

Swift e-Bulletin

Edition 23/20-21

Week – December 21st to December 25th

Quote for the week:

“Tell me and I forget. Teach me and I remember. Involve me and I learn.”

- Benjamin Franklin

Introduction

Merry Christmas! Wishing your holiday season be filled with sparkles of joy and love.

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 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, the various regulatory authority granting many relaxations, exemptions and making various amendments to the various legislations to ease out the operations during current pandemic time.

This week’s newsletter covers various Circulars/notifications issued by certain regulatory authorities such as, The Ministry of Corporate Affairs (“MCA”), the Securities and Exchange Board of India (“SEBI”), the Insolvency and Bankruptcy Board of India (“IBBI”) and the International Financial Service Centres Authority (“IFSCA”) and critical judgements and orders passed by the National Company Law Tribunal (“NCLT”), the National Company Law Appellate Tribunal (“NCLAT”), SEBI and High Court.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of December 21, 2020 to December 25-2020.

**Thank you,
Swift Team**

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REGULATORY UPDATES

MCA UPDATES

1. MCA notifies 17 provisions of of the Companies (Amendment) Act, 2020 vide Gazette Notification dated December 21, 2020



- ✚ The Ministry of Corporate Affairs (MCA) notified that the provisions of the Companies (Amendment) Act, 2020 will be enforced from 21 December 2020.
- ✚ The 17 provisions include Section 1; Section 3; Section 6 to 10 (both inclusive); Sections 12 to 17 (both inclusive); Clauses (a) and (b) of Section 18; Section 19 to 21 (both inclusive); Clause (i) of Section 22; Section 24; Section 26; Section 28 to 31 (both inclusive); Sections 33 to 39 (both inclusive); Section 41 to 44 (both inclusive); Section 46 to 51 (both inclusive); Section 54; Section 57; Section 61; and Section 63. Some of these amendments are highlighted below.
- ✚ Section 1 deals with the name of the amendment called the Companies (Amendment) Act, 2020 while Section 3 deals with the penalty provisions of section 8 of the principal act relating to Formation of Companies with Charitable Objects, etc. wherein the words “with imprisonment for a term which may extend to three years or” shall be omitted; and for the words “twenty-five lakh rupees, or with both”, the words “twenty-five lakh rupees” shall be substituted.
- ✚ Section 6 to 10 deals with the decriminalization of the Companies Act, 2013. It removes the imprisonment for various offenses, substitutes fine by penalty in and reduces the amount of payable as penalty across the board. In case of certain minor omissions, etc. penal consequence have been omitted.
- ✚ Section 12 to 17 deals with notice to be given to the Registrar for alteration of share capital; omission of Section 66 which pertained to Reduction of share capital; power of company to purchase its own securities; omission of Section 71; Punishment for contravention and Register of members, etc. respectively.
- ✚ Section 19 to 21 deals with the amendment in investigation of beneficial ownership of shares in certain cases; Annual return and Proxies respectively.

- ✚ Section 24 deals with the amendment in the provision relating to Books of account, etc., to be kept by the company and Section 26 deals with the amendment in the provision relating to the Financial statement, Board 's report, etc.
- ✚ Section 28 to 31 deals with the amendment in the provision relating to Copy of financial statement to be filed with Registrar; Removal, resignation of auditor and giving of special notice; Powers and duties of auditors and auditing standards and Punishment for contravention respectively.
- ✚ Section 46 to 51 deals with the amendment in the provision relating to Promoters, directors, etc., to cooperate with Company Liquidator; Dissolution of company by Tribunal; Section 342 was omitted; Disposal of books and papers of company; Information as to pending liquidations; and Power of Tribunal to declare dissolution of company void respectively.
- ✚ Section 54 to 63 deals with Amendment of Section 392 relating to the Punishment for contravention by companies incorporated outside India; amendment in Section 405 relating to Power of the Central Government to direct companies to furnish information or statistics; amendment in Section 441 relating to Compounding of certain offences; and amendment in Section 450 relating to punishment where no specific penalty or punishment is provided.

