

Swift e-Bulletin

Edition 13/20-21

Week – October 12th to October 16th

Quote for the week:

"Your time is limited, so don't waste it living someone else's life. Don't be trapped by dogma – which is living with the results of other people's thinking."

- Steve Jobs

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"):

- Amendment of the Companies (Prospectus and Allotment of Securities) Rules, 2014

❖ Securities and Exchange Board of India ("SEBI"):

- Standardization of procedure to be followed by Debenture Trustee(s) in case of 'Default' by Issuers of listed debt securities;

❖ Ministry of Commerce and Industry:

- Clarification on Foreign Direct Investment (FDI) Policy for uploading/streaming of news and current affairs through Digital media

The critical judgements and orders passed by the National Company Law Tribunal, Securities and Exchange Board of India, High Court and Supreme Court are as mentioned below.

❖ **National Company Law Tribunal**

- National Company Law Tribunal Hyderabad bench allows the withdrawal of the petition filed for initiating Corporate Insolvency Resolution Process (CIRP) against SNS Starch Limited

❖ **Securities and Exchange Board of India**

- Adjudication Order in Respect of Osian Industries Limited

❖ **High Court**

- Phonetically generic word ('DELHIVERY') being a registered trademark, is no estoppel against law, unless a generic word is held to be distinctive
- Petitions preferred under Section 11 (6) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate on the disputes between the parties are disposed of.
- Sole Arbitrator appointed to arbitrate on the disputes between the parties on diagnostic services under Shishu Suraksha Karyakaram (JSSK)
- Petition filed with Delhi High Court on matters relating to procurement of KN-95 Respiratory Masks, where 30 percent of the total value of the invoice was secured through a bank guarantee

❖ **Supreme Court**

- Supreme Court allowed the civil appeal on such terms and detailed that 'He who asks for equity must do equity'
- Applications of lessees of manganese/iron ore mines seeking extension of time for the transportation of the mineral and application filed by the Goa Foundation for clarification/direction was disposed of

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of October 12, 2020 to October 16, 2020.

**Thank you,
Swift Team**

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REGULATORY UPDATES

MCA UPDATES

1. **MCA amends the Companies (Prospectus and Allotment of Securities) Rules, 2014 vide Gazette Notification dated October 16, 2020**



- ❖ These rules may be called the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2020.

- ❖ In the Companies (Prospectus and Allotment of Securities) Rules, 2014, in rule 14 (Private placement), in sub-rule (1), after third proviso, the following proviso shall be inserted, namely:

“Provided also that in case of offer or invitation of any securities to qualified institutional buyers, it shall be sufficient if the company passes a previous special resolution only once in a year for all the allotments to such buyers during the year.”

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

SEBI UPDATES

1. **SEBI standardizes procedure to be followed by Debenture Trustee(s) in case of ‘Default’ by Issuers of listed debt securities vide Circular dated October 13, 2020:**



- ❖ SEBI, upon receiving representations from Debenture Trustee(s) regarding the process to be followed in case of ‘Default’ by issuers of listed debt securities and after consultation with stakeholders including investors, Debenture Trustee(s), Issuers etc. It has been decided to introduce the standardization process in three broad areas namely:
 - Procedures to be followed in the event of Default by issuers of listed debt securities;
 - Consent of Investors for enforcement of security for signing Inter Creditor Agreement (“ICA”); and

- Conditions for signing of Inter Creditor Agreement (“ICA”) by Debenture Trustee(s) on behalf of investors.

- ❖ Regulation 51 read with the explanation to Clause A (11) in Part B of Schedule III of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), 2015 (“LODR Regulations”) defines ‘**default**’ as non-payment of interest or principal amount in full on the pre-agreed date which shall be recognized at the first instance of delay in the servicing of any interest or principal on debt. In the manner of calling ‘**event of default**’, due to the presence of multiple ISIN’s which may have been issued under the same Information Memorandum(s) (“**IM(s)**”) or a single ISIN which may have been split across multiple IM(s), it is clarified that ‘event of default’ shall be reckoned at the ISIN level, as all terms and conditions of issuance of security are same under a single ISIN even though it might have been issued under multiple IMs.

