

**Swift e-Bulletin**

**Edition 12/20-21**

**Week – October 5<sup>th</sup> to October 9<sup>th</sup>**

**Quote for the week:**

*“Success is not final, failure is not fatal, it is the courage to continue that counts.”*

*- Sir Winston Churchill.*

**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:

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

- Standardization of timelines for listing of securities on Private placement basis;
- Review of Dividend option(s)/Plan(s) in case of Mutual Fund schemes;
- Product labelling of Mutual fund schemes- Risk-o-meter;
- Issuance, listing and trading of Perpetual Non-Cumulative Preference Shares (PNCPS) and Innovative Perpetual Debt Instruments (IPDIs)/ Perpetual Debt Instruments (PDIs) (commonly referred to as Additional Tier 1 (AT 1) instruments);
- Extension of facility for conducting extraordinary meeting(s) of unit holders of InvITs and REITs through Video Conferencing or Other Audio-Visual Means (VC/OAVM);
- Guidelines on Inter Scheme Transfers of Securities;

- Amendments to Securities Contract (Regulation) (Stock exchanges and Clearing Corporations) Regulations, 2018;
  - Amendments to Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
  - Amendments to Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015
  - Amendments to Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993; and
  - Revised FAQ's on Prohibition of Insider Trading Regulations (PIT), 2015.
- ❖ **Ministry of Home Affairs ("MHA") Notification on the following:**
- Amendment to Section 17(1) of Foreign Contribution Regulation Act.
- ❖ **Reserve Bank of India ("RBI") Press release on the following:**
- Statement on Developmental and Regulatory Policies
- 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 initiates Liquidation of Ashapura Intimates Fashion Limited
- ❖ **National Company Law Appellate Tribunal (NCLAT)**
- NCLAT directs the NCLT New Delhi to take up the Pending Appeal within One Week and Dispose of the Same and Pass Orders on Merits In Accordance With Law Within A Period Of Three Weeks
- ❖ **Securities Exchange Board of India (SEBI)**
- Final order in respect of Sumana Ghosh Roy in the matter of PDS Agro Industries Limited
- ❖ **High Court**

- Writ Petition disposed of with a direction to respondent to decide the petitioner's revision application
- Writ Petition filed under Article 226 of the Constitution of India was withdrawn by the Petitioner.
- Writ Petition filed was disposed of on recording the statement given by the respondents on instructions of the Assessing Officer and also held the respondent bound by the same.
- Suit filed for permanent injunction against the defendant from infringing its trade marks, stands dismissed.
- Writ Petition filed under Articles 226 & 227 of the Constitution of India, was favored in part.
- Appeal filed for seeking interference of the Court in respect of the Stay Order passed by Delhi VAT Appellate Tribunal was allowed.

❖ **Supreme Court**

- Special Leave Petition stands dismissed, filed against the Division Bench judgement of the Kerala High Court.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of October 05, 2020 to October 09, 2020.

**Thank you,  
Swift Team**

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## REGULATORY UPDATES

### SEBI UPDATES

**1. SEBI issues clarification on standardization of timelines for listing of securities issued on a private placement basis vide Circular dated October 05, 2020:**



- ❖ SEBI, upon receiving requests from various market participants for clarification on the time period within which securities issued on private placement basis under SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (“**SEBI ILDS**”), SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (“**SEBI NCPRS**”), SEBI (Public Offer and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 (“**SEBI SDI**”) and SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 (“**SEBI ILDM**”) Regulations need to be listed after completion of allotment.
- ❖ After discussions and taking feedback from market participants, SEBI has decided to stipulate the following timelines:

Serial number	Details of Activities	Due date
1.	Closure of issue	T day
2.	Receipt of funds	To be completed by T+2 trading day
3.	Allotment of securities	
4.	Issuer to make listing application to Stock Exchange(s)	To be completed by T+4 trading day
5.	Listing permission from Stock Exchange(s)	

- ❖ Depositories shall activate the International Securities Identification Number (“**ISINs**”) of debt securities issued on private placement basis only after the Stock Exchange(s) have accorded approval for listing of such securities. Further, in order to facilitate re-issuances of new debt securities in an existing ISIN, Depositories are advised to allot such new debt securities under a new temporary ISIN which shall be kept frozen. Upon receipt of listing approval from Stock Exchange(s) for such new debt securities, the debt securities credited in the new temporary ISIN shall be debited and the same shall be credited in the pre-existing ISIN of the existing debt

securities, before they become available for trading. Stock Exchange(s) are advised to inform the listing approval details to the Depositories whenever listing permission is given to debt securities issued on private placement basis.

