

## Swift e-Bulletin

Edition 2/20-21

Week – July 27<sup>th</sup> to 31<sup>st</sup>

### Introduction

We welcome you to our weekly newsletter for this week!

As part of our knowledge sharing and growth, we launched our inaugural edition of 'Swift e-Bulletin' - weekly newsletter last week, which is specifically designed to cover all regulatory updates and critical judgement passed during the week. We hope that you liked our first edition 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, the Reserve Bank of India ("RBI"), the Ministry of Corporate Affairs ("MCA") and the Securities and Exchange Board of India ("SEBI") have been at the front foot in bringing significant regulatory changes in recent times. With a constant endeavor to cover all regulatory updates at one place, we have prepared a comprehensive summary for quick reference of such updates issued during the week of July 27, 2020 to July 31, 2020.

Thank you,  
Swift Team

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# REGULATORY UPDATES

## SEBI UPDATES

1. **SEBI introduces relaxation relating to procedural matters pertaining to Takeovers and Buy-backs vide circular dated July 27, 2020:**

SEBI vide circular no. SEBI/CIR/CFD/DCR1/CIR/P/2020/83 dated May 14, 2020 granted one time relaxations from strict enforcement of certain regulations of SEBI (SAST) Regulations, 2011 and SEBI (Buyback of Securities) Regulations, 2018 pertaining to open offers and buyback through tender offers opening up to July 31, 2020. Based on the representations received from the market participants, the validity of relaxations, as provided by said circular dated May 14, 2020 is further extended and shall be applicable for open offers and buy-back through tender offers opening up to December 31, 2020. To read the circular, click on the link below:

Link:[https://www.sebi.gov.in/legal/circulars/jul-2020/relaxations-relating-to-procedural-matters-takeover-and-buy-back\\_47152.html](https://www.sebi.gov.in/legal/circulars/jul-2020/relaxations-relating-to-procedural-matters-takeover-and-buy-back_47152.html)

2. **SEBI extends the timeline for submission of Financial results for the quarter/half year/financial year ended June 30<sup>th</sup> 2020 vide circular dated July 29, 2020:**

SEBI, vide circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated June 24, 2020, had extended the timeline for submission of financial results by listed entities for the quarter/half-year/financial year ended 31<sup>st</sup> March 2020 to July 31, 2020 due to the impact of the COVID-19 pandemic. Regulation 33 of the SEBI(LODR), Regulations 2015 requires a listed entity to submit its quarterly/half year/annual financial results within forty-five days or sixty days, as applicable, from the end of each quarter/half year/financial year. Accordingly, listed entities are required to submit the financial results for the quarter/half year ended June 30, 2020, on or before August 14, 2020. SEBI after receiving representations and after consideration, decided to extend the timeline for submission of financial results under Regulation 33 of the LODR Regulations, for the quarter/half year/financial year ended 30<sup>th</sup> June 2020, to September 15, 2020. To read the circular, click on the link below:

Link:[https://www.sebi.gov.in/legal/circulars/jul-2020/extension-of-time-for-submission-of-financial-results-for-the-quarter-half-year-financial-year-ended-30th-june-2020\\_47183.html](https://www.sebi.gov.in/legal/circulars/jul-2020/extension-of-time-for-submission-of-financial-results-for-the-quarter-half-year-financial-year-ended-30th-june-2020_47183.html)

**3. SEBI grants relaxation in timelines for compliances with regulatory requirements pertaining to Trading Members/Clearing Members/Depository Participants vide circular dated July 29, 2020:**

In view of the COVID-19 pandemic related situation, SEBI has decided that the relaxation on regulatory measures introduced vide circulars dated April 16, 2020, April, 21, 2020, May 15, 2020 and June 19, 2020 pertaining to Trading Members/Clearing Members/Depository Participants in areas which include Client funding reporting, reporting for Artificial Intelligence, Margin Trading for CM Segment, Risk based supervision, System Audit Report, Annual System Audit Report, uploading of KYC application form, provisions of Enhanced Supervision, update in Income Tax Permanent Account Number of Key Managerial Personnel / Directors, among other areas and a new relaxation pertaining to Cyber Security & Cyber Resilience Audit for the year ended March 31, 2020., shall be extended till September 30, 2020. To view the circular for detailed list of relaxations in various areas, please click on the link Below:

Link: [https://www.sebi.gov.in/legal/circulars/jul-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements\\_47185.html](https://www.sebi.gov.in/legal/circulars/jul-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements_47185.html)

**4. SEBI grants relaxation in timelines for compliances with regulatory requirements pertaining to depository participants(DPs) /Registrars to an Issue & Share Transfer Agents (RTAs) vide circular dated July 29, 2020:**

In view of the COVID-19 pandemic related situation, SEBI has decided that the relaxation in timelines for with various regulatory requirements, introduced vide circulars dated April 16, 2020, April 24, 2020, and June 30, 2020 pertaining to depository participants(DPs) /Registrars to an Issue & Share Transfer Agents (RTAs) relating to Processing of demat request form by Issuer/RTA and Participants, uploading of KYC Application form, submission of half-yearly Internal Audit Report by DPs, redressal of Investor Grievances, transmission of securities, closure of demat account, annual Systems Audit shall be extended till September 30, 2020. To view the circular for detailed list of relaxations in various areas, please click on the link Below:

Link: [https://www.sebi.gov.in/legal/circulars/jul-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements\\_47186.html](https://www.sebi.gov.in/legal/circulars/jul-2020/relaxation-in-timelines-for-compliance-with-regulatory-requirements_47186.html)

**5. SEBI extends the date of implementation of its circular on “Margin obligations to be given by way of Pledge / Re-pledge in the Depository System” vide circular dated July 29, 2020:**

In view of the prevailing situation due to COVID-19 pandemic, partial lockdowns in various areas of the country, representations received from the stock brokers and

stock broker associations and that the changes to the systems and software development still under progress, it has been decided to give further relaxations to the circular which was issued on February 25, 2020 on specified mechanism with regard to margin obligations to be given by way of Pledge / Re-pledge in the Depository System which was to initially come into effect on June 1, 2020 but was extended till August 01, 2020 vide SEBI circular dated May 25, 2020 read with SEBI circular dated May 29, 2020. This circular relates to the timelines for implementation of mechanism of pledge/re-pledge, acceptance of client securities as collateral by the Trading members / Clearing members, holding of funded stocks by the Trading members / Clearing members by way of pledge and closure of all existing demat accounts tagged as “Client Margin / Collateral”. To read the circular in detail, click on the link below:

Link:[https://www.sebi.gov.in/legal/circulars/jul-2020/implementation-of-sebi-circular-on-margin-obligations-to-be-given-by-way-of-pledge-re-pledge-in-the-depository-system\\_47190.html](https://www.sebi.gov.in/legal/circulars/jul-2020/implementation-of-sebi-circular-on-margin-obligations-to-be-given-by-way-of-pledge-re-pledge-in-the-depository-system_47190.html)

**6. SEBI enables use of digital signature certifications for authentication / certification of filings / submissions made to Stock Exchanges via circular Dated July 31, 2020:**

SEBI, vide circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/63 dated April 17, 2020, had permitted use of digital signature certifications for authentication / certification of filings / submissions made under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations'), to the Stock Exchanges, till June 30, 2020. Due to the COVID -19 pandemic and precautionary measures for its curtailment, SEBI has received a representation from the Institute of Company Secretaries of India (“ICSI”) stating that Company Secretaries continue to face operational challenges in carrying out certification and authentication of documents in physical form. Accordingly, SEBI decided that authentication / certification of any filing / submission made to stock exchanges under the LODR Regulations may be done using digital signature certifications till December 31, 2020. To read the circular in detail, click on the link below:

Link:[https://www.sebi.gov.in/legal/circulars/jul-2020/use-of-digital-signature-certifications-for-authentication-certification-of-filings-submissions-made-to-stock-exchanges\\_47219.html](https://www.sebi.gov.in/legal/circulars/jul-2020/use-of-digital-signature-certifications-for-authentication-certification-of-filings-submissions-made-to-stock-exchanges_47219.html)

**7. SEBI issues guidelines for collection and reporting of margins by Trading Member (TM) / Clearing Member (CM) in Cash Segment via circular dated July 31, 2020:**

SEBI, vide circular no. CIR/HO/MIRSD/DOP/CIR/P/2019/139 dated November 19, 2019, issued guidelines with regard to collection of margins from clients and reporting of short-collection / non-collection of margins by Trading Member (TM) /

Clearing Member (CM). In view of the representations received from investors, TMs / CMs, stock broker associations, in this regard, following has been decided:

- *If TM / CM collects minimum 20% upfront margin in lieu of VaR and ELM from the client, then penalty for short-collection / non-collection of margin shall not be applicable. However, it is reiterated that Clearing Corporation shall continue to collect the upfront margin from the TM / CM based on VaR and ELM.*
- *The penalty provision for short-collection / non-collection of upfront margin in cash segment shall be implemented with effect from September 01, 2020.*

It is to be noted that SEBI circular dated November 19, 2019 is modified to the extent of the above. All other provisions of the said circular dated November 19, 2019 shall continue to remain applicable. To read the circular in detail, click on the link below:

Link:[https://www.sebi.gov.in/legal/circulars/jul-2020/collection-and-reporting-of-margins-by-trading-member-tm-clearing-member-cm-in-cash-segment\\_47220.html](https://www.sebi.gov.in/legal/circulars/jul-2020/collection-and-reporting-of-margins-by-trading-member-tm-clearing-member-cm-in-cash-segment_47220.html)

**8. SEBI issues clarification on applicability of regulation 40(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 to open offers, buybacks and delisting of securities of listed entities via circular Dated July 31, 2020:**

The proviso to regulation 40(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations') states that "except *in case of transmission or transposition of securities, requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialized form with a depository.*" After receiving representations from investors expressing concerns that they have not been able to participate in open offers, buybacks and delisting of securities of listed entities since the securities held by them were not in dematerialized form. SEBI in this context, has clarified that shareholders holding securities in physical form are allowed to tender shares in open offers, buy-backs through tender offer route and exit offers in case of voluntary or compulsory delisting. However, such tendering shall be as per the provisions of respective regulations. To read the circular in detail, click on the link below:

Link:<https://www.sebi.gov.in/legal/circulars/jul-2020/clarification-on-applicability-of-regulation-40-1-of-sebi-listing-obligations-and-disclosure->

[requirements-regulations-2015-to-open-offers-buybacks-and-delisting-of-securities-of-listed-entities\\_47216.html](#)

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## MINISTRY OF FINANCE UPDATES

1. Government of India further amends Foreign Exchange Management (Non-Debt Instruments) Rules, 2020 named as the Foreign Exchange Management (Non-debt Instruments) (Third Amendment) Rules, 2020 vide Gazette Notification dated July 27, 2020:

The Ministry of Finance has notified changes and made insertions in Foreign Exchange Management (Non-Debt Instruments) Rules, 2020. These rules permit Non-Resident Indians (NRIs) to acquire up to 100% in Air Transport Service in relation to Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline and Regional Air Transport Service etc. The amendment in FDI policy will permit foreign investment in Air India Ltd at par with other Scheduled Airline Operators. Further as one of the highlights, Department of Economic Affairs (DEA) said that “Substantial ownership and effective control of M/s Air India Limited shall continue to be vested in Indian Nationals as stipulated in Aircraft Rules, 1937,”. To read all the amendments in the notification, please click on the link below.