- ❖ SEBI also has provided mechanisms for consent of investors of security and signing the Inter Creditor Agreement (“ICA”). The Reserve Bank of India (“RBI”), vide Circular dated June 07, 2019 issued the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 which inter alia specified the mechanism for resolution of stressed assets by Lenders (viz. Scheduled Commercial Banks, All-India Term Financial Institutions, Small Finance Banks, Systemically Important Non-Deposit Taking Non-Banking Finance Companies (“**NBFCs**”) as well as Deposit Taking NBFCs). In terms thereof, investors in debt securities, being financial creditors, are approached by other lenders to sign an agreement, referred to as Inter Creditor Agreement (“ICA”), under specific terms detailed in the framework as stipulated by RBI.

- ❖ Regulation 59 of LODR Regulations provides that material modification in the structure of debt securities shall be made only after obtaining the consent of the requisite majority of investors. Regulation 18 of the Securities and Exchange Board of India (Issuer and Listing of Debt Securities) Regulations, 2008 (“**ILDS Regulations**”), applicable in case of public issue of debt securities, stipulates a period of fifteen days for giving notice in case of rollover of debt securities and further provides for approval to be obtained from not less than 75% of the holders by value of such debt securities.

- ❖ As the resolution plan in ICA may involve restructuring including roll-over of debt securities, requiring the consent of the investors, the process to be followed for seeking consent for enforcement of security and/or entering into an ICA shall be as under:

- The Debenture Trustee(s) shall send a notice to the investors within 3 days of the event of default by registered post/acknowledgement due or speed post/acknowledgement due or courier or hand delivery with proof of delivery as also through email as a text or as an attachment to email with a notification including a read receipt, and proof of dispatch of such notice or email, shall be maintained.
- The notice shall contain the following.
 - negative consent for proceeding with the enforcement of security;
 - positive consent for signing the ICA;
 - the time period within which the consent needs to be provided, viz. consent to be given within 15 days from the date of notice; and
 - the date of meeting to be convened.
- Debenture Trustee(s) shall convene the meeting of all investors within 30 days of the event of default, provided that in case the default is cured between the date of notice and the date of meeting, then the convening of such a meeting may be dispensed with.
- In view of Regulation 15(2)(b) of SEBI (Debenture Trustees) Regulations, 1993, in case of debt securities issued by way of public issue, the notice sent by the Debenture Trustee(s) shall not contain the consent and the requirement to convene a meeting for enforcement of security, shall not be applicable.
- The Debenture Trustee(s) shall take necessary action to enforce security or enter into the ICA or as decided in the meeting of investors
- The consent of the majority of investors shall mean the approval of not less than 75% of the investors by value of the outstanding debt and 60% of the investors by number at the ISIN level.
- ❖ The Debenture Trustee(s) may sign ICA and consider the resolution plan on behalf of the investors upon compliance with the following conditions:
 - The signing of ICA and agreeing to the resolution plan is in the interest of investors and in compliance with the Companies Act, 2013 and the rules made thereunder, the Securities Contracts (Regulations) Act, 1956 and the Securities and Exchange

Board of India Act, 1992 and the rules, regulations and circulars issued thereunder from time to time.

- If the resolution plan imposes condition(s) on the Debenture Trustee(s) that are not in accordance with the provisions of Companies Act, 2013 and the rules made thereunder, the Securities Contracts (Regulations) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules, regulations and circulars issued thereunder from time to time, then the Debenture Trustee(s) shall be free to exit the ICA altogether with the same rights as if it had never signed the ICA. Under these circumstances, the resolution plan shall not be binding on the Debenture Trustee(s).
- The resolution plan shall be finalized within 180 days from the end of the review period. If the resolution plan is not finalized within 180 days from the end of the review period, then the Debenture Trustee(s) shall be free to exit the ICA altogether with the same rights as if it had never signed the ICA and the resolution plan shall not be binding on the Debenture Trustee(s). However, if the finalization of the resolution plan extends beyond 180 days, the Debenture Trustee(s) may consent to an extension beyond 180 days' subject to the approval of the investors regarding the total timeline. The total timeline shall not exceed 365 days from the date of commencement of the review period.
- If any of the terms of the approved Resolution Plan are contravened by any of the signatories to the ICA, the Debenture Trustee(s) shall be free to exit the ICA and seek appropriate legal recourse or any other action as deemed fit in the interest of the investors.
- ❖ The Debenture Trustee(s) shall ensure that the conditions mentioned in sub-points 1, 2 and 3 in the previous point above are suitably incorporated in the ICA, before signing of the ICA

