

**Swift e-Bulletin**

**Edition 24/20-21**

**Week – December 28<sup>th</sup> to January 1<sup>st</sup>**

**Quote for the week:**

*"For last year's words belong to last year's language. And next year's words await another voice."*

*- T.S. Eliot*

**Introduction**

Wishing our readers, a safe, healthy, and prosperous new year!

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, the various regulatory authorities have been granting many relaxations, exemptions and amendments to the various legislations by regulatory authorities to ease out the operations during this time of crisis.

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") and the International Financial Service Centres Authority ("IFSCA"), and critical judgements and orders passed by the National Company Law Tribunal ("NCLT"), 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 28, 2020 to January 01, 2021.

**Thank you,  
Swift Team**

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## REGULATORY UPDATES

### MCA UPDATES

**1. MCA extends the timeline to conduct Board meetings through video conferencing or other audio visual means vide Gazette Notification dated December 30, 2020**



- ✚ The Ministry of Corporate Affairs (“MCA”) notified the Companies (Meetings of Board and its Powers) Fourth Amendment Rules, 2020. The government relaxed the requirement of holding Board meetings with physical presence of Directors under Section 173(2) read with Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 for approval of the annual financial statements, Board’s report, etc.
- ✚ The Board meeting can be held through Video Conferencing (“VC”) or Other Audio-visual means (“OAVM”) may till June 30, 2021 by duly ensuring compliance of Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014.
- ✚ In the Companies (Meetings of Board and its Powers) Rules, 2014, in Rule 4, in sub-rule (2), for the figures, letters and words “31<sup>st</sup> December 2020”, the figures, letters and word “30<sup>th</sup> June 2021” shall be substituted.

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

**2. MCA extends timelines to conduct their Extraordinary General Meetings through Video Conferencing or Other Audio-Visual means or transact items through postal ballot in accordance with the framework provided vide General Circular 39/2020 dated December 31, 2020**



- ✚ In continuation to the Ministry's General Circulars No.14/2020 dated April 08, 2020, No.17/2020 dated April 13, 2020, No.22/2020 dated June 15, 2020 and No.33/2020 dated September 28, 2020 relating to “Clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 read

with Rules made thereunder on account of COVID-19” and after due examination, the Ministry has decided to allow companies to conduct their Extraordinary General Meetings (“EGMs”) through Video Conferencing (“VC”) or Other Audio-visual means (“OAVM”) or transact items through postal ballot in accordance with the framework provided in the aforesaid Circulars up to June 30, 2021 , from the earlier limit of up to December 31, 2020.

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

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## SEBI UPDATES

### 1. SEBI issues Procedural Guidelines for Proxy Advisors in modification of its earlier Circulars vide Circular dated December 31, 2020



- In partial modification to SEBI Circulars dated August 03, 2020 and August 27, 2020 on “Procedural Guidelines for Proxy Advisors”, the following modifications are made:

- Clause 1(c) of the SEBI Circular dated August 03, 2020 is modified as under:

*“Proxy Advisors shall alert clients, within 24 hours of receipt of information, about any factual errors and any impending material revisions to their reports. Further, any such material revisions to their reports shall be communicated to the clients within 72 hours of receipt of the information, while ensuring that adequate time is available for clients to make an informed decision.”*

- Clauses 1(c), as stated above and 1(e) relating to sharing of reports by proxy advisors with the clients of SEBI Circular dated August 03, 2020 shall be applicable with effect from February 01, 2021 and all the other conditions specified in the SEBI Circular dated August 03, 2020 shall remain unchanged.

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

### 2. SEBI extends the timeline for applicability of Net Asset Value (NAV) across various schemes upon realization of funds vide Circular dated December 31, 2020



- Paragraph 1 of SEBI Circular dated September 17, 2020, stated that the uniform applicability of NAV in respect of purchase of units of mutual fund schemes upon realization of funds, was to come into effect from January 01, 2021.
- Upon subsequent representation received from Association of Mutual Funds in India (“AMFI”) regarding operational challenges, and after due consideration SEBI has decided to extend the date of applicability of the aforementioned provision to February 01, 2021.

- Partial Modifications have also been made to procedural aspects of Trade Execution and Allocation of SEBI Circular dated September 17, 2020 in terms of usage of use an automated Order Management System (hereinafter referred to as 'OMS') by Asset Management companies ("AMC").