Link: <http://egazette.nic.in/WriteReadData/2020/220699.pdf> (Gazette Notification)

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## JUDGEMENTS/ORDERS

### NCLT

1. In the matter of M/s Krishna Industrial Corporation Limited, application was filed by the Resolution Professional under section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (I &B code, 2016) praying NCLT Chennai to pass an order to Liquidate the Corporate Debtor (applicant) under I & B code 2016.

Mr. S. Rajendran was appointed as Interim Resolution Professional (IRP) and taken over the management of the corporate debtor and issued publication in newspaper inviting the claims from creditors. Upon claims received from creditor, the IRP constituted Committee of Creditors (CoC). The IRP also invited Expression of Interest. The CoC in the second meeting decided to liquidate the corporate debtor and appointed the present Resolution professional as liquidator.

In view of the facts and circumstance NCLT Chennai passed the liquidation order stating that Mr. S. Rajendran appointed as the Liquidator of the applicant; he shall issue the public announcement that the applicant is in liquidation; the liquidator shall investigate the financial affairs in relation to the preferential transaction or undervalue transaction and fraudulent preferences; shall give necessary intimation to the Income Tax Department; shall submit preliminary report to the Authority within 75 days from the liquidation commencement date. To read the Order in detail, click on the link below:

Link:

<https://nclt.gov.in/sites/default/files/July-final-orders-pdf/MA%20376.pdf>

### NCLAT

1. The 'RoC' had initiated action for non-filing of Annual Returns for the years 2015-2016 and 2016-2017. The NCLT has granted relief to the Appellant subject to payment of costs of INR 25,000/- in the Prime Minister Relief Fund along with INR 50,000/- in the Ministry of Corporate Affairs (MCA). The matter was appealed before the NCLAT, New Delhi. The Learned Counsel for the Appellant states that the Appellant is in the profession of Education and has been suffering losses and thus the costs should not have been imposed.

The NCLAT, after considering the default, reduce the costs to payment of INR 25,000/- in the Prime Minister Relief Fund and set aside the direction of the NCLT to pay another INR 50,000/- to the MCA. To read the Order in detail, click on the link below:

Link: <https://nclat.nic.in/Useradmin/upload/2569326555f1ecf16321ea.pdf>

- 2. The Adjudicating Authority examined and directed the Corporate Debtor to settle all the claims within a definite time frame rather than settlement of all individual claims in detail.**

The appeal is dismissed bearing in mind that the settlement process set in motion at the pre-admission stage is supported by the Consent Terms filed by some of the stakeholders, though it may not be all encompassing, this appeal would not lie and accordingly it was held that the appeal is not maintainable.

On hearing the Appellants claim, it was find out that the subject matter being a Housing Project with stakeholders, inter alia, being the Allottees and the Investors, the Company Petition came to be disposed of on the basis of Joint Consent terms filed by the parties to the Company Petition. The Adjudicating Authority was of the view that instead of examining all individual claims in detail, the Adjudicating Authority deemed it appropriate to direct the Corporate Debtor to settle all the remaining claims within a definite time frame. It further appears that three months' time was allowed for settlement of the claims by the Corporate Debtor and the Adjudicating Authority observed that if any of the claimants be aggrieved of the settlement process, they would be at liberty to approach the Adjudicating Authority again. To read the Order in detail, click on the link below:

Link: <https://nclat.nic.in/Useradmin/upload/6231251285f22ae7aafc4f.pdf>

## **SEBI**

1. In the matter of Sterling International Enterprises Ltd. The Securities and Exchange Board of India (“**SEBI**”) carried out Investigation in respect of irregular trading activities of certain entities in the scrip of Sterling International Enterprises Limited. Pursuant to the investigation, SEBI initiated adjudication proceedings against Sudha Balkrishna Oza (“noticee”) for violation of provisions of SEBI Act and regulations.

In this regard, Adjudicating Officer (AO) issued show cause notice (SCN) to the noticee and advised to file reply within 14 days of the receipt of the SCN. In reply, husband of the Noticee informed that, his wife Sudha Oza (notice) has passed away on September 19, 2016 and requested to withdraw the SCN against her and also produce death certificate. The AO took note of the death certificate.