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

2. MCA amends the Companies (Incorporation) Rules, 2014 and introduces extension of Name reservation in certain cases by the Registrar vide Gazette Notification dated December 24, 2020



- ✚ These Rules may be called the Companies (Incorporation) Third Amendment Rules, 2020.
- ✚ A new clause "9A. Extension of reservation of name in certain cases" shall be inserted after Rule 9 of the Companies (Incorporation) Rules, 2014 with effect from 26th January, 2021.
- ✚ The said clause provides for extension of name reservation in certain cases upon payment of fees provided below through the web service available at www.mca.gov.in, by the Registrar by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), up to:

- a) Forty days from the date of approval under Rule 9, on payment of fees of Rupees One Thousand made before the expiry of Twenty days from the date of approval under Rule 9;
- b) Sixty days from the date of approval under Rule 9 on payment of fees of Rupees Two Thousand made before the expiry of Forty days referred to in clause (a) above;
- c) Sixty days from the date of approval under Rule 9 on payment of fees of Rupees Three Thousand made before the expiry of Twenty days from the date of approval under Rule 9

✚ Provided that the Registrar shall have the power to cancel the reserved name in accordance with sub-section (5) of Section 4 of the Companies Act, 2013.

✚ In the said rules, in the annexure, in SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus FORM NO. INC-32), for Part –A, a new part shall be substituted, to include the field Limited Liability Partnership Identification Number (“LLPIN”) after Type of company in Spice + Part A.

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

3. MCA amends the Companies (Share Capital and Debentures) Rules, 2014 and vide Gazette Notification dated December 24, 2020

✚ These rules may be called the Companies (Share Capital and Debentures) Second Amendment Rules, 2020.



✚ With this notification a new Form SH-7 shall be substituted in the Annexure to these rules as mentioned in the notification.

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

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SEBI UPDATES

1. SEBI reviews inclusion of Historical Scenarios in Stress Testing in Commodity Derivatives Segment vide Circular dated December 21, 2020



- SEBI vide Circular dated July 11, 2018 and dated July 21, 2020, inter alia, had prescribed norms related to Stress Testing for the commodity derivatives segment, which included norms regarding historical scenarios.
- In light of an unprecedented event of negative final settlement price in the crude oil futures markets in the recent past, SEBI vide circular dated September 21, 2020 had prescribed an Alternate Risk Management Framework that would be applicable in case of near zero and / or negative prices for any underlying commodities/future.
- Pursuant to the issuance of the above circular, SEBI received representation to review the requirement of including all the price movements during the last 15 years, in the historical scenarios prescribed for stress testing.
- The matter was discussed upon in the Risk Management Review Committee (“RMRC”) of SEBI and in line with the recommendations of the RMRC, following clause stands inserted after Para ‘1’ of Part ‘A’ of Annexure to the SEBI Circular dated July 11, 2018 with a view to address the concerns emanating from exceptional and extreme volatile price events.

“Price movements corresponding to a Z-score of 10 will replace extreme price movements beyond that threshold in peak historical returns of all the commodities. Mean and sigma of returns over the applicable MPOR period across 15 years would be used for calculation of the Z-score.”

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

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IBBI UPDATES

1. Central Government notifies further period of three months under Section 10A: Suspension of initiation of corporate insolvency resolution process vide Gazette Notification dated December 22, 2020



- Section 10A of The Insolvency and Bankruptcy Code, 2016 deals Suspension of initiation of corporate insolvency resolution process. The period was extended for 3 months from September 25, 2020 vide Notification No. S.O. 3265(E) dated September 24, 2020 till December 25, 2020. The Central Government hereby notifies further extension by period of three months from December 25, 2020.
- No application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

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

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IFSCA UPDATES

1. IFSCA issues instructions and clarifications on circulars issued under the IFSC (Banking) Regulations, 2020 vide Circular dated December 24, 2020:



- Banking Units (“BUs”) are requested to refer to the following circulars and directions, dated December 4, 2020, issued after notification of the IFSC (Banking) Regulations, 2020:

- IFSC (Banking) Regulation, 2020 – Directions for implementation
- OTC Derivatives at IFSCs
- IFSCA (Deposits) Directions, 2020
- Directions on business in foreign currency at IFSCs

- Subsequently, queries/suggestions received from BUs, IFSCA has issued instructions and clarifications in the many areas in the **Annex** to this circular some of which are provided below:

- Licensing requirement of existing Bus
- Offering of services to domestic customers/market (e.g. Post shipment credit, Derivatives)
- Applicability of domestic laws to IFSC
- Permissible activities of BUs - Credit insurance backed lending, acting as FPI, Wealth Management products
- Ombudsman for individual client complaints
- Inclusion of IFSC under the definition of “established financial centers” under RBI’s circular on “Operations of foreign branches and subsidiaries of the Indian banks – Compliance with statutory/regulatory/administrative prohibitions/restrictions” dated May 12,2014
- Offering Non-deliverable derivative contracts (“NDCCs”) to person’s resident outside India and in foreign currency (“FCY-FCY”)
- Clarity on operations that has to be carried out of GIFT city
- Clarity on INR denominated transactions
- Statutory restrictions on lending

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

JUDGEMENTS/ ORDERS

NCLT

1. National Company Law Tribunal allows the Restoration of M/s Sunrise Ribbon Private Limited



National Company Law Tribunal, New Delhi Special Bench (“Tribunal”) accepts the appeal filed by the shareholder of M/s Sunrise Ribbon Private Limited (“Respondent Company”) under section 252 of the Companies Act, 2013 (“the Act”) and allows the restoration of M/s Sunrise Ribbon Private Limited.

The Appellant submitted that the Registrar of Companies (“RoC”) Delhi and Haryana struck off the Appellant Company from the Register of Companies citing the reason that the Company is not carrying on any business or operation for two immediately preceding financial years and has not made any application for obtaining status of the dormant company.

In furtherance of the submissions, Appellant stated that the Appellant Company has been active and carrying on its’ business activity since its incorporation and placed before the Tribunal the copies of Audited Balance Sheets for the financial years 2015-16, 2016-17, 2017-18 and 2018-19, copies of Income Tax Returns for assessment year 2016-17 to 2019-20 and the bank statement issued by the IDFC Bank reflecting debit and credit entries.

Tribunal noted the response filed by the RoC, indicating no objections against the restoration of the Appellant Company and the Income Tax Department neither appeared during the hearing nor filed any response.

Based on facts presented, the Tribunal was satisfied that the Appellant Company was in fact in operation and passed the restoration order subject to their filing of all outstanding documents for the defaulting years as required by law and completion of all formalities, including payment of any late fee or other charges which are leviable by the RoC for the late filing of statutory returns. Further, Tribunal also ordered the Appellant Company to pay INR 50,000/- towards costs.

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

NCLAT

1. National Company Law Appellate Tribunal condones the delay in filing of appeal by M/s. Rajgad Placement Private Limited



Rajgad Placement Private Limited
The Registrar of Companies, Mumbai

Appellant
Respondent

The present Appeal was preferred by the Appellant Company against the impugned order passed by National Company Law Tribunal, Mumbai Bench under section 252 of the Companies Act, 2013.

The Learned counsel of the Appellant Company acknowledged the fact that the said appeal should have been filed within 45 days from the date of receipt of the certified true copy of the impugned order passed by the National Company Law Tribunal, Mumbai Bench and the Appellant Company has made a delay of 35 days in preferring said appeal.

The Learned counsel of Appellant Company stated that the said delay in filing of an appeal is due to the fact that one of the Directors of the Appellant Company came into contact with the person who was suffering from Covid-19 Positive and due to this the said director was quarantined at home and hence Appellant Company could not file the appeal in time.