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

### 3. SEBI brings relaxation in timelines for compliance with regulatory requirements by Circulars issued earlier vide Circular dated December 31, 2020



- Keeping in view the situation arising due to COVID-19 pandemic, lockdown imposed by the Government and representations received from Stock Exchanges, SEBI had earlier provided relaxations in timelines for compliance with various regulatory requirements by the trading members / clearing members / depository participants, vide circulars dated April 16, 2020, April 16, 2020, April 21, 2020 and April 24, 2020. Later these timelines / period of exclusion were further extended for certain compliance requirements by various circulars.
- Due to the prevailing situation, due to COVID-19 pandemic and representation received from the Stock Exchanges, SEBI has decided to extend the timelines for compliance with the following regulatory requirements by the trading members / clearing members, as under:

S. No.	Compliance requirements for which timelines are extended	Extended timeline / Period of exclusion
1	Maintaining call recordings of orders/ instructions received from clients.	February 28, 2021.
2	Know Your Customer ("KYC") application form and supporting documents of the clients to be uploaded on system of KYC Registration Agency ("KRA") within 10 working days.	Period of exclusion shall be from January 01, 2021 till February 28, 2021.  A 15-day time period after February 28, 2021, is allowed to clear the back log.

- ✚ With regard to KYC application form and supporting documents of the clients to be uploaded on system of KRA by the members, for which relaxation has been provided till December 31, 2020 vide circular dated October 01, 2020, Stock Exchanges / Clearing Corporation shall direct their members to clear the backlog, if any, by January 31, 2021.

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

**4. SEBI extends timeline for implementation for creation of Security in issuance of listed debt securities and 'due diligence' by debenture trustee(s) vide Circular dated December 31, 2020**



- ✚ SEBI, vide earlier Circular dated November 03, 2020, specified requirements with regard to creation of security in issuance of listed debt securities and due diligence to be carried out by debenture trustee(s), which were applicable from January 01, 2021. Several Representations have been received from debenture trustees with regard to extension of the date of applicability of the provisions of the aforesaid Circular.
- ✚ After taking into consideration the representation received from debenture trustees, and the challenges arising out of the prevailing business and market conditions due to COVID-19 pandemic, SEBI has decided to extend the implementation date of the provisions of the said Circular to April 01, 2021.

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

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## IFSCA UPDATES

### 1. IFSCA issues directions for implementation for Transfer of assets through loan participation agreement by Banking Units (“BUs”) under IFSC (Banking) Regulations, 2020 vide Circular dated December 30, 2020



- ✚ Banking Units (BUs) are requested to refer to the circular on IFSC (Banking) Regulation, 2020 – Directions for implementation dated December 4, 2020 (“the circular”) through which the Circular on “Revisions to the Guidelines on Securitisation Transactions and Direct Assignment of Cash Flows dated May 7, 2012 (as amended)” (“the guidelines”) issued by the Reserve Bank of India was adopted.
- ✚ In addition to the modes of transfer of assets mentioned in the guidelines, BUs may also undertake transfer of assets bilaterally through the means of a standard loan participation agreement such as Master Risk Participation Agreement (“MRPA”).
- ✚ BUs may execute such agreement to sell or buy a single asset or a part of such asset or a portfolio of such assets to/from other BUs, Financial Institutions (as defined in Section 3(1)(c) of the IFSCA Act, 2019), persons resident in India and persons resident outside India. Sale or purchase of assets to/from persons resident in India shall be subject to the provisions of Foreign Exchange Management Act (FEMA), 1999.
- ✚ BUs buying assets on the basis of such agreement should undertake necessary due diligence of the assets and, if necessary, shall insert necessary provisions in the agreement to protect its interest such as for retention of a part of the asset or portfolio by the seller and/or minimum period of retention of the asset or portfolio by the seller prior to transfer.

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

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## JUDGEMENTS/ ORDERS

### National Company Law Tribunal

#### 1. National Company Law Tribunal allows the Restoration of M/s Proskill Industrial Solution Limited.



National Company Law Tribunal, Cuttack Bench (“Tribunal”) accepts the appeal filed by the shareholder of M/s Proskill Industrial Solution Limited (“Respondent Company”) under section 252 of the Companies Act, 2013 (“the Act”) and allows the restoration of M/s Proskill Industrial Solution Limited.

The Appellant submitted that the Registrar of Companies (“RoC”) Odisha struck off the Appellant Company from the Register of Companies due to non-filing of financial statements and annual returns from the financial year ended on March 31, 2017 onwards, in accordance with section 248 of the Act and had not filed application under section 455 of the Act for obtaining status of Dormant Company.

The learned counsel of Appellant Company submitted that the non-filing of statutory returns was due to inadvertence and lack of professional advice on the same and the Appellant Company had never been defuncted. In order to sustain the said plea, the learned counsel of Appellant Company had placed before the Tribunal the copies of financial statements for the financial years 2015-16 onwards, copy of certificate of incorporation, copy of company master data, copies of Income Tax Returns acknowledgements, copy of PAN card, copy of invoices and the copy of bank statements as evidence that the Appellant Company was acting as a going concern during the relevant period.