- ❖ In case there is a delay in listing of securities issued on private placement basis beyond the timelines mentioned above in the table the issuer shall:

- Pay penal interest of **1% p.a.** over the coupon rate for the period of delay to the investor (i.e. from date of allotment to the date of listing);

- Be permitted to utilise the issue proceeds of its subsequent two privately placed issuances of securities only after receiving final listing approval from Stock Exchanges.

- ❖ Clause 4(a) (ii) of the SEBI Circular No. SEBI/HO/MIRSD/DOS3/CIR/P/2019/68 dated May 27, 2019 states that in case of delay in listing of debt securities beyond 20 days from the deemed date of allotment, the Company shall pay penal interest of at least @ 1% p.a. over the coupon rate from the expiry of 30 days from the deemed date of allotment till the listing of such debt securities to the investor. **The said clause stands deleted.**

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

2. **SEBI reviews Dividend option(s) / Plan(s) in case of Mutual Fund Schemes vide Circular dated October 05, 2020:**



- ❖ Schedule Nine and Eleven of SEBI (Mutual Funds) Regulations, 1996 and SEBI dated March 15, 2010, provide the accounting policies to be followed for determining distributable surplus and accounting the sale and repurchase of units in the books of the Mutual Fund.
- ❖ The aforesaid regulatory requirements, inter-alia, mandates that when units are sold, and sale price Net Asset Value (“NAV”) is higher than face value of the unit, a portion of sale price that represents realized gains shall be credited to an Equalization Reserve Account and which can be used to pay dividend. There is a need to clearly communicate to the investor that, under dividend option of a Mutual Fund Scheme, certain portion of his capital (Equalization Reserve) can be distributed as dividend.

❖ Based on the recommendations of Mutual Funds Advisory Committee (“MFAC”), SEBI has decided that:

➤ All the existing and proposed Schemes of Mutual Funds shall name / rename the Dividend option(s) in the following manner:

Option / Plan	Name
Dividend Payout	Payout of Income Distribution cum capital withdrawal option
Dividend Re-investment	Reinvestment of Income Distribution cum capital withdrawal option
Dividend Transfer Plan	Transfer of Income Distribution cum capital withdrawal plan

➤ Offer documents shall clearly disclose that the amounts can be distributed out of investors capital (Equalization Reserve), which is part of sale price that represents realized gains. Further, Asset Management Companies (“AMCs”) shall ensure that the said disclosure is made to investors at the time of subscription of such options/plans

➤ AMCs shall ensure that whenever distributable surplus is distributed, a clear segregation between income distribution (appreciation on NAV) and capital distribution (Equalization Reserve) shall be suitably disclosed in the Consolidated Account Statement provided to investors as required under Regulation 36(4) of SEBI (Mutual Funds) Regulations, 1996 and SEBI Circular No. CIR/MRD/ DP/ 31/2014 dated November 12, 2014.

❖ The aforesaid changes shall not be treated as Fundamental Attribute Change in terms of Regulation 18 (15A) of SEBI (Mutual Funds) Regulations, 1996. All other conditions specified in this regard shall remain unchanged and the provisions mentioned under Point 4 shall be effective from **April 01, 2021**.

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

3. **SEBI issues guidelines on Product Labeling in Mutual Fund schemes – Risk-o-meter vide Circular dated October 05, 2020**



- ❖ SEBI had issued circulars on March 18, 2013 and April 30, 2015 captioned as 'Product Labeling in Mutual Funds'.
- ❖ SEBI based on the recommendation of Mutual Fund Advisory Committee (“**MFAC**”), has reviewed the guidelines for product labeling in mutual funds and the following has been decided:
  - Risk Level of a scheme will be depicted by “Risk-o-meter”, as shown in the circular;
  - Risk-o-meter shall have following six levels of risk for mutual fund schemes
    - Low Risk
    - Low to Moderate Risk
    - Moderate Risk
    - Moderately High Risk
    - High Risk and
    - Very High Risk;
  - The detailed guidelines for evaluation of risk levels of a scheme along with few examples are provided at **Annexure A** to the circular;
  - Based on the scheme characteristics, Mutual Funds shall assign risk level for schemes at the time of launch of scheme/New Fund Offer;
  - Any change in risk-o-meter shall be communicated by way of Notice cum Addendum and by way of an e-mail or SMS to unitholders of that particular scheme;
  - Risk-o-meter shall be evaluated on a monthly basis and Mutual Funds/AMCs shall disclose the Risk-o-meter along with portfolio disclosure for all their schemes on their respective website and on AMFI website within 10 days from the close of each month;