Based on facts presented before the National Company Law Appellate Tribunal, the Tribunal condoned the delay of 35 days in filing of an appeal by the Appellant Company after being satisfied that the said delay in filing of an appeal was completely unintentional by the Company. The National Company Law Appellate Tribunal levied no cost for condoning the said delay in filing of an appeal.

Further, at request of the Learned Counsel of the Appellant Company, National Company Law Appellate Tribunal permitted the Learned Counsel to file the copy of Reply of RoC, Mumbai Report and adjourned the said matter to January 2021.

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

SEBI

1. Adjudicating Order in respect of M/s. Reliance Capital Limited in the matter of Reliance Capital Limited



Date of the Order: December 22, 2020

CDSL had informed that Depository Participant functions had been transferred from the M/s. Reliance Capital Limited (“Noticee”) to M/s. Reliance Securities Limited (“RSL”) and all the relevant records/documents were transferred to M/s. Reliance Securities Limited. In this respect, inspection of Noticee was ordered in May, 2012 and thereafter in July, 2012 inspection of the Depository Participant (“DP”) RSL was ordered.

Considering the facts Securities and Exchange Board of India (“SEBI”) conducted inspections of Depository Participants of National Securities Depository Limited (“NSDL”) and /or Central Depository Services (India) Limited (“CDSL”) inter alia for the purpose as specified in regulation 59 of the SEBI (Depositories and Participants) Regulations, 1996 (“DP Regulations”).

Considering the facts and circumstances of the case and relevant factors and exercising the powers conferred upon the adjudicating officer under section 15I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules and 19H of Depositories Act read with rule 5 of the Depositories Adjudication Rules, a consolidated monetary penalty of ₹1,00,000/- (INR One Lakh only) be imposed on Noticee viz., Reliance Capital Limited, and the said penalty is commensurate with the violation committed by it in this case.

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

2. Adjudicating Order in respect of Accolade Holdings Private Limited in the matter of PMC Fincorp Limited.

Date of the Order: December 22, 2020

Adjudication proceedings initiated against Accolade Holdings Private Limited for the alleged violations of Section 12A(a),(b),(c) of Securities and Exchange Board of India Act, 1992

read with Regulation 3(a),(b),(c),(d) and Regulations 4(1), 4(2) (a), (e) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations**”) pursuant to investigation in the scrip of PMC Fincorp Limited (**PMC / Scrip / Company**) for the period March 29, 2012 to March 31, investigation period by SEBI initiated adjudication proceedings under Section 15HA of the Securities and Exchange Board of India Act, 1992, was disposed of by the Adjudication Order, based upon the findings and proceedings initiated against the Noticee, i.e., Accolade Holdings Private Limited.

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

3. Adjudicating Order in respect of Divya Dealers Limited

Date of the Order: December 23, 2020

The scrip of Silicon Valley Infotech Limited was investigated by Securities and Exchange Board of India (“**SEBI**”) and it was prima facie observed that the prices of the shares of the company were manipulated by some entities, including Divya Dealers Limited (“**Noticee**”).

The case was further investigated to look into possible violations of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (“**Takeover Regulations**”), Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (“**PIT Regulations**”) and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (“**PFUTP Regulations**”).

It was further observed that the status of Noticee on the MCA website is being shown as “Strike Off” and on further search conducted on the website of the MCA, it was found that a Notice dated October 30, 2019 is issued under section 248(5) of the Companies Act, 2013, that the names of 306 companies have been struck off from the register of companies and such companies are dissolved as on the said date and the said list inter alia included the name of the Noticee at serial no. 124.

In view of the findings it was concluded that since the Noticee has been “dissolved”, in the facts and circumstances of the instant case, the adjudication proceedings initiated against Noticee, cannot be proceeded with and is hereby disposed of.

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

HIGH COURT

1. Writ Petition filed by the DCX Cable Assemblies Private Limited to quash the minutes of the joint lenders meeting was disposed of by the Karnataka High Court.



