

**Swift e-Bulletin**

**Edition 26/20-21**

**Week – January 11<sup>th</sup> to January 15<sup>th</sup>**

**Quote for the week:**

*“The only devils in the world are the ones running in our own hearts. That is where the battle should be fought.”*

*- Mahatma Gandhi*

**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 Ministry of Corporate Affairs (“MCA”), the Securities and Exchange Board of India (“SEBI”) and the Insolvency and Bankruptcy Board of India (“IBBI”), and critical judgements and orders passed by the National Company Law Tribunal (“NCLT”), SEBI, High Court and Supreme Court.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of January 11, 2021 to January 15, 2021.

**Thank you,  
Swift Team**

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## REGULATORY UPDATES

### MCA UPDATES

#### 1. MCA issues clarification on Corporate Social Responsibility (“CSR”) Expenditure for awareness and public outreach on COVID-19 Vaccination programme vide General Circular 01/2021 dated January 13, 2021



- ✚ The present clarification is in continuation of an earlier General Circular No 10/2020 dated March 23, 2020 issued by MCA providing clarification on spending of CSR funds for COVID-19 is an eligible activity.
- ✚ Through this Circular it is further clarified by the Ministry that spending of CSR funds for carrying out awareness campaigns/programmes or public outreach campaigns on COVID-19 Vaccination programmes is an eligible CSR activity under item no (i), (ii) and (xii) of Schedule VII of the Companies Act, 2013 relating to promoting of health care, including preventive health care and sanitization, promoting education and disaster management.

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

#### 2. MCA issues clarification on holding of Annual General Meeting (AGM) through Video Conferencing (“VC”) or Other Audio Visual Means (“OAVM”) vide General Circular 02/2021 dated January 13, 2021



- ✚ MCA through this General Circular extends time for companies whose AGMs were due to be held in the year 2020, or become due in 2021, to conduct AGMs through VC or OAVM till **December 31, 2021** which shall be conducted in accordance with the requirements laid down in Paragraphs 3 and 4 of its earlier General Circular dated May 05, 2020.
- ✚ However, it has been clarified that ***“this Circular shall not be construed as conferring any extension of time for holding AGMs by the companies under the Companies Act, and the companies which have not adhered to the relevant timelines shall remain subject to legal action under the Companies Act, 2013”***

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

**3. MCA introduces Scheme for condonation of delay for companies restored on the Register of Companies between December 01, 2020 and December 31, 2020, under Section 252 of the Companies Act, 2013 vide General Circular 03/2021 dated January 15, 2021**



- ✚ It is to be noted that the Companies Fresh Start Scheme, 2020 (“**CFSS-2020**”), came into effect vide General Circular No. 12/2020, dated March 30, 2020 and was extended vide General Circular No. 30/2020, dated September 28, 2020 and is no longer applicable for various filings done under the provisions of the Companies Act, 2013
- ✚ Many representations requesting for relief were received from companies as some companies had preferred appeals under section 252 of the Act against the orders of striking off the names of the companies before the respective Benches of the National Company Law Tribunals (“**NCLTs**”) and the order(s) by NCLT Benches were issued during December, 2020. In view of this, such companies could not avail the benefit of filing under CFSS-2020 by December 31, 2020 and are liable to be levied additional fees upon filing of overdue e-forms.
- ✚ After examining the matter MCA has decided that the aforementioned companies may be provided the benefit of waiver of additional fees in respect of overdue filings to be made by them pursuant to the NCLT Order under section 252 of the Act, without any immunity from civil/criminal proceedings, etc.
- ✚ Consequently "**Scheme for condonation of delay for companies restored on the Register of Companies between December 01 2020 and December 31, 2020, under Section 252 of the Companies Act, 2013**" was introduced for the purpose of condoning the delay in filing forms with the Registrar, insofar as it relates to charging of additional fees on account of delay in such filings.
- ✚ The Scheme shall come into effect from **February 01, 2021**. The details of the Scheme are as under:
  - **Applicability:** *It shall be applicable in respect of companies for whom the appeal filed under section 252 of the Act with the respective NCLT Bench for the restoration of the name of the company was disposed of between December 01 2020 and December 31, 2020, with an order for restoration of the company.*

- **Duration of the Scheme:** *The last date for filing of any overdue e-forms by such companies under the scheme shall be March 31, 2021.*
- **Forms for which the Scheme shall be applicable:** *The Scheme shall be applicable in respect of filing of all e-forms except where any increase in authorized capital is involved (e-Form SH-7) and charge related documents (e-forms CHG-1, CHG-4, CHG-8 and CHG-9) which are required to be filed with the Registrar.*
- **Applicable Fees:** *Every company shall be required to pay normal filing fees under the Companies (Registration Offices and Fees) Rules, 2014 on the date of filing and no additional fees shall be payable for the forms for which the scheme is applicable.*

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

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## SEBI UPDATES

### 1. SEBI repeals the Securities and Exchange Board of India (Central Database of Market Participants) Regulations, 2003 vide Gazette Notification Dated January 13, 2021



✚ The Securities and Exchange Board of India repeals with immediate effect the Securities and Exchange Board of India (Central Database of Market Participants) Regulations, 2003 published in Part-III, Section 4 of the Gazette of India, Extraordinary, under notification of the Securities and Exchange Board of India number F. No. SEBI/LE/26/2003 dated the November 20, 2003.

✚ The repeal of the said regulations shall not affect:

- the previous operation of the said regulations or anything done or omitted to be done or suffered therein;
- any right, privilege, obligation or liability acquired or accrued or incurred under the said regulations;
- any penalty or punishment incurred in respect of any contravention or offence committed under the said regulations;
- any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty or punishment as aforesaid.

✚ Any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty or punishment may be imposed as if the said regulations had not been repealed.

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

### 2. SEBI revised the Daily Price Limits (“DPL”) for Commodity Futures Contracts vide Circular dated January 11, 2021



✚ The Daily Price Limits in commodity futures market serve an important function of defining the maximum range within which the price of a commodity futures contract can move in one trading session. The defined daily price limits protect investors from sudden and extreme price movements and provides

cooling-off period to re-assess the information and fundamentals impacting the price of the commodity futures contract. Thus, DPLs can neither be too narrow nor too wide as it will restrict fair price discovery.

- SEBI vide Circulars dated January 15, 2016 and September 07, 2016 had issued norms for Daily Price Limits (“DPL”) for agricultural and nonagricultural commodity derivatives. Continuing with SEBI’s endeavor to develop the commodity derivatives market and in consultation with the stock exchanges, the norms for DPL for commodity futures contracts (excluding Index Futures and options) are being revised. The revision on the norms is done on following points:

- *Base price for DPL;*
- *Order Acceptance;*
- *Breach of slab;*
- *Manner of calculation of DPL for Commodity futures contracts which are based on agricultural and Agri-processed goods;*
- *Manner of calculation of DPL for Commodity futures contracts which are based on Non-agricultural goods;*
- *DPL on First Trading Day of the Contract; and*
- *Manner of Calculation of closing price or daily settlement price (DSP).*

- The provisions of this Circular shall come into effect