- Mutual Funds shall disclose the risk level of schemes as on March 31 of every year, along with number of times the risk level has changed over the year, on their website and AMFI website; and
- Mutual Funds shall publish the following table of scheme wise changes in Risk-o-meter in scheme wise annual reports and abridged summary:

Scheme name	Risk-o-meter level at start of the financial year	Risk-o-meter level at end of the financial year	Number of changes in Risk-o-meter during the financial year

- ❖ Product label shall be disclosed on:
  - Front page of initial offering application form, Scheme Information Documents (“**SID**”) and Key Information Memorandum (“**KIM**”);
  - Common application form – along with the information about the scheme;
  - The product label with respect to the 2 points above shall be placed in proximity to the caption of the scheme and shall be prominently visible; and
  - Scheme advertisements – placed in manner so as to be prominently visible to investors.
- ❖ Change in Risk-o-meter will not be considered as a Fundamental Attribute Change of the scheme in terms of regulation 18(15A) of SEBI (Mutual Fund) Regulations, 1996
- ❖ This Circular shall be in force with effect from **January 01, 2021**, to all the existing schemes and all schemes to be launched on or thereafter. However, mutual funds may choose to adopt the provisions of this circular before the effective date.

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

4. **SEBI introduces additional framework on issuance, listing and trading of Perpetual Non-Cumulative Preference Shares (“PNCPS”) and Innovative Perpetual Debt Instruments (“IPDIs”)/ Perpetual Debt Instruments (“PDIs”) (commonly referred to as Additional Tier 1 (AT 1) instruments) vide Circular dated October 06, 2020:**



- ❖ Perpetual Non-Cumulative Preference Shares (“PNCPS”) and Innovative Perpetual Debt Instruments (“IPDIs”) / Perpetual Debt Instruments (“PDIs”) (commonly referred to as AT 1 instruments) are essentially non-equity regulatory instruments, forming part of a bank’s capital, governed by Reserve Bank of India (RBI) guidelines and issued under the issuance and listing framework given under Chapter VI of the SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (“NCRPS Regulations”). This Circular shall come into force with effect from **October 12, 2020**.
- ❖ These instruments have certain unique features which, inter-alia, grant the issuer (i.e. banks, in consultation with RBI) a discretion in terms of writing down the principal / interest, to skip interest payments, to make an early recall etc. without commensurate 2 right for investors to legal recourse, even if such actions of the issuer might result in potential loss to investors.
- ❖ Given the nature and contingency impact of these AT 1 instruments and the fact that full import of the discretion is available to an issuer, may not be understood in the truest form by retail individual investors, the matter was discussed in SEBI’s advisory committee on the development of corporate bond market in India viz. Corporate Bonds and Securitization Advisory Committee (“CoBoSAC”). Based on the recommendations of the CoBoSAC, the following shall be the additional framework related to issuance, listing and trading of PNCPS and IPDIs which are proposed to be listed:
  - Manner of Issuance;
  - Investors;
  - Allotment size;
  - Trading lot size; and
  - Other requirements.

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

5. **SEBI extends the facility for conducting extraordinary meeting(s) of unit holders of Infrastructure Investment Trusts (“InvITs”) and Real Estate Investment Trusts (“REITs”) through Video Conferencing or Other Audio-Visual Means (VC/OAVM) vide Circular dated October 08, 2020:**



- ❖ SEBI issued a Circular dated June 22, 2020, whereby InvITs/ REITs were permitted to conduct meetings of unitholders through VC or OAVM subject to compliance with the procedure specified therein.
- ❖ Vide clause 6 of the aforesaid Circular, the facility of VC or OAVM was made available for annual meeting of unitholders in terms of Regulation 22(3)(a) of InvIT Regulations and Regulation 22(3) of REIT Regulations, to be conducted during calendar year 2020. For meetings, other than annual meeting of unitholders, the facility for conducting meeting of unitholders through VC or OAVM was provided up to September 30, 2020.
- ❖ In this respect, representations have been received for extending the facility of VC or OAVM for conducting extraordinary meetings of unitholders for some more time due to the pandemic and thus SEBI has decided to extend this facility up to **December 31, 2020**, subject to compliance with the procedure prescribed in **Annexure-I** of SEBI circular dated June 22, 2020

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

6. **SEBI issues guidelines on Inter Scheme Transfers of Securities vide Circular dated October 08, 2020**



- ❖ Presently, transfers of securities from one scheme to another scheme in the same mutual fund is allowed only if such transfers are done at the prevailing market price for quoted instruments on spot basis and the securities so transferred are in conformity with the investment objective of the scheme to which such transfer has been made.