Based on facts presented, the Tribunal was satisfied that during the relevant period 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 within 30 days from the date on which its name is restored on the Register of Companies, Odisha and payment INR 25,000/- towards "payment of cost for revival of Company.

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

## SEBI

### 1. Adjudication order in respect of Rajnandi Yarns Private Limited in the matter of Spectacle Infotek Limited



In respect of Rajnandi Yarns Private Limited Securities ('Noticee') and Exchange Board of India ('SEBI') observed the huge rise in the traded volumes and price of the shares of Spectacle Infotek Limited ('Company') during the investigation period. SEBI initiated an investigation into the trading in the scrip of the company during the investigation period and observed by the SEBI that Noticee had created artificial volume in the scrip of the company during the investigation period. In view of the same, SEBI initiated adjudication proceedings against the Noticee under the provisions of section 15 HA of SEBI Act, 1992.

A show cause notice (SCN) was issued by the adjudicating authority, however, it was undelivered with remarks 'not known'. During the course of the proceedings, it was observed that the name of the Noticee has been struck off from the list of companies by the Registrar of Companies, Mumbai (RoC).

SEBI note that, when a company's name is struck-off from the RoC list and the company is also dissolved, then it is a non-existing company and the adjudication proceedings against the non-existing company is thus nullity and draw the reference from the judgment of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax (CIT) vs Vived Marketing Services (P) Ltd in which it was held that - "*When the Assessing Officer passed the order of assessment against the respondent company, it had already been dissolved and struck off the register of the Registrar of companies under Section 560 of the Companies Act 1956. In these circumstances, the Tribunal rightly held that there could not have been any assessment order passed against the company which was not in existence as on that date in the eyes of law it had already been dissolved. We are of the opinion that the view taken by the Tribunal is perfectly valid and in accordance with law.*"

Therefore, in view of the fact that the Noticee's name has been struck-off from the RoC list and also 'dissolved' as per the RoC notification, SEBI dispose of the Adjudication Proceedings initiated against the Noticee.

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

## HIGH COURT

### 1. Delhi High Court considered ad-interim relief in the case of Dabur India Limited

Dabur India Limited	Plaintiff
Marico Limited	Defendant



**Date of Judgement:** December 28, 2020

Dabur India Limited filed the present suit seeking injunction/damages for disparagement and denigration, etc. Dabur India Limited is engaged in the manufacture of 'DABUR Chyawanprash' which is an ayurvedic proprietary medicine which helps to boost immunity. There was a grievance in the present application, where the Marico Limited (Defendant) has launched a product called 'Saffola AROGYAM chyawan amrut' in the advertisement of which, it seeks to denigrate and disparage the 'chyawanprash' product category as a whole.

In the present case, the application was disposed of with terms and an ad-interim relief was considered by the Delhi High Court. The matter was heard in detail and the Defendant was provided with instructions and accordingly the Defendant was willing to modify the impugned print advertisement in the following manner:

- (i) The word chyawanprash would not be pre-fixed by either of the words - ordinary or saadharan, or any other adjective;
- (ii) The container which is currently being used to depict chyawanprash would be modified into a rectangular container, without the image of any family appearing on it and without any cap.

The Delhi High Court disposed of the application by stating that the above mentioned two modifications being carried out by the Defendant, which is without prejudice to the rights and contentions of the parties and no further orders are called for in this interim application. The Delhi High Court further stated that, if any fresh advertisement is issued by the Defendant which is comparative in nature, the same shall strictly be in terms of the order contained above.

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

**2. Petition filed by Phelan Energy India R J Private Limited was disposed of on such terms and the bank guarantee be renewed on same terms of the contact between the parties.**

**Phelan Energy India R J Private Limited  
Indusind Bank & ANR.**

**Petitioner  
Respondent**

**Date of Judgement:** December 28, 2020

The present petition has been filed by Phelan Energy India R J Private Limited, seeking return of the amounts, to the extent of INR 1,92,00,000/-, received by the Respondent No. 2, due to encashment of the bank guarantee which was issued by Respondent No. 1. The Court had restrained the invocation of the bank guarantee given by Petitioner in favour of Respondent No.2 from Respondent No.1.

The court was of the view that, the fact that invocation of a bank guarantees can adversely affect the financial standing of the entity involved. Hence it is made clear that the present invocation shall not affect the financial standing of the Petitioner in any manner and the bank shall issue a certificate on or before December 31, 2020, stating that the bank guarantee has been reinstated in favour of Respondent No.2.

With these observations, the present petition along with all pending applications are disposed of, basis the Petitioner agreed to renew the bank guarantee on the same terms of the contact between the parties and the Court informed that no further orders are called for in this matter.

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

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