

Swift e-Bulletin

Edition 25/20-21

Week – January 04th to January 08th

Quote for the week:

“You who would accomplish little must sacrifice little; you who would achieve much must sacrifice much; you who would attain highly must sacrifice greatly.”

- James Allen

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, 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.

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 Insolvency and Bankruptcy Board of India (“IBBI”) and critical judgements and orders passed by 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 January 04, 2021 to January 08, 2021.

**Thank you,
Swift Team**

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REGULATORY UPDATES

SEBI UPDATES

1. SEBI issues directions regarding refund of security deposit on surrender of membership by Trading Members vide Circular dated January 06, 2021



✚ This Circular is in reference to the letter dated June 10, 2019 issued to NSE regarding refund of security deposit and arbitration mechanism after the surrender of membership of Trading Members (**Annexure 1**).

✚ Following is advised to all exchanges regarding refund of security deposit on surrender of membership by Trading Member.

➤ On approval of application for surrender of Trading Member's registration by SEBI, the Exchange shall release Security Deposit of the Trading Member (engaged in trading on behalf of clients) after the period mentioned at point a) or b), whichever is earlier:

- a) *Three years from the date of receipt of surrender application by Exchange from the Trading Member (in order to meet any investor claims), or*
- b) *Five years from the date of disablement of Trading Member's trading terminals by the Exchange.*

➤ On approval of application for surrender of Trading Member's registration by SEBI, the Exchange shall release Security Deposit of the Trading Member (engaged only in proprietary trading in last three years prior to the date of application) after the period mentioned at point a) or b), whichever is earlier:

- a) *one year from the date of receipt of surrender application by exchange from the Trading Member, or*
- b) *three years from the date of disablement of Trading Member's trading terminals by the Exchange.*

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

RBI UPDATES

1. RBI issues Directions for Legal Entity Identifier (LEI) for Large Value Transactions in Centralised Payment Systems Via Circular dated January 05, 2021.



- ✚ Reserve Bank of India (RBI) issued this direction under Section 10 (2) read with Section 18 of Payment and Settlement Systems Act, 2007 (Act 51 of 2007) and shall be effective from **April 1, 2021**.
- ✚ Legal Entity Identifier (LEI) is a 20-digit number used to uniquely identify parties to financial transactions worldwide. It was conceived as a key measure to improve the quality and accuracy of financial data systems for better risk management post the Global Financial Crisis and it has already been introduced by the Reserve Bank in a phased manner for participants in the over the counter (OTC) derivative and non-derivative markets as also for large corporate borrowers.
- ✚ However, RBI has decided to introduce LEI system for all payment transactions of value **Fifty crore** and above undertaken by entities (**non-individuals**) using Reserve Bank-run Centralized Payment Systems Viz. Real Time Gross Settlement (RTGS) and National Electronic Funds Transfer (NEFT).
- ✚ In preparation for the wider introduction of LEI across all payment transactions, member banks should:
 - advise entities who undertake large value transactions (₹50 crores and above) to obtain LEI in time, if they do not already have one;
 - include remitter and beneficiary LEI information in RTGS and NEFT payment messages (details of the identified fields in the messaging structures of RTGS and NEFT for inclusion of LEI information are at **Annexure** to this notification);
 - maintain records of all transactions of ₹50 crores and above through RTGS and / or NEFT
- ✚ Entities can obtain LEI from any of the Local Operating Units (“LOUs”) accredited by the Global Legal Entity Identifier Foundation (GLEIF), the body tasked to support the implementation and use of LEI. In India, LEI can be obtained from Legal Entity

Identifier India Ltd. (LEIL), which is also recognized as an issuer of LEI by the Reserve Bank under the Payment and Settlement Systems Act, 2007.

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

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IBBI UPDATES

1. IBBI notifies time period for retention of records pertaining to Corporate Insolvency Resolution Process (CIRP) vide Circular dated January 06, 2021



- ✚ The Insolvency and Bankruptcy Code, 2016 (Code) read with various Regulations require an insolvency professional (“IP”) to maintain several records in relation to the assignments conducted by him under the Code. Keeping in view the importance of such records, clause (g) of sub-regulation (2) of regulation 7 of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) provides that the registration granted to an IP shall be subject to the condition that he maintains records of all assignments undertaken by him under the Code for at least three years from the completion of such assignment. Clause 19 of the Code of Conduct appended to the First Schedule to the IP (Regulations) mandates an IP must provide all records as may be required by the Board or the insolvency professional agency (IPA) with which he is enrolled
- ✚ Clause (a) of sub-regulation (4) of regulation 3 of the IBBI (Inspection and Investigation) Regulations, 2017 (“**Inspection Regulations**”) provides that the Board may conduct inspection, inter alia, to ensure that the records are being maintained by an IP in the manner required under the relevant regulations. Sub-regulation (2) of regulation 4 and sub-regulation (2) of regulation 8 of the Inspection Regulations empower the Inspecting Authority / Investigating Authority to direct the IP to submit records, as may be required, and it is his duty to produce such records in his custody or control before such Authority.
- ✚ Regulation 39A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) mandates the interim resolution professional (“IRP”) and the resolution professional (“RP”) to preserve a physical as well as an electronic copy of the records relating to the corporate insolvency resolution process (“CIRP”) of the corporate debtor (“CD”), as per the record retention schedule as communicated by the Board in consultation with Insolvency Professional Agency (“IPAs”).
- ✚ Keeping in view the various provisions the **IBBI** notified and directed retention of records under regulation 39A of the CIRP Regulations as under:
 - An IP Shall preserve:

- An electronic Copy of all records whether (physical and electronic) for a minimum period of eight Years;
- Physical copy of physical records for a minimum period of three Years.

From the date of completion of the CIRP or the conclusion of any proceeding relating to the CIRP, before the Board, the Adjudicating Authority (“AA”), Appellate Authority or any Court, whichever is later.

- An IP shall also preserve records relating to that period of a CIRP when he acted as IRP or RP, irrespective of the fact that he did not take up the assignment from its commencement or continue the assignment till its conclusion.
- ✚ An IP shall preserve copies of records relating to or forming the basis of:
 - *his appointment as IRP or RP, including the terms of appointment;*
 - *handing over / taking over by him;*
 - *admission of Corporate Debtor (“CD”) into CIRP;*
 - *public announcement;*
 - *the constitution of Committee of Creditors (“CoC”) and its meetings;*
 - *claims, verification of claims, and list of creditors;*
 - *engagement of professionals, registered valuers, and insolvency professional entity, including work done, reports etc., submitted by them;*
 - *information memorandum;*
 - *all filings with the AA, Appellate Authority and their orders;*
 - *invitation, consideration and approval of resolution plan;*
 - *statutory filings with IBBI and IPA;*
 - *correspondence during the CIRP;*
 - *insolvency resolution process cost;*
 - *applications for avoidance transactions or fraudulent trading; and*
 - *any other records, which is required to give a complete account of the CIRP*
- ✚ An IP shall preserve the records at a secure place and ensure that unauthorised persons do not have access to the same. For example, he may store copies of records in electronic form with an Information Utility. Notwithstanding the place and manner of storage, the IP shall be obliged to produce records as may be required under the Code and the Regulations

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

JUDGEMENTS/ ORDERS

NCLAT

1. **NCLAT set aside the Impugned Order and remand back the matter to the Adjudicating Authority and requested to consider the Application as per provisions of IBC**



An Appeal has been filed by the Appellant-Operational Creditor against Impugned Order passed by the by the Adjudicating Authority (**NCLT, Bengaluru Bench**) and by the Impugned Order, the Adjudicating Authority disposed of the Application under Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC).

The learned Counsel for the Appellant submits that the Appellant has filed the Application under Section 9 of IBC and the Adjudicating Authority issued Notice to the respondent and claimed that service is complete but none had appeared on behalf of the Respondent. The Adjudicating Authority observed that since the amount of the Operational Debt is small amount and thus directed the Respondent to settle the issue instead of admitting the Application under Section 9 of IBC. Learned Counsel for Respondent submits that the claim is barred by the Limitation and also stated that the Respondent was not served with the notice.

NCLAT stated that, If the Respondent is not served with the notice, it has to be ensured that the Respondent is served with the Notice. If the Respondent has been served and does not appear before the Authority, then it would be required to consider if the Application under Section 9 of IBC is complete. If application is complete, it has to be admitted. The order of NCLT Bench which directs the Respondent to settle the issue who had not appeared before the Adjudicating Authority, found to be inappropriate order.

With the above reasons, NCLAT set aside the Impugned Order and remand back the matter to the Adjudicating Authority. The Adjudicating Authority was requested to consider the Application as per provisions of IBC and decide the case as per law, after hearing the parties. The Appellant and Respondent are directed to appear before the Adjudicating Authority on 27th January, 2021. The Appeal was disposed of accordingly.

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

SEBI

1. Adjudication order in respect of Mayur Developments and Leasing Limited Private Limited and in the matter of Spectacle Infotek Limited.



In respect of Mayur Developments and Leasing Limited (**Noticee**) Securities and Exchange Board of India (**SEBI**) investigated in the scrip of HPC Biosciences Ltd (**HPC**) relating to manipulation, in the Initial Public Offer (**IPO**) process of HPC.

During the course of investigation, the Investigating Authority of SEBI had issued summons to “Noticee” under Section 11(3) and 11C (3) of SEBI Act, requiring it to furnish certain information with regard to transfer of funds by HPC from the IPO proceeds and it was observed that Noticee failed to provide the details sought by the authority vide summon dated August 4, 2016, which hampered the investigation to ascertain the facts under investigation.