❖ In order to ensure that such Inter Schemes Transfers (“ISTs”) of securities are in conformity with the above objective, the following additional safeguards have been prescribed by SEBI:

- *In case of Close Ended Schemes, IST purchases would be allowed within “three” business days of allotment pursuant to New Fund Offer (“NFO”) and thereafter, no ISTs shall be permitted to/from Close Ended Schemes;*
- *In case of Open Ended Schemes, ISTs may be allowed in the following scenarios*
  - *For meeting liquidity requirement in a scheme in case of unanticipated redemption pressure*
  - *For Duration/ Issuer/ Sector/ Group rebalancing;*
- *No ISTs of a security shall be allowed, if there is negative news or rumors in the mainstream media or an alert is generated about the security, based on internal credit risk assessment in terms of **clause F** of SEBI Circular dated October 01, 2019 during the previous four months;*
- *AMC shall ensure that Compliance Officer, Chief Investment Officer and Fund Managers of transferor and transferee schemes have satisfied themselves that ISTs undertaken are in compliance with the regulatory requirements. “Template” (**Annexure – A**), as mentioned in the circular and documentary evidence in this regard shall be maintained by the AMC for all ISTs; and*
- *If security gets downgraded following ISTs, within a period of four months, Fund Manager of buying scheme has to provide detailed justification /rationale to the trustees for buying such security.*

❖ This Circular shall be applicable with effect from **January 01, 2021.**

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

**7. SEBI amends the Securities Contract (Regulation) (Stock exchanges and Clearing Corporations) Regulations, 2018 vide Gazette Notification dated October 08, 2020**



❖ These regulations maybe called the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2020.

❖ In regulation 2, sub-regulation (1) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018, clause (d) shall be substituted with the following clause, namely:

*"clearing corporation" means an entity that is established to undertake the activity of clearing and settlement of trades in securities or other instruments or products that are dealt with or traded on a recognized stock exchange and includes a clearing house and a limited purpose clearing corporation specified under Chapter IV-A."*

❖ In regulation 7, sub-regulation (4) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018, after clause (a), the following proviso shall be inserted, namely:

*"Provided that where the applicant is a limited purpose clearing corporation specified under Chapter IV-A, compliance with the requirement under this clause may be demonstrated by way of outsourcing arrangement(s) with a recognized clearing corporation(s), subject to such conditions as may be specified by the Board from time to time;"*

❖ After Chapter IV, the following Chapter shall be inserted, namely, "**CHAPTER IV - A LIMITED PURPOSE CLEARING CORPORATION**" which covers:

- 22A – Applicability;
- 22B - Shareholding in a recognised limited purpose clearing corporation;
- 22C - Composition of the governing board of recognised limited purpose clearing corporation;
- 22D - Contribution to the Settlement Guarantee Fund;
- 22E - Utilization of profits and investments; and
- 22F - Arbitration Mechanism;

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

**8. SEBI amends the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 vide Gazette Notification dated October 08, 2020**



- ❖ These regulations may be called the Securities and Exchange Board of India (Issue and Listing of Debt Securities) (Amendment) Regulations, 2020. Some of the amendments to the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 have been highlighted in the below points.
- ❖ In regulation 2, a. in sub-regulation (1), clause (h) shall be substituted with the following, namely:

*“(h) “Private placement” means an offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum application, which satisfies the conditions specified in section 42 of the Companies Act, 2013.”*
- ❖ In regulation 15, the existing sub-regulation (2), shall be substituted with the following, namely:

*“(2) Every debenture trustee shall amongst other matters, accept the trust deeds which shall contain the matters as prescribed under section 71 of Companies Act, 2013 and Form No. SH.12 of the Companies (Share Capital and Debentures) Rules, 2014. Such trust deed shall consist of two parts:*

  - a. Part A containing statutory/standard information pertaining to the debt issue.*
  - b. Part B containing details specific to the particular debt issue.”*
- ❖ After regulation 21A and before regulation 22, the following new regulation shall be inserted, namely:

*“Creation of Security 21B. The issuer shall give an undertaking in the Information Memorandum that the assets on which charge is created are free from any encumbrances and in cases where the assets are already charged to secure a debt, the permission or consent to create a second or pari passu charge on the assets of the issuer has been obtained from the earlier creditor.”*

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

9. **SEBI amends Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 vide Gazette Notification dated October 08, 2020**



- ❖ These regulations may be called the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2020. Some of the amendments to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 have been highlighted in the below points.