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

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MINISTRY OF COMMERCE AND INDUSTRY UPDATES

1. Department for Promotion of Industry and Internal Trade (DPIIT) issues clarification on Foreign Direct Investment (FDI) Policy for uploading/streaming of news and current affairs through Digital media dated October 16, 2020:



- ❖ The Central Government vide Press Note 4 of 2019 dated September 18, 2019 has decided to liberalize the FDI regime for entities engaged in News Digital Media Sector. Accordingly, entities engaged in the news and current affairs through digital media have been permitted FDI up to **26%** through the Government Approval Route.
- ❖ After receiving representations from various stakeholders and after due consultation the department has issued various clarifications in this regard as under:
 - The Decision of permitting 26% FDI through government route would apply to following category of Indian entities, registered or located in India:
 - Digital media entity streaming/uploading news on current affairs on websites apps or other platforms;
 - News agency which gathers, writes and distributes/transmits news, directly or indirectly, to digital media entities and/or news aggregators; and
 - News aggregator being an entity which, using software or web application, aggregates news content from various sources, such as news websites, blogs, podcasts, video blogs, user submitted links, etc. in one location.
 - Entities covered above will have to align their FDI to the 26% level with the approval of the Central Government, within 1 year from the date of issue of this clarification.
- ❖ Compliance with the FDI Policy and applicable Foreign Exchange Management Act (“**FEMA**”) Notification (including the notification dated December 5, 2019) would be the responsibility of the investee entity. Further the entity would adhere to the following conditions:
 - The majority of Directors on the Board of the company shall be Indian citizens;

- The Chief Executive officer shall be an Indian Citizen;
- The entity shall be required to obtain a security clearance of all foreign personnel likely to be deployed for more than 60 days in a year by way of appointment, contract or consultancy or any other capacity for functioning of the entity prior to their deployment. In the event of security clearance of any foreign personnel being denied or withdrawn for any reasons whatsoever, the investee entity will ensure that the concerned person resigns or his/her services are terminated forthwith after receiving such directives from the Government.

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

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JUDGEMENTS/ ORDERS

NCLT

1. National Company Law Tribunal Hyderabad bench allows the withdrawal of the petition filed for initiating Corporate Insolvency Resolution Process (CIRP) against SNS Starch Limited



National Company Law Tribunal (“**Tribunal**”) allows the withdrawal of the petition filed by the Operational Creditors (“**Applicant**”) to initiate CIRP against SNS Starch Limited (“**Corporate Debtor**”). The Tribunal had admitted the petition of the applicant vide its order dated September 02, 2020 and initiated the CIRP against the Corporate Debtor.

Subsequent to the appointment of Insolvency Resolution Professional (“**IRP**”) and Public Announcement to invite the claim of other creditors, one of the promoters of the Corporate Debtor, Mr. Sanjay Jalan filed an appeal before Hon’ble NCLAT, New Delhi. Pursuant to such appeal, the Hon’ble NCLAT, New Delhi passed an interim order directing the IRP to go ahead with the CIRP and granted stay in constituting Committee of Creditors (“**CoC**”) for a period of 10 days.

Post this interim order, both the parties agreed to resolve the matter amicably by entering into a compromise settlement agreement on September 22, 2020, wherein the respondent agreed to pay the entire claim amount of Rs. 1,04,72,633 via Demand Drafts as a full and final settlement of the claim amount.

After the agreement for settlement of entire claim amount was reached between both the parties, the applicant filed the withdrawal application of the said petition in accordance with the section 12A of the Insolvency and Bankruptcy Code, 2016 (“**IBC Code**”) in Form FA on September 22, 2020. The withdrawal application was duly accepted by the Tribunal.

Further, the Tribunal ordered that the Moratorium period under section 14 of the IBC Code stands vacated and also allowed the Corporate Debtor to function independently through its Board of Directors with immediate effect.

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

SEBI

1. Adjudication Order in Respect of Osian Industries Limited

In the matter of Non-Redressal of investor grievances on SCORES, it was alleged that Osian Industries 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 even 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 600,000/- (INR Six Lakh) for alleged violation of the non-compliance to SEBI circulars dated August 13, 2012 and April 17, 2013.