After taking into consideration of facts and circumstance SEBI imposed a fine of INR 10,00,000/- (INR Ten Lakhs) lakh on the Noticee for its failure to comply with summons issued by the authority.

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

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HIGH COURT

1. Suit filed by the Indian Performing Right Society Limited (IPRS) was disposed of and decree was passed against the defendants.



The Indian Performing Right Society Limited Plaintiff
Entertainment Network (India) Limited Defendant

And

Phonographic Performance Limited & ANR Plaintiff
CRI Events Private Limited & ORS Defendant

Date of Judgement: January 04, 2021

The suits were disposed in the present case, were the plaintiff The Indian Performing Right Society Limited (IPRS), a company limited by guarantee and registered under the Companies Act, 1956 and also registered as a Copyright Society under Section 33 of the Copyright Act, 1957, established to monitor, protect and enforce the rights, interests and privileges of its members, comprising of authors, composers and publishers of literary and/or musical works, who are owners of copyright in their literary and musical works and who is a sole representative body of composers, authors and publishers of literary and musical works in India.

Considering the facts and circumstances of the case, a decree was passed in favour of the plaintiff IPRS and against the defendants in directing:

- (i) that in the case the defendants wish to perform the sound recordings in public, i.e. play them, a license from Phonographic Performance Limited (PPL) is essential;
- (ii) in case the musical works are to be communicated or performed in the public, independently, through an artist, the license of IPRS is essential;
- (iii) in case the defendants wish to hold an event involving performances or communication of works of both kinds to the public, the license or authorisation of both, Phonographic Performance Limited (PPL) and The Indian Performing Right Society Limited (IPRS) is essential; and,

- (iv) of permanent injunction restraining the defendants from acting contrary to the aforesaid directions, and leaving the parties to bear their own costs.

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

2. Delhi High Court dismissed the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, by The National Highway Authority of India (NHAI), challenging the Award of the Arbitral Tribunal

**National Highways Authority of India
Punjab National Bank & ANR.**

**Petitioner
Respondent**

Date of Judgement: January 04, 2021

Petition was filed under Section 34 of the Arbitration and Conciliation Act, 1996, by The National Highway Authority of India (NHAI), challenging the Award of the Arbitral Tribunal. The NHAI had invited bids, for construction, operation and maintenance of the Jetpur-Somnath section of NH-8D, spanning 127 km, in the state of Gujarat, on Design, Build, Finance, Operate and Transfer (DBFOT) basis. A Special Purpose Vehicle (SPV) was formed in the name of Jetpur Somnath Tollways Private Limited, under the bid of a Consortium, comprising IDFC Projects Ltd and PLUS Expressways Berhad, of which IDFC Projects Ltd. A Concession Agreement between the Jetpur Somnath Tollways Private Limited and National Highway Authority of India (NHAI) was executed and one of the Article to the said Concession Agreement granted the exclusive right, license and authority to construct, operate and maintain the Project Highway, for 30 years from the Appointed Date, to Jetpur Somnath Tollways Private Limited.

The Delhi High Court concluded that the challenge to the impugned Award, by NHAI, fails and the period of 90 days, granted by the learned Arbitral Tribunal to NHAI, to make payment of ₹ 42.96 crores, in accordance with the impugned Award, shall, however, stand reckoned from the date of receipt, by NHAI.

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

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SUPREME COURT

1. Supreme Court allowed the appeal and entitled the appellant to refund the earnest money deposited with the Respondent-Port Trust



M/s. Padia Timber Company Private Limited
The Board of Trustees of Visakhapatnam
Port Trust Through its Secretary

Appellant

Respondent

Date of Judgement: January 05, 2021

Appeal filed against a common Judgment and Order passed by the High Court of Judicature at Hyderabad in appeal confirming a Judgment and Order of the Additional Senior Civil Judge, Visakhapatnam allowing the suit being filed by the Respondent- Port Trust who floated a tender for supply of Wooden Sleepers, against the Appellant for damages, and dismissing the suit filed by the Appellant for refund of earnest deposit, was accordingly, allowed. The short question involved in this appeal is, whether the acceptance of a conditional offer with a further condition results in a concluded contract, irrespective of whether the offeror accepts the further condition proposed by the acceptor.

Both the Trial Court and the High Court over-looked the main point that, in the response to the tender floated by the Respondent-Port Trust, the Appellant had submitted its offer conditionally subject to inspection being held at the Depot of the Appellant and this condition was not accepted by the Respondent-Port Trust unconditionally.

The Supreme Court before allowing the appeal, stated that the Appellant was entitled to refund of earnest money deposited with the Respondent-Port Trust and the said earnest money shall be refunded within four weeks with interest @ 6% per annum from the date of institution of suit till the date of refund thereof.

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

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