- ❖ In regulation 54, sub-regulation (1) shall be substituted by the following, namely:

*“(1) In respect of its listed non-convertible debt securities, the listed entity shall maintain hundred per cent. asset cover or asset cover as per the terms of offer document/ Information Memorandum and/or Debenture Trust Deed, sufficient to discharge the principal amount at all times for the non-convertible debt securities issued.”*

*And sub-regulation 3 shall be omitted*

- ❖ In regulation 56 in sub-regulation (1), in clause (c), the following new sub-clause shall be inserted after the existing sub-clause (iii), namely:

*“(iv) All covenants of the issue (including side letters, accelerated payment clause, etc.)”*

- ❖ In regulation 56 in sub-regulation (1), the existing clause (d) along with the proviso, shall be substituted with the following, namely,

*“(d) a half-yearly certificate regarding maintenance of hundred percent asset cover or asset cover as per the terms of offer document/ Information Memorandum and/or Debenture Trust Deed, including compliance with all the covenants, in respect of listed non-convertible debt securities, by the statutory auditor, along with the half-yearly financial results: Provided that the submission of half yearly certificate is not applicable where bonds are secured by a Government guarantee.”*

- ❖ In Schedule III in Part A, under the Clause A, after the existing sub-clause 16, the following new sub-clause shall be inserted, namely:

*“17. Initiation of Forensic audit: In case of initiation of forensic audit, (by whatever name called), the following disclosures shall be made to the stock exchanges by listed entities: a) The fact of initiation of forensic audit along-with name of entity initiating the audit and reasons for the same, if available; b) Final forensic audit report (other than for forensic audit initiated by regulatory / enforcement agencies) on receipt by the listed entity along with comments of the management, if any.”*

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

**10. SEBI amends Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 vide Gazette Notification dated October 08, 2020**



❖ These regulations may be called the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2020. Some of the amendments to the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 have been highlighted in the below points.

❖ In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, regulation 14 shall be substituted by the following namely:

*“Every debenture trustee shall amongst other matters, accept the trust deeds which shall contain the matters as specified in section 71 of Companies Act, 2013 and Form No. SH.12 specified under the Companies (Share Capital and Debentures) Rules, 2014. Such trust deed shall consist of two parts:*

- a. Part A containing statutory/standard information pertaining to the debt issue;*
- b. Part B containing details specific to the particular debt issue.”*

❖ In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, In regulation 15

➤ in sub-regulation (1), clause (h) shall be substituted by the following, namely

*“ensure the implementation of the conditions regarding creation of security for the debentures, if any, debenture redemption reserve and recovery expense fund;”*

➤ in sub-regulation (1), clause (t) shall be substituted by the following, namely:



- (i) on a Quarterly basis- (a) carry out the necessary due diligence and monitor the asset cover in the manner as may be specified by the Board from time to time.
- (ii) on a Half-Yearly basis- (a) obtain a certificate from the statutory auditor of the issuer giving the value of receivables/book debts including compliance with the covenants of the Offer Document/Information Memorandum in the manner as may be specified by the Board from time to time.” 3 iii. in sub-regulation (2), in clause (b), after the word “default” and before the words “or which”, the words and symbols “or breach of covenants (as specified in the Offer Document/Information Memorandum and/or debenture trust deed)” shall be inserted”

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

#### **11. SEBI Issues Revised FAQ's on Prohibition of Insider Trading (PIT) Regulations 2015**

❖ SEBI has updated its FAQs and has made updation in the areas namely:



- Whether requirement of pre-clearance is applicable for exercise of employee stock options?
- Whether trading in American Depository Receipts (ADRs) and Global Depository Receipts (GDRs) by employees of Indian companies who are foreign nationals is covered under provisions of PIT Regulations on code of conduct?
- What information should a listed Company maintain in its structured digital database under Regulation 3(5), in case the designated person is a fiduciary or intermediary?
- what information should be collected by the company/ intermediary/ fiduciary under PIT Regulations in case a designated person resigns?

To read the updated FAQ's in detail, please click [here](#).