DCX Cable Assemblies Private Limited

1. Reserve Bank of India
Regional Office, Bengaluru
2. Canara Bank
3. ICICI Bank Limited
4. HDFC Bank Limited
5. Axis Bank Limited

Petitioner

- Respondent 1
- Respondent 2
- Respondent 3
- Respondent 4
- Respondent 5

Date of Judgement: December 21, 2020

Writ Petition filed by DCX Cable Assemblies Private Limited under Article 226 of the Constitution of India to quash the minutes of the Joint Lenders meeting and the decisions/resolutions of four banks namely, Canara Bank, ICICI Bank, HDFC Bank and Axis Bank, were disposed of by the High Court of Karnataka.

The Petitioner's Account were frozen by the Banks and the petitioner's business had come to a grinding halt and under such circumstances the petitioner desirously approached some other bankers to bank with. Undisputed of the facts of the case, the petitioner is a constituent of all the aforementioned four banks. Though the petitioner was given loan as a 'consortium loan', however the petitioner had independent banking transactions with four different banks mentioned above.

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

2. The Delhi High Court declined the grant of interim injunction prayed by Future Retail Limited and disposed of the present application.

Future Retail Limited

Plaintiff

Amazon.com Investment Holdings LLC & ORS

Defendants

Date of Judgement: December 21, 2020

Future Retail Ltd. ("**Plaintiff**") had filed a suit impleading Amazon.com NV Investment Holdings LLC ("**Defendant No. 1**"), Future Coupons Private Limited ("**Defendant No. 2**"), the promoters of the Plaintiff in short 'Biyanis' ("**Defendant Nos. 3 to 11**"), Future Corporate Resources Private Limited ("**FCRPL**"), Akar Estate and Finance Private Limited ("**AEFPL**") as Defendant Nos. 12 and 13 respectively, and Reliance Retail Ventures Limited ("**RRVL**") and Reliance Retail and Fashion Lifestyle Limited ("**RRFL**") as Defendant Nos. 14 and 15 respectively (together referred as Reliance).

The main tests in the present case was in respect of "balance of convenience" and "irreparable loss". That is to say, even if a prima facie case is made out by Plaintiff, the balance of convenience lies both in favour of Plaintiff and Amazon.com NV Investment Holdings LLC (Defendant No. 1). Further, there being another aspect as to why no interim injunction was granted in the present application was for the reason that, both Plaintiff and Amazon.com NV Investment Holdings LLC (Defendant No. 1) have already made their representations and counter representations to the statutory authorities/regulators and to take the decision was on the Statutory Authorities/Regulators. Consequently, the Delhi High Court finds that no case for grant of interim injunction is made out in favour of Plaintiff and against Amazon.com NV Investment Holdings LLC (Defendant No. 1).

The Delhi High Court concluded the case by disposed of the present application and by declining the grant of interim injunction as prayed for by Plaintiff, however, the Statutory Authorities/Regulators were directed to take the decision on the applications/objections in accordance with the law.

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

3. Application filed by the Indian Agro & Recycled Paper Mills Association under the Code of Civil Procedure Code, 1908 was allowed by the Delhi High Court.

Indian Agro & Recycled Paper Mills Association

Plaintiff

Tafcon Projects (India) Private Limited (TAFCON) & ORS

Defendants

Date of Judgement: December 24, 2020

Indian Agro & Recycled Paper Mills Association (Plaintiff's) application filed under the Code of Civil Procedure, 1908, inter alia, seeking to amend the plaint to seek a decree of damages for a sum of ₹3,00,00,000/- (INR Three Crores), being the amount paid by defendant no.3 to defendant no.1 for assignment of the marks "P" and "Paperex", and a decree of damages amounting to ₹1,00,00,000/- (INR One Crore) on account of dilution of the marks owned by the plaintiff due to allegedly wrongful and illegal acts of defendant no.1. Further, the plaintiff also seeking to extensively amend the plaint to include assertions in support of the aforementioned prayers, was allowed and was directed to place an amended petition on record and an amended written statement be filed and to list before the concerned Registrar for completion of the pleadings.

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

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