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

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HIGH COURT

1. Phonetically generic word ('DELHIVERY') being a registered trademark, is no estoppel against law, unless a generic word is held to be distinctive



Delhivery Private Limited
Treasure Vase Ventures Private Limited

Plaintiff
Defendant

Date of Judgement: October 12, 2020

The prayer made by the defendant in the application was allowed and the interim injunction granted by the Delhi High Court was vacated. The Plaintiff has continuously and extensively used the trademark 'DELHIVERY' since the year 2011 for its logistics, transportation, management, etc. and the mark was coined and adopted by its promoter in the year 2008, who have experienced exponential growth and has received numerous awards and accreditations and averred in the plaint that it has 27 registrations for the trademark 'DELHIVERY' / its variants in classes 35, 39 & 42 of the Trade Marks Act, 1999 including a word mark registration of the trademark 'DELHIVERY'. The plaintiff has time and again taken legal action against the infringers of its copyright and trademarks and has secured orders in their favour from this Court as well.

The defendant company was in discussion with the plaintiff to become its vendor since September, 2019 and was coordinating various business proposals and continued business discussions with the plaintiff. The former surreptitiously adopted the mark for identical services and filed a trademark application for identical services. The defendant continued to be associated with the plaintiff and executed a vendor agreement and also did a pilot project and issued two invoices bearing a mark 'SMART-E delivery services' and hence avoided direct confrontation with the plaintiff for using the impugned mark.

The Plaintiff opposed that, the defendant in its written statement had admitted that it is in the delivery business since 2019 albeit under the trademark 'SMART-E Delivery Services' and had changed its mark to "DELIVER E" in May, 2020 after having adopted the same in February, 2020 only to come as close as possible to the business of the plaintiff and to earn profits in an illegal manner.

The Delhi High Court concluded that the mark 'DELHIVERY' is phonetically a generic word and held that there is no estoppel against law, unless a generic word is held to be distinctive, which in any case is a matter of trial and held that using the mark 'DELHIVERY' since 2011 and having high sale figures is not conclusive to hold that the mark has attained distinctiveness.

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

2. Petitions preferred under Section 11 (6) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate on the disputes between the parties are disposed of.

ARB.P. 418/2020 & I.A. 8522/2020

Eleganz Interiors Private Limited

Petitioner

Premium Port Lounge Management Company Private Limited

Respondent

O.M.P.(I) (COMM.) 233/2020 & I.A. 6906/2020

Eleganz Interiors Private Limited

Petitioner

Premium Port Lounge Management Company Private Limited

Respondent

Date of Judgement: October 12, 2020

Both Petitions preferred under Section 11 (6) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate on the disputes between the parties are disposed of, with no orders as to costs.

The respondent had approached the petitioner, requisitioning the petitioner's services for construction/renovation of the Plaza Premium Lounge at Level-E, Domestic Departure, Rajiv Gandhi International Airport, Shamsabad, Hyderabad. However, owing to the nationwide lockdown and other restrictions imposed consequent to the COVID-2019 pandemic, the petitioner, for reasons beyond its control, was unable to carry out any work. On partial lifting of the lockdown the respondent requested the petitioner to propose a revised schedule, which was provided by the petitioner. It is alleged that the respondent failed to provide any response, qua safety measures and Standard Operating Protocols (SOPs) to be set in place by the respondent, thereby preventing the petitioner from effectively deploying staff and workers at the project site. During the process, the petitioner had incurred additional costs and despite attempts were made to discuss the matter with the respondent, the respondent started levelling allegations, complaining of default on the part of the petitioner. Hence, the petition disputes these allegations.

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

3. **Sole Arbitrator appointed to arbitrate on the disputes between the parties on diagnostic services under Shishu Suraksha Karyakaram (JSSK)**

City X Ray and Scan Clinic Private Limited.	Petitioner
The Medical Superintendent Govt. of NCT of Delhi	Respondents

Date of Judgement: October 12, 2020

Petitions preferred under Section 11 (6) of the Arbitration and Conciliation Act, 1996 to appoint a sole arbitrator stands disposed of with observations, where the respondent had contracted vide an agreement with the petitioner to diagnostic services under the Janani Shishu Suraksha Karyakaram (JSSK) to the respondent.