## MINISTRY OF HOME AFFAIRS UPDATES

1. **Central Government amends Section 17(1) of the Foreign Contribution (Regulation) Act, 2010 vide Gazette Notification dated October 07, 2020:**



- ❖ Section 17(1) in The Foreign Contribution (Regulation) Act, 2010 states Every person who has been granted a certificate or given prior permission under Section 12 shall receive foreign contribution in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate: Provided that such person may open one or more accounts in one or more banks for utilising the foreign contribution received by him: Provided further that no funds other than foreign contribution shall be received or deposited in such account or accounts.
- ❖ The Central Government hereby specifies the State Bank of India, New Delhi Main Branch, 11, Sansad Marg, New Delhi-110001 as the branch for the purposes of the said sub-section.

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

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## RBI UPDATES

### 1. RBI issues Statement on Developmental and Regulatory Policies vide Press release dated October 9, 2020



- ❖ In lieu of the current threat posed by COVID-19 and gradual lifting of lockdown the resumption of economic activities is well underway and the role of the financial sector during this phase of recovery will continue to remain important in facilitating businesses to reach the pre-COVID levels of economic activity. The focus of the Reserve Bank's regulatory actions over the past few months was to first, provide an immediate relief to the borrowers from the impact of COVID-19, through extension of moratorium and other measures, and then to facilitate resolutions through the Resolution Framework for COVID-19 related Stress.
  
- ❖ Accordingly, following measures have been planned to be undertaken which intend to:
  - Enhance liquidity support for financial markets so as to revive activity in targeted sectors of the economy with linkages to other sectors;
  - Provide a boost to exports;
  - Regulatory support to improve the flow of credit to specific sectors within the ambit of the norms for credit discipline;
  - Deepen financial inclusion; and
  - Facilitate ease of doing business by upgrading payment system services so as to improve customer satisfaction, while supporting growth.

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

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## JUDGEMENTS/ ORDERS

### NCLT

#### 1. NCLT Mumbai bench initiates Liquidation of Ashapura Intimates Fashion Limited

NCLT (“Tribunal”) admits the Resolution Professional’s application and initiates liquidation proceedings of the Ashapura Intimates Fashion Limited (“Corporate Debtor”).



Tribunal vide its order dated June 28, 2019 had initiated the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor in accordance with the provisions of section 7 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) and appointed Mr. Kashyap Vaidya as the Interim Resolution Professional (“IRP”) and the Committee of Creditors (“CoC”) in its meeting held on August 26, 2019 had confirmed the appointment of Mr. Kashyap Vaidya as the Resolution Professional (“RP”) of the Corporate Debtor. CoC further in its meeting held on October 11, 2019 resolved to seek for extension of CIRP by 90 Days, which was duly granted by the Tribunal vide its order dated November 25, 2019 and accordingly the period of CIRP was extended by 90 days.

In view of the expiration of the CIRP period including its’ extension thereof, RP apprised the Tribunal that he had received an Expression of Interest (“EOI”) in Form-G from Prospective Resolution Applicants namely Dollar Industries Limited, JG Hosiery Private Limited and Nova Corp. However, no Resolution Plan was submitted by any one of them. Due to this, RP filed this application before Tribunal in order to commence the liquidation proceedings of the Corporate Debtor under section 33(1)(a) of the Code.

The RP further apprised the Tribunal that CoC in its meeting had passed a resolution with majority of not less than 66% of voting share, appointing Mr Bhavesh Rathod as the Liquidator of the Corporate Debtor and the remuneration will be paid to him in accordance with the Regulation 4 of the IBBI (Liquidation Process Regulation), 2016.

Even though the RP claimed that the resolution for appointment of Liquidator was passed with the requisite majority of more than 66%, Tribunal noticed that the above resolution was supported by 60.47% voting share of CoC and 20.47% voted against the resolution and the remaining CoC abstained from voting. In response to this RP submitted that, the percentage of voting among the members present and voting, the percentage works out to 70.36% voting in favour of resolution and hence the resolution

dully is passed. In order to fortify his point, RP relied on the Judgement of the Hon'ble NCLAT in the matter of '*Tata Steel Limited vs. Liberty House Group, CA (AT) 198 of 2018*'.

Tribunal after due examination of facts presented before it, approved the said application for initiating liquidation proceedings of the Corporate Debtor, taking into consideration the fact that no Resolution Plan was received within CIRP period and the 270 days of CIRP period were also expired.

Tribunal in its order declared the cessation of the Moratorium period and directed the liquidator to issue public announcement stating that the Corporate Debtor is in liquidation.

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

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## NCLAT

1. **NCLAT directs the NCLT New Delhi to take up the Pending Appeal within One Week and Dispose of the Same and Pass Orders on Merits In Accordance With Law Within A Period Of Three Weeks**



The Appeal was filed before Appellate Tribunal, against the Impugned Order dated September 17, 2020 passed by the National Company Law Tribunal (“NCLT”), New Delhi, Court- IV.

