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CHANGE IN NAME FROM SWIFTINDIAINC CORPORATE SERVICES LLP AS ON 07.02.2017

Swift e-Bulletin
Edition 16/20-21
Week – November 2nd to November 6th

Quote for the week:

"If you really look closely, most overnight successes took a long time."

- 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 such as, the Securities and Exchange Board of India ("**SEBI**"), the Reserve Bank of India (**"RBI"**) and the Press Information Bureau ("**PIB**"), 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.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of November 2, 2020 to November 6, 2020.

Thank you,
Swift Team

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REGULATORY UPDATES

Securities and Exchange Board of India

1. **SEBI releases new guidelines on Creation of Security in issuance of listed debt securities and 'Due Diligence' by debenture trustee(s) vide Circular dated November 03, 2020**

- The following guidelines are issued to give effect to amendments pertaining to SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("**ILDS Regulations**") and SEBI (Debenture Trustees) Regulations, 1993 ("**DT Regulations**") which were approved by SEBI Board and notified vide **Gazette Notifications no. 34 and 35 dated October 08, 2020 and shall come in force from January 01, 2021.**

- **Part A** of the guidelines emphasizes on documents and consents required at the time of entering into debenture Trustee agreement:

  - Regulation 13 of DT Regulations stipulates that the debenture trustee shall enter into a written agreement ("**debenture trustee agreement**") with the Issuer before the debenture trustee agrees to act as debenture trustee in respect of the said issue of debt securities;

  - In order to enable the debenture trustee to exercise due diligence with respect to creation of security, the Issuer at the time of entering into debenture trustee agreement shall provide the following information/ documents to the debenture trustee:
    - Details of assets, moveable and immoveable property on which charge is proposed to be created including title deeds (original/ certified true copy by issuers/ certified true copy by existing charge holders, as available) or any kind of title reports, copies of relevant agreements, copies of evidence registration with Registrar of companies etc.;
    - For any unencumbered assets, an undertaking that the assets on which charge is proposed to be created are free from any encumbrances;
    - In case of personal guarantee or any other document/ letter with similar intent is offered as security or a part of security:
      (i) Details of guarantor;
      (ii) Net worth Statement;
      (iii) List of assets of the guarantor including undertakings etc.;

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- In case securities (equity shares etc.) are being offered as security then a holding statement from the depository participant along-with an undertaking that these securities shall be pledged in favour of debenture trustees in the depository system;
- Details of any other form of security being offered.

- **Part B** of the guidelines emphasizes on Due Diligence by Trustee for creation of Security which shall include:

  - Debenture trustee shall verify that the assets provided by Issuer for creation of security are free from any encumbrances or necessary permissions or consents has been obtained from existing charge holders;
  - In case of personal guarantee, corporate guarantee and any other guarantees/ form of security, the debenture trustee shall verify the relevant filings made on websites of Ministry of Corporate Affairs, Stock Exchange(s), CIBIL, IU etc.;
  - Post Due Diligence the debenture trustee shall issue due-diligence certificate to the issuer;
  - Debenture trustee shall maintain records and documents pertaining to due diligence exercised for a minimum period of five years from redemption of the debt securities;

- **Part C** of the guidelines emphasizes on disclosures in the offer document or private placement memorandum/ information memorandum by the issuer which shall include:

  - Due-Diligence certificate issued by the debenture trustee;
  - Terms and conditions of debenture trustee agreement including fees charged by debenture trustees, details of security to be created and process of due diligence carried out by the debenture trustee.