The Delhi High Court upon hearing the facts of the case, appointed the sole arbitrator to arbitrate on the disputes between the parties, informing him of this order, to secure his acceptance for acting as an arbitrator in this matter. Further informed that, in consultation with the parties, the modalities of arbitration would be decided and he would be entitled to charge fees in accordance with the Fourth Schedule to the Arbitration and Conciliation Act, 1996.

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

4. **Petition filed with Delhi High Court on matters relating to procurement of KN-95 Respiratory Masks, were 30 percent of the total value of the invoice was secured through a bank guarantee**

MS Zilingo Pte. Ltd.	Petitioner
Union of India & ORS	Respondents

Date of Judgement: October 14, 2020

Writ Petition listed in the typed supplementary list on special marking, where the urgency expressed is that a bank guarantee sought to be encashed by the Union of India, through the Ministry of External Affairs. The demand for the encashment was raised by the High Commission of India in Singapore, for invoking the said bank guarantee.

A contract was entered into between High Commission of India, Singapore and the Petitioner, through the channelizing company HLL Lifecare Limited, Thiruvananthapuram for

the procurement and supply of 10 Million KN-95 Respiratory Masks which are essential items especially during the pandemic, were 30 percent of the total value of the invoice was to be secured through a bank guarantee by the Petitioner.

The stand of the Petitioner is that they are ready and willing to effect supplies immediately and it is only due to the testing protocol that the supply has been stopped. Since, the reasons for encashment not being clear and that 68% of the supply has also already been made, the Delhi High Court issued directions in this respect.

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

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SUPREME COURT

1. **Supreme Court allowed the civil appeal on such terms and detailed that 'He who asks for equity must do equity'**



**Ferrodous Estates (Private.) Limited.
P. Gopirathnam (Dead) & ORS.**

**Appellant
Respondents**

Date of Judgement: October 12, 2020

Civil Appeal filed for specific performance by the appellant against four defendants, represented by the respondents, was allowed with no order as to costs.

By an agreement to sell entered between the appellant company and the four defendants, necessary permissions were not obtained, in particular, the permission from the competent authority under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, the appellant filed a suit for specific performance.

It was found that, the defendants were held to have taken up dishonest pleas and also held to have been in breach of a solemn agreement in which they were to obtain the Urban Land Ceiling permission which, if not obtained, would, under the agreement itself, not stand in the way of the specific performance of the agreement between the parties. He who asks for equity must do equity. Given the conduct of the defendants in this case, as contrasted with the conduct of the appellant who is ready and willing throughout to perform its part of the bargain, this Court thought it to be a fit case in which the Division Bench judgment should be set aside. As a result, the decree passed by the Single Judge is restored.

Hence, the Civil Appeal filed for specific performance was allowed with the aforesaid terms that, since the appellant itself had offered a sum of INR.1.25 crores to the Division Bench, it must be made to pay this amount to the respondents within a period of eight weeks from the date of this judgment.

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

2. Applications of lessees of manganese/iron ore mines seeking extension of time for the transportation of the mineral and application filed by the Goa Foundation for clarification/direction was disposed of

Chowgule and Company Private Limited
Goa Foundation & ORS.

Appellant (s)
Respondents

With

M.A.NOS.13851387/ 2020 IN CIVIL APPEAL NOS.840842 OF 2020

M.A.NO.1384/2020 IN CIVIL APPEAL NO. 843 OF 2020

M.A.NO.1345 /2020 IN CIVIL APPEAL NO.848 OF 2020

M.A.NO.1344/2020 IN CIVIL APPEAL NO. 847 OF 2020

M.A.NO.1625/2020 IN CIVIL APPEAL NO.839 OF 2020

Date of Judgement: October 12, 2020

Applications filed by the lessees of manganese/iron ore mines seeking extension of time for the transportation of the mineral and the application filed by the Goa Foundation for clarification/direction are disposed of to the following effects: (i) The lessees are granted time up to end of January, 2021 for the removal of the minerals excavated/mined on or before March 15, 2018 subject to payment of royalties and other charges; (ii) The quantity of mineral to be removed by each of the lessees shall be determined by the concerned officials with reference to the records of the Government maintained at the relevant point of time; (iii) If within the time stipulated above, the lessees could not remove the mineral, the Government shall invoke the power under Rule 12(1)(hh).

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

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