The AO took into account the Orders of Hon'ble Supreme Court (SC) passed in case of Girijandini vs. Bijendra Narain and observed that in case of personal action, i.e., the actions where the relief sought is personal to the deceased, the right to sue

will not survive to or against the representatives, and in such cases, the maxim actio personalis moritur cum persona (personal action dies with the death of the person) would apply. Relying on the order of the SC, AO disposed of the adjudicating proceeding and abates the penalty. To read the Order in detail, click on the link below:

Link:

<https://www.sebi.gov.in/enforcement/orders/jul-2020/adjudication-order-in-respect-of-sudha-balkrishna-oza-in-the-matter-of-sterling-international-enterprises-ltd-47149.html>

2. In respect of Sushil Financial Services Pvt. Ltd. (“Noticee”), SEBI conducted inspection to verify the compliance of Regulations and Circulars issued in respect of segregation of funds and securities. On analysis of the detail during inspection, the SEBI observed that the Noticee had not segregated clients’ funds resulting into mis-utilisation of client funds.

SEBI imposed a penalty of INR. 3,00,000 on Noticee, a registered Broker, under Section 23D of the SCRA for failure to segregate securities or moneys of client or clients. To read the Order in detail, click on the link below:

Link:

<https://www.sebi.gov.in/enforcement/orders/jul-2020/adjudication-order-in-the-matter-of-sushil-financial-services-pvt-ltd-47168.html>

## HIGH COURT

1. **The Calcutta High court allowed the creditor to file its claim with OL after the expiry of the prescribed time.**

**Sanwaria Creations Private Limited And Quality maintenance venture ltd.**

**Versus**

**Official Liquidator**

Date of Judgement: July 27, 2020

This application was filed by Quality Maintenance Venture Ltd. (**the applicant**) for an order directing the Official Liquidator (OL) to accept the claim of the applicant as creditor of the company in liquidation. Sanwaria Creations Private Limited went into liquidation pursuant to an order of Court. A subsequent order was passed, in terms of which, all creditors of the company in-liquidation were granted liberty to file their respective claims before the OL by 9<sup>th</sup> September, 2019. The applicant

filed a claim before the OL on February 28, 2020 However, the Official Liquidator informed the applicant that since it had filed its claim beyond the time-period granted by this Court, the applicant needs to obtain leave of Court for filing its claim. Subsequently, thereafter, lockdown was imposed in the State because of outbreak of pandemic Covid 19. The present application has been taken out on or about 25<sup>th</sup> June, 2020. In view of the emergency in the state, the delay in taking out this application is condoned.

The court permitted the creditor to file its claim against a company in liquidation with OL. The court was satisfied with the facts and circumstances of the case, there was no intentional or unconscionable delay on the part of the applicant and allowed the applicant to file its claim with the OL. Hence case was disposed of. To read the Order in detail, click on the link below:

Link:

[http://164.100.79.153/judis/kolkata/index.php/casestatus/viewpdf/CA\\_51\\_20\\_20\\_27072020\\_O\\_240.pdf](http://164.100.79.153/judis/kolkata/index.php/casestatus/viewpdf/CA_51_20_20_27072020_O_240.pdf)

2. **Writ Petition disposed off as rectification applications pending and matters been se-aside to the file of Assessment Officer for fresh verification.**

**M/s. BT India Private Limited ..... Petitioner**

**Versus**

**The Assistant Commissioner of Income-Tax & ANR. .... Respondents**

Date of Judgement: July 27, 2020

The Court has disposed off the Writ Petition filed by the Respondent challenging the proceedings initiated against the petitioner under Section 245 of Income Tax Act, 1961 and to refund the amount payable on finalization of the income tax return for the assessment year 2018-19 along with applicable interest, as some of the rectification applications have been pending since July and December, 2012 and that that the tax demands outlined in the notice are invalid because for all the assessment years mentioned therein, either the rectification applications have been pending in spite of reminders or the matters have been set-aside to the file of Assessment Officer for fresh verification. To read the Order in detail, click on the link below:

Link: <http://164.100.69.66/jsearch/>

3. **Writ Petition is disposed off with no costs, as difference was drawn between a registered association and registered trade union.**

**Karnataka Employees State Insurance Scheme Medical Services Department  
Pharmacist Employees Welfare Association (R) .... Petitioner**

**Versus**

**(a) The state of Karnataka;**

**(b) Employees state insurance corporation**

**(c) The directorate, employees state insurance scheme medical services  
department, government of Karnataka .... Respondent**

Date of Judgement: July 27, 2020

Writ Petition is disposed off with no costs, by directing the respondent to take a call on the petitioners' representation in accordance with law and within a period of 3 months. Initially the Writ Petition was resisted, contending that an association cannot maintain a writ petition for and on behalf of its members, since no right of the association as such, is violated. Later difference was drawn between a registered association and registered trade union and it was submitted that there would be no difficulty for consideration of subject representations in accordance with law and a reasonable period be prescribed and that the petitioner shall also co-operates by furnishing necessary information and records, which was noticeably a very fair and reasonable stand. To read the Order in detail, click on the link below:

Link:

<http://judgmenthck.kar.nic.in/judgmentsdsp/handle/123456789/336098>

## **SUPREME COURT**

### **1. The Supreme Court set aside the Orders Officer's Order Imposing Penalty on Company's Part-Time Director**

**Shailendra swarup ... Appellant**

**Versus**

**The deputy director, enforcement directorate ... Respondent**

Date of Judgement: July 27, 2020

The Enforcement Directorate (**ED**) issued show cause notice to Modi Xerox Ltd.(**MXL**) and all the directors for contravention of Section 51 of Foreign Exchange Regulation Act, 1973 (**FERA**). Xerox Modi Corporation Ltd. (successor of **MXL**) replied to the show cause notice. The ED decided to hold the proceedings and issued notice to **MXL** and its directors for personal hearing. In the reply the appellant stated that he is a practicing Advocate of the Supreme Court and was only a part-time, non-executive Director of **MXL** and he was never in the

employment of the Company nor had executive role in the functions of the Company.

The ED after hearing the appellant and other directors of the company passed the order and imposed penalty of INR 1,00,000 on the appellant for contravention of Section 8(3) read with 8 (4) and Section 68 of FERA, 1973. The appellant Aggrieved by the order of ED and filed appeal in Appellant Tribunal for foreign exchange which was dismissed by the Tribunal. Against the order of the Appellate Tribunal, Criminal Appeal was filed by the appellant in Delhi High Court. The Delhi High Court by the impugned judgment dated November 08, 2009 has dismissed the appeal of the appellant. Thus, the matter was appealed before the Supreme Court of India by the appellant against the Deputy Director, Enforcement Directorate.

The Supreme Court (**SC**) observed the judgment of S.M.S. Pharmaceuticals Ltd. Vs Neeta Bhalla and another, had consider the provisions of Section 141 of the Negotiable Instruments Act, 1981 which is pari materia to Section 68 of the FERA, 1973. Further SC is of the View that the adjudicating officer has erroneously imposed penalty on the appellant for the alleged offence which was also erroneously affirmed both by the Appellate Tribunal and the High Court. The SC held that, this appeal deserves to be allowed and set aside the penalty imposed on the applicant, the judgments of the High Court, the adjudicating officer and the Appellate Tribunal. To read the Order in detail, click on the link below:

Link:

[https://main.sci.gov.in/supremecourt/2010/3398/3398\\_2010\\_35\\_1501\\_231\\_14\\_Judgement\\_27-Jul-2020.pdf](https://main.sci.gov.in/supremecourt/2010/3398/3398_2010_35_1501_231_14_Judgement_27-Jul-2020.pdf)

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