- **Part D** of the guidelines talks about creation and registration of charge of security by Issuer which includes:

  - Before making any application for listing of debt securities the Issuer shall create charge in favour of the debenture trustee and also execute debenture trust deed (DTD) with the debenture trustee;
  - Stock exchange shall list the debt securities only upon receipt of a Due Diligence certificate from a debenture trustee confirming creation of charge and execution of the DTD;

- The charge created by Issuer shall be registered with Sub-registrar, Registrar of Companies, Central Registry of Securitization Asset Reconstruction and Security Interest of India ("**CERSAI**"), Depository etc., as applicable, within 30 days of creation of such charge. In case the charge is not registered anywhere or is not independently verifiable, then the same shall be considered a breach of covenants/ terms of the issue by the Issuer;

- Format of Due Diligence Certificate to be given by the Debenture Trustee at the time of filing the draft Offer Document or Private Placement Memorandum/ Information Memorandum is give in **Annexure A** to the Circular.

- The provisions of the Circular shall come into force w.e.f. ***January 01, 2021*** i.e. for new issues proposed to be listed on or after January 01, 2021

To read the Circular in detail, please click here.

2. **SEBI amends the framework for schemes of Arrangement by Listed Entities and relaxation under the Securities Contracts (Regulations) Rules, 1957 vide Circular dated November 03, 2020**

- SEBI Circular dated March 10, 2017 had laid down the framework for Schemes of Arrangement by listed entities and relaxation under Rule 19(7) of the Securities Contracts (Regulation) Rules, 1957.

- Stock Exchanges have been empowered by deciding to stream line the processing of draft schemes filed with the stock exchanges and to ensure that the recognized stock exchanges refer draft schemes to SEBI only upon being fully convinced that the listed entity is in compliance with SEBI Act, Rules, Regulations and Circulars issued thereunder, making amendments to the aforesaid Circular dated March 10, 2017. This Circular shall be applicable for all the schemes filed with the Stock exchange after ***November 17, 2020***.

- The amendment indicated at Para 7 of the ***Annexure*** to this Circular shall be applicable for all listed entities seeking listing and/or trading approval from the stock exchanges after November 3, 2020. Detailed set of amendments are given in ***Annexure*** to this Circular.

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- The recognized stock exchanges are directed by SEBI to bring the provisions of this Circular to the notice of the listed companies and also to disseminate the same on their website.

To read the Circular in detail, please click here.

3. **SEBI issues advisory for Financial Sector Organizations regarding Software as a Service (SaaS) based solutions vide Circular dated November 03, 2020:**

- With the advent of evolution of Technology at a faster pace, more and more financial sector institutions are availing or thinking of availing Software as a Service ("**SaaS**") based solution for managing their Governance, Risk & Compliance ("**GRC**") functions so as to improve their cyber Security Posture.

- It was observed by Ministry of Electronics & Information Technology, Govt. of India **("MoE&IT")** that such technology provide ease of doing business and quick turnaround, but it may bring significant risk to health of financial sector as many a time risk and compliance data of the institution moves beyond the legal and jurisdictional boundary of India due to nature of shared cloud SaaS, thereby posing risk to the data safety and security.

- In this regard, Indian Computer Emergency Response Team ("**CERT-in**") has issued an advisory for Financial Sector organizations. Therefore, SEBI has advised that financial sector institution shall ensure complete protection and seamless control over the critical systems by organizations by continuous monitoring through direct control and supervision protocol mechanisms while keeping the critical data within the legal boundary of India.

- Institutions shall ensure compliance of the advisory shall be reported in the half yearly report by stock brokers and DP to stock exchanges and depositories respectively and by direct intermediaries to SEBI with an undertaking, "**Compliance of the SEBI Circular for Advisory for Financial Sector Organizations regarding Software as a Service (SaaS) based solutions has been made**.

- The advisory annexed with this Circular shall be effective with immediate effect.

To read the Circular in detail, please click here.

4. **SEBI releases new guidelines on rights issue of units by an unlisted Infrastructure Investment Trust (InvIT) vide Circular dated November 04, 2020:**

- Chapter VIA of the of SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("**InvIT Regulations"**) provides the framework for private placement of units by InvITs which are not eligible to be listed. In order to enable unlisted InvITs to raise further funds, it has been decided to provide a mechanism for raising of funds by unlisted InvITs through rights issue of units.

- For the purpose of this Circular "rights issue" shall mean an offer of units by an unlisted InvIT to the unit holders of the InvIT as on the record date fixed for the said purpose. The guidelines in respect of a rights issue of units by an unlisted InvIT are given below:

  - *Conditions for issuance;*
  - *Underwriting guidelines;*
  - *Guidance on issue of Letter of Offer;*
  - *Manner of making an application by the investment manager;*
  - *Determining Pricing of units;*
  - *Timelines of the Rights Issue;*
  - *Manner of Issuance of units;*
  - *Manner of Allotment of units; and*
  - *Restriction on further capital issues;*

- Disclosures relating to Letter of Offer are given in ***Annexure 1*** to the Circular.

  To read the Circular in detail, please click here.

5. **SEBI enhances Overseas Investment limits for Mutual Funds vide Circular dated November 05, 2020:**

- In partial modification to clause 1(b) of SEBI Circular dated September 26, 2007 and clause 2 of SEBI Circular dated April 08, 2008, SEBI has decided to enhance the investment limits per Mutual Fund as follows:

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- Mutual Funds can make overseas investments subject to a maximum of US $ 600 Million per Mutual Fund, within the overall industry limit of US $ 7 Billion.

- Mutual Funds can make investments in overseas Exchange Traded Fund ("**ETF(s)**") subject to a maximum of US $ 200 Million per Mutual Fund, within the overall industry limit of US $ 1 Billion.

- The allocation methodology of the aforementioned limits shall be as follows:

  - In case of overseas investments specified at sub bullet point 1 above, US $ 50 Million would be reserved for each Mutual Fund individually, within the overall industry limit of US $ 7 Billion.

  - **New Fund Offers (NFOs):** Mutual Funds launching new schemes intending to invest in Overseas securities / Overseas ETFs shall ensure that the scheme documents shall disclose the intended amount that they plan to invest in Overseas securities / Overseas ETFs subject to maximum limits specified at Para 1, as the case maybe. Such limits disclosed in scheme documents will be valid for a period of six months from the date of closure of New fund offer ("**NFO**"). Thereafter the unutilized limit, if any, shall not be available to the Mutual Fund for investment in Overseas securities / Overseas ETFs and shall be available towards the unutilized industry wide limits. Further investments should follow the norms for ongoing schemes.

  - **Ongoing Schemes:** For all ongoing schemes that invest or are allowed to invest in Overseas securities / Overseas ETFs, an investment headroom of 20% of the average Assets under management ("**AUM**") in Overseas securities / Overseas ETFs of the previous three calendar months would be available to the Mutual Fund for that month to invest in Overseas securities / Overseas ETFs subject to maximum limits specified at Para 1, as the case maybe.

- Further, Mutual Funds shall report the utilization of overseas investment limits on monthly basis, within 10 days from end of each month. The format for reporting is enclosed at ***Annexure A*** to the Circular.

- All other conditions specified in the above-mentioned Circulars shall remain unchanged and the Circular shall come into force with immediate effect.

  To read the Circular in detail, please click here.

Reserve Bank of India

1. **RBI issues guidelines on Co-Lending by Banks and NBFCs to Priority Sector vide Circular dated November 05, 2020:**

- RBI Circular dated September 21, 2018 set out guidelines on co-origination of loans by banks and NBFCs for lending to priority sector. The arrangement entailed joint contribution of credit at the facility level by both the lenders as also sharing of risks and rewards.

- Based on the feedback received from the stakeholders and to better leverage the respective comparative advantages of the banks and NBFCs in a collaborative effort, it has been decided to provide greater operational flexibility to the lending institutions, while requiring them to conform to the regulatory guidelines on outsourcing, KYC, etc. The primary focus of the revised scheme, rechristened as "Co-Lending Model" (CLM), is to improve the flow of credit to the unserved and underserved sector of the economy and make available funds to the ultimate beneficiary at an affordable cost, considering the lower cost of funds from banks and greater reach of the NBFCs. Detailed features of the CLM are furnished in the ***Annexure*** to the Circular.

- In terms of the CLM, banks are permitted to co-lend with all registered NBFCs (including HFCs) based on a prior agreement. The co-lending banks will take their share of the individual loans on a back-to-back basis in their books. However, NBFCs shall be required to retain a minimum of 20 per cent share of the individual loans on their books.

- The banks and NBFCs shall formulate Board approved policies for entering into the CLM and place the approved policies on their websites. Based on their Board approved policies, a Master Agreement may be entered into between the two partner institutions which shall inter-alia include, terms and conditions of the arrangement, the criteria for selection of partner institutions, the specific product lines and areas of operation, along with provisions related to segregation of responsibilities as well as customer interface and protection issues, as detailed in the ***Annexure*** to the Circular.

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- The Master Agreement may provide for the banks to either mandatorily take their share of the individual loans originated by the NBFCs in their books as per the terms of the agreement, or to retain the discretion to reject certain loans after their due diligence prior to taking in their books, subject to the conditions specified in the ***Annexure*** to the Circular.

- The banks can claim priority sector status in respect of their share of credit while engaging in the CLM adhering to the specified conditions. The CLM shall not be applicable to foreign banks (including Wholly-owned Subsidiaries("**WOS"**) with less than 20 branches.

- This Circular supersedes the RBI Circular dated September 21, 2018. However, outstanding loans in terms of the Circular ibid would continue to be classified under priority sector till their repayment or maturity, whichever is earlier.

  To read the Circular in detail, please click here.

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Press Information Bureau

1. **Government of India (Ministry of Communications) issues liberalized guidelines to improve ease of doing business for Business Process Outsourcing (BPO) and IT Enabled Services vide press release dated November 05, 2020:**

- With an aim to qualitatively improve the Ease of Doing Business of the IT Industry Particularly Business Process Outsourcing ("**BPO"**) and IT Enabled Services, the Government has drastically simplified the Other Service Provider("**OSP"**) guidelines of the Department of Telecom. The new guidelines tremendously reduce the compliance burden of the BPO industry.

- It is clarified that the registration requirement for OSPs has been done away with altogether and the BPO industry engaged in data related work have been taken out of the ambit of OSP regulations. In addition, requirements such as deposit of bank guarantees, requirement for static Internet Providers ("**IPs**"), frequent reporting obligations, publication of network diagram, penal provisions etc. have also been removed. Similarly, several other requirements, which prevented companies from adopting 'Work from Home' and 'Work from Anywhere' policies have also been removed. Additional dispensations to enhance flexibility for the Industry have been allowed.

- The new framework will provide a strong impetus to India's industry and will make India one of the most competitive IT jurisdictions in the World. The new guidelines are inspired by Prime Minister Modi's strong emphasis on Minimum Government, Maximum Governance. India's IT Industry is a source of pride for the country and the new guidelines are aimed at removing unnecessary bureaucratic restrictions to allow the industry to focus on innovative new products and solutions. With this reform, the Government of India sends out a strong signal of its support to the IT industry with a view to encouraging increased investment in the Sector. The reform will certainly unleash the potential of our talented youth by making India as a

preferred destination for Information and Knowledge Outsourcing Industry and would further the vision of 'Atma Nirbhar Bharat'.

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

Further, to read the OSP Guidelines in detail, please click here.

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JUDGEMENTS/ ORDERS

National Company Law Tribunal

1. **National Company Law Tribunal Initiates Corporate Insolvency Resolution Process ("CIRP") against CMM Infraprojects Limited**

NCLT, Indore Bench ("**Tribunal**") admits the Operational Creditor's application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") and initiates CIRP against the CMM Infraprojects Limited ("**Corporate Debtor**").