The Learned Counsel for the Appellants pointed out that the relevant portion of the General Circular No. 6/2020 Bearing F.No. 17/61/2016 (CL-V)-Pt- I of the Government of India, Ministry of Corporate Affairs (MCA), dated March 4<sup>th</sup>, 2020 on the Subject: - ‘LLP Settlement Scheme’, 2020 reads as under:

*“(vi) The immunity from prosecution in respect of document(s) filed under the scheme- The defaulting LLPs, which have filed their pending documents till 13th June, 2020 and made good the default, shall not be subjected to prosecution by Registrar for such default”*

The Learned Counsel for the Appellants further pointed out that the ‘LLP Settlement Scheme’, 2020 dated March 4<sup>th</sup>, 2020 issued by the MCA has been extended up to December 31, 2020. Further submits that Appellants will be satisfied if a direction is issued by this Tribunal to the NCLT, New Delhi, Court- IV to take up as expeditiously as possible and to dispose of the same within a time frame to be determined by this Tribunal.

After taking note of the fact that the ‘LLP Settlement Scheme’, 2020 dead line has been extended till 31<sup>st</sup> December, 2020 by the Government of India, Ministry of Corporate Affairs, New Delhi directed to the NCLT, New Delhi, Court- IV to take up the pending appeal within one week and dispose of the same and pass orders on merits in accordance with Law within a period of three weeks.

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

## SEBI

### 1. Final order in respect of Sumana Ghosh Roy in the matter of PDS Agro Industries Limited

In the Matter of PDS Agro Industries Limited (“PAIL”) SEBI had passed an ex-parte interim order cum show cause notice dated April 26, 2018 against the PAIL and its directors for violation of public issue norms by the PAIL by issuing Redeemable Preference Shares (RPS) at least 850 investors in the Financial Year 2010-11 and 2011-12, thereby, illegally raising a sum of INR 52,82,500/-



SEBI noted the order of Hon'ble SAT passed in the matter of Pritha Bag v. SEBI had observed that liability for refund under Section 73(2) of the Companies Act, 1956, lies on the company along with the director who is officer in default as per Section 5 of the Companies Act, 1956.

Based on the fact and circumstance mentioned in the order SEBI directed that Ms. Sumana Ghosh Roy (Noticee no.3) to the interim order shall be refrained/prohibited from accessing the securities market by issue of prospectus/offer document/advertisement or otherwise in any manner whatsoever, and shall be refrained/prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of 3 years.

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

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## HIGH COURT ORDERS

1. **Writ Petition disposed of with a direction to respondent to decide the petitioner's revision application.**

Link Quest Technologies Limited      Petitioner

The Commissioner Of Income Tax Respondents  
TDS Delhi I New Delhi & ANR.



**Date of Judgement:** October 05, 2020

The present writ petition and pending applications are disposed of with a direction to respondent no.1 to decide the petitioner's revision application within four weeks, after giving an opportunity of hearing to the petitioner, by way of a reasoned order in accordance with law. The said writ petition was filed challenging impugned TDS Certificate and in the alternative, directions to the respondents to pass an order in the revision application filed by the petitioner. Petitioner also prays for directions to the respondent authorities to issue a fresh Certificate of Tax Deduction at Source at lower rate.

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

2. **Writ Petition filed under Article 226 of the Constitution of India was withdrawn by the Petitioner.**

M/s. Shree Malikarjuna Shipping Pvt. Ltd (SMSPL)

Petitioner

1. The Director Ports & Inland Water Transport Karwar, Uttar  
Kannada District – 581301

Respondents

2. The Principal Secretary Department of PWD, Ports and Inland  
Water Transport and Additional Chief Secretary Government of  
Karnataka, Vikasa Soudha, Bengaluru - 560001

Respondents

**Date of Judgement:** October 06, 2020



The Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus was dismissed as withdrawn after arguing the petition fully, the learned counsel for the petitioner sought permission to withdraw the petition.

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

3. **Writ Petition filed was disposed of on recording the statement given by the respondents on instructions of the Assessing Officer and also held the respondent bound by the same.**

Hyosung Corporation  
Union of India & ORS.

Petitioner  
Respondents

**Date of Judgement:** October 06, 2020

The writ petition stands disposed of on recording the statement/undertaking given by the learned counsel for the respondents, on instructions of the Assessing Officer and held the respondents bound by the same.

