order passed by the District Consumer Disputes Redressal Forum, Ambedkar Nagar, Uttar Pradesh ['District Forum'], whereby the District Forum allowed Complaint filed by the Respondent, Rajesh Kumar Tiwari ['Complainant'], and directed the Financier to pay to the Complainant, along with interest towards physical and mental injury and for the litigation expenses.

The said appeal was allowed, directing the Financier shall pay a composite sum to the Complainant towards the damages for 'deficiency' in service and costs for omission to give the Complainant a proper notice before taking repossession of the vehicle.

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

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