The Operational Creditor had supplied various equipments via different work orders placed by the Corporate Debtor on rental basis in financial years 2016-17 and 2017-18. The Corporate Debtor was liable to pay interest on the outstanding amount for the period of delay as per the terms and condition of work orders. The default in payment of such amount led to issue of notice under section 8 of the IBC.

The Corporate Debtor did not reply to the demand notice nor to aforesaid application. The Learned Counsel of the Operational Creditor pointed out to the Tribunal that no one had appeared on behalf of the Corporate Debtor on last four occasions. The Learned counsel pleaded that the matter had been made Ex-parte on the last date of hearing. Further, it was also pointed out that no name was proposed for the role of Interim Resolution Professional ("IRP") in CIRP.

Tribunal noted that since the outstanding amount pertains to provision of equipment's on rental basis, the said debt is operational nature and the same is due and payable, both in law and fact.

Based on the facts presented, Tribunal admitted the said application filed by the Operational Creditor and declared moratorium in accordance to section 14 of the IBC. The order of moratorium shall have effect from the date of this order. Tribunal resolved to appoint Mr. Vichitra Narayan Pathak to act as the IRP. Tribunal further directed the Operation Creditor to pay an advance amount of INR. 1,00,000 (INR One Lakh) to the IRP for ensuring smooth conduct of CIRP and directed Registry to communicate a copy of this order to the Operational Creditor, Corporate Debtor, IRP and concerned Registrar of Companies within seven working days.
To read the order in detail, please click here.

National Company Law Appellate Tribunal

1. **National Company Law Appellate Tribunal set aside the impugned order dated February 13, 2020 passed by National Company Law Tribunal, Chennai**

Scheme of Amalgamation of Arihant Unitech Realty Projects Limited with North Town Estates Private Limited **Appellant**

M/s Arihant Unitech Realty Projects Limited,

NIL **Respondent**

The Appellant has preferred the instant Company Appeal as an 'Aggrieved Person', in respect of the order dated February 13, 2020, passed by the National Company Law Tribunal ("**NCLT**"), Division Bench-I, Chennai who had dismissed the petition for condonation of delay of 201 days filed by the Appellant.

The Learned Counsel for the Appellant submits that the 'Appellant Company' and the 'Transferee Company' had duly complied with the directions of the Tribunal, in convening and holding meeting of equity shareholders and unsecured creditors. Further, in the said meetings, the 'Equity Shareholders' and 'Unsecured Creditors' of 'Transferor' and 'Transferee' Company unanimously approved the 'Resolution' approving the Scheme of Amalgamation.

The Learned Counsel further submits that, the 'Scheme of Amalgamation' is in the final stage of consideration and if such delay was not condoned, it would cause a significant adverse impact on the business operations of the 'Transferor' as well as the 'Transferee' Company.

The NCLAT states that, with respect to condonation of delay the Tribunal is to adopt/take lenient/liberal view of course, based on the facts and circumstances. Further, the very approach of the Tribunal ought to be pragmatic and justice oriented in the considered opinion of this Tribunal. Further, the Tribunal is to assess the 'due diligence' of parties craving for condonation of given case.

After considering the fact and circumstance of the case, the present Appeal is allowed, but without Costs and impugned order was set aside.

To read the order in detail, please click here.

Securities Exchange Board of India

1. Adjudication Order in the matter of UV Boards Limited

In the matter of UV Boards Limited (**UVBL**), Bombay Stock Exchange Limited **("BSE")** informed Securities and Exchange Board of India ("**SEBI**") that during the course of analysis in the scrip of UVBL for the period of February 12, 2015 to March 09, 2016, it was observed that, there was a decrease in the shareholding of public shareholder Mr. Aaditya Tikmani (**Noticee**).

SEBI vide email asked the Noticee to provide the details of disclosures made by him in this regard. The Noticee by reply submitted that "due to oversight he inadvertently missed out to report the transactions for which he was required to make requisite disclosures.

SEBI noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. Further noted that this is the first-time default and consider that timely disclosures to the company and the stock exchange as required under the SAST Regulations, are of significant importance from the point of view of the investors and regulators.