The learned counsel for the petitioner had stated that the interest has not been paid on the refund amount to him till date, on the basis which the petitioner had filed a rectification application praying for up-to-date interest has also been made. The respondent then assured and undertakes to the Court that the petitioner's rectification application shall be decided within two weeks and up-to-date interest, in accordance with law, shall be paid to the petitioner.

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

4. **Suit filed for permanent injunction against the defendant from infringing its trade marks, stands dismissed.**

CFA Institute  
Brickwork Finance Academy

Plaintiff  
Defendant

**Date of Judgement:** October 06, 2020

The suit filed by the plaintiff for permanent injunction against the defendant and its agents from infringing its trade marks, passing off, unfair trade practice, delivery-up of

materials/products, damages as well as to declare the plaintiff's mark as a well-known trade mark, was dismissed.

Conclusion was drawn, basis the plaintiff's pleading for distinctiveness and secondary meaning to its mark 'CFA' which is a disputed fact and mandates adducing of evidence and also to find out what is the effect thereof on the impugned mark, the Hon'ble Judge dismissed the application under Order XIII A read with Section 151 of the Civil Procedure Code (CPC), seeking summary judgment. Further it was also stated that, in fact an 'oral prayer' made under Order XIII A of the CPC for summary judgment in the facts and pleadings were put forth by him. Suffice it to say that in view of the judgment of a Division Bench of this Court in *Bright Enterprises Private Ltd. v. MJ Bizcraft LLP, 2017 (69) PTC 596 (Del)*, an oral prayer being not maintainable under Order XIII A, the Hon'ble Judge rejected the same.

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

**5. Writ Petition filed under Articles 226 & 227 of the Constitution of India, was favored in part.**

**National Restaurant Association of India,  
A Society Registered Under the Societies Registration Act, 1860      Petitioner**

**(1) State of Karnataka, Department of Excise      Respondents**

**(2) The Commissioner, Department of Excise      Respondents**

**Date of Judgement: October 07, 2020**

The Writ Petition filed under Articles 226 and 227 of the Constitution of India, was favoured in part. A Writ of Mandamus is issued to the respondents to consider petitioner's subject representations in accordance with law and within a period of three weeks further informed the petitioner that, it is open to hire the services of an advocate for presenting its case before the respondents and informed that it shall appear before the 2<sup>nd</sup> respondent to seek further instructions in the matter and concluded that all the contentions of the parties are kept open.

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

**6. Appeal filed for seeking interference of the Court in respect of the Stay Order passed by Delhi VAT Appellate Tribunal was allowed.**

**M/s. IKEA Trading (India) Private Limited.  
Commissioner of Trade and Tax,  
Department of Trade and Taxes**

**Appellant**

**Respondents**

**Date of Judgement:** October 07, 2020

Appeal filed under Section 81 of the Delhi Value Added Tax Act, 2004, seeking interference of the Court in respect of Stay Order passed by Delhi VAT Appellate Tribunal (DVAT), was allowed, directing the Appellate Tribunal to decide the application as expeditiously as possible, and pending application were also disposed of accordingly.

The Appellant was engaged in local procurement and export of home furnishing products like carpets, dhurries, fabrics, plastic articles, lamps, soft toys, etc. It was conferred the status of a 4-Star Export House by the Government of India, and had obtained registration under the Delhi VAT Act, 2004 to meet its statutory compliances. During the disputed period, the Appellant purchased products from a number of domestic vendors situated outside the State of Delhi against Form H in terms of Section 5(3) and 5(4) of the Central Sales Tax Act, 1956 and exported the same to its group companies outside India. All such sales and purchases are outside the tax net in terms of Section 6(1) of the Central Sales Tax Act, 1956. However, the Value-Added Tax Officer, Export-Import Cell, Department of Trade and Taxes, Govt. of NCT of Delhi, being the Assessing Authority, issued default assessment notices for tax, interest and penalty for the disputed period.

Conclusion was drawn and the impugned order was set aside and the matter was remanded back to the DVAT Appellate Tribunal, which shall now decide the application under Section 76(4) of the Act afresh, having regard to the views expressed by the High Court in this order, after affording opportunity to both the parties for hearing. The tribunal will also examine the question of financial hardship of the Appellant. On this aspect, Revenue shall be free to urge and request the Tribunal to consider the financials of the holding company of the Appellant, and cite case laws in support thereof. Needless to say, we have not examined the merits of the case and the observations made in this order shall not be read or construed to be the reflection of our opinion on the merits of the case.

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