SEBI after taking into consideration all the facts and circumstances of the case impose a monetary penalty of INR 1,00,000 (INR One Lakh) on the noticee under section15A(b) of the SEBI Act.

To read the order in details, please click here.

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High Court

1. No injunction was granted and the captioned Patent applications were dismissed

I.A. No. 8826/2020 in
+ CS (COMM) No. 410/2020

Astrazeneca AB & ANR	**Plaintiffs**
Intas Pharmaceuticals Limited	**Defendant**

I.A. No. 8859/2020 in
+ CS (COMM) No. 411/2020

Astrazeneca AB & ANR	**Plaintiffs**
Alkem Laboratories Limited	**Defendant**

Date of Judgement: November 02, 2020

Injunction was not granted in favour of the plaintiffs and against the defendants and consequently, the captioned applications, mainly, two patents (IN 147 – The Genus Patent & IN 625 – The Species Patent) are dismissed.

The Court stated that the defendants via their respective affidavits, place on record the details, quantum, and value of drug manufactured and sold as also indirect and direct taxes paid in that behalf and the information will be placed on the Court's record every quarter. It was also stated that the defendants will also provide details of their assets [encumbered and unencumbered] which would include their location and current market value. The information given in the affidavits will be backed by a certificate of a statutory auditor. The defendants via their affidavits also undertake to pay damages as and when called upon to do so by the Court. These affidavits need to be filed within a period of 3 weeks from the date of this judgement.

To read the Judgement in detail, please click here.

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2. **Appointment of an Advocate as Sole Arbitrator, stood vitiated on account of Section 12(5) of the Arbitration and Conciliation Amendment Act and the petition was dismissed**

ABB India Limited	**Petitioner**
Bharar Heavy Electricals Limited	**Respondent**

Date of Judgement: November 02, 2020

The Petition filed under Section 14(1)(a) of the Arbitration and Conciliation Act, 1996, seeking declaration that the mandate for appointing an Advocate as Sole Arbitrator by the respondent was terminated *de jure* and to further continue the arbitral proceedings call was made to the Court to appoint a substitute arbitrator.

In this respect the Court is of the view that the submissions be rejected, which were made for the appointment of the Advocate as a Sole Arbitrator, who stood vitiated on account of Section 12(5) of the Arbitration and Conciliation Act, 1996, as inserted by the 2015 Amendment Act and the Court concluded that the said petition fails and is dismissed with no orders as to costs.

To read the Judgement in detail, please click here.

3. **Appeal was ruled in favour of the revenue, and against the appellant, as under Section 23(1) of the Income Tax Act, 1961, intermediate profits, and interest on intermediate profits, constitute revenue receipt.**

M/s. Skyland Builders Private Limited.	**Appellant**
Income Tax Officer	**Respondent**

Date of Judgement: November 03, 2020

Appeal filed under Section 260A of the Income Tax Act as preferred by the assesse to assail the order passed by the Income Tax Appellate Tribunal Bench 'G', New Delhi (ITAI) pertaining to the assessment year 1999-2000, stands disposed of and was ruled in favour of the revenue (Income Tax), and against the appellant, for the question of law as set out in paragraph 2 framed as below by the Court for its consideration.

"Whether in the facts and circumstances of the case and in law, the ITAT was right in taxing mesne profit and interest on mesne profit received at the discretion/ directions of Hon'ble

Civil Court in suit No. 814/90 for unauthorized occupation of immovable property by Indian Overseas Bank, under Section 23(1) of Act"

The Court further held that the ITAT was right in holding that the intermediate profits and interest on intermediate profits received under the direction of the Civil Court for unauthorized occupation of the immovable property of the assessee by Indian Overseas Bank – the erstwhile tenant of the appellant, was liable to tax under Section 23(1) of the Income Tax Act, 1961, since the intermediate profits, and interest on intermediate profits, in the facts of the present case constituted to be revenue receipt.

To read the Judgement in detail, please click here.

4. **Appeal was filed under Section 37 of the Arbitration and Conciliation Act, 1996, stands dismissed and the accompanying stay application is also dismissed with no orders as to costs.**

Steel Authority of India Limited.	**Appellant**
Primetals Technologies India Private Limited (*Formerly known as Siemens Val Metals Technologies Private Limited*)	**Respondent**

Date of Judgement: November 03, 2020

Steel Authority of India Limited, being a Government of India undertaking, which is engaged in the business of inter alia manufacturing steel, was awarded a contract for the setting up of a Coupled Pickling Line and Tandem Cold Mill at Bokaro Steel Plant to a consortium of M/s Siemens VAI Metals Technologies Private Limited (now Primetals Technologies India Private Limited), M/s Siemens VAI Metal Technologies GmbH & Co, Austria and M/s McNally Bharat Engineering Co. Limited.

Due to opposing stances taken by the parties to the contract, the Respondent invoked arbitration and the matter was referred to an Arbitral Tribunal comprising of a Sole Arbitrator.

The present appeal was filed under Section 37 of the Arbitration and Conciliation Act, 1996, read with Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 against the impugned final order and judgment passed by the learned Single Judge of this Court, whereby the objections filed by the Appellant under Section 34 of the Arbitration and Conciliation Act against the arbitral award

passed by the learned Sole Arbitrator which was dismissed and by way of the award, the claims of the Respondent which was allowed, stands dismissed and the accompanying stay application is also dismissed with no orders as to costs.

The Court of the view that it would not like to be drawn into controversy, as the contention being urged before them was clearly never raised before the learned Single Judge, and the same is evident from a reading of the impugned judgment.

To read the Judgement in detail, please click here.

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Supreme Court

1. **Submissions advanced by the Appellant was rejected and the appeals were dismissed affirming the view taken by the National Consumer Disputes Redressal Commission, New Delhi**

M/s. Imperia Structures Limited — **Appellant**
Anil Patni and Another — **Respondents**

Date of Judgement: November 02, 2020

The Project for a Housing Scheme called "The ESFERA" in Sector 13C, Gurgaon, Haryana, was launched by the Appellant sometime in 2011 and all the original Complainants booked their respective apartments by paying the booking amounts and thereafter each of them executed Builder Buyer Agreement with the Appellant. The Respondents in the leading appeal had booked an apartment, however, there was delay to deliver the possession due to Government Rules, Orders, Notifications, etc., respectively, which was duly mentioned in one of the Clause of the Agreement between the parties, which represented "Failure to deliver possession: Remedy to the Company."

The Court concluded in this case, by rejecting the submissions advanced by the Appellant and answered the questions that were raised against the Appellant. In the due course, the Real Estate (Regulation and Development) Act, 2016 ("the RERA Act") came into force, w.e.f May 01. 2016, and the Court considered the effect of the Registration of the Project under the RERA Act and stated that the entitlement of the Complainants must be considered in the light of the terms of the Builder Buyer Agreements and was rightly dealt with by the Commission. It was further noted that the Consumer Protection Act, 2019 was enacted by the Parliament "to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effectively administration and settlement of the consumers' dispute and for matters connected therewith or incidental thereto".

Therefore, the appeals under Section 23 of the Consumer Protection Act, 1986 are directed against the common judgement and order passed by the National Consumer Disputes Redressal Commission, New Delhi, where the Submissions advanced by the Appellant was rejected and these appeals were accordingly dismissed affirming the view taken by the

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Commission. The Court also directed to quantify the Cost at INR 50,000/- (INR Fifty Thousand only) to be paid by the Appellant in respect of each of the Consumer Cases, over and above the amounts directed to be made over to the Complainants and shall form part of the amount payable by the Appellant to the Complainants.

All the Complainants were entitled to execute the orders passed by the Commission in their favour, in accordance with law.

To read the Judgement in detail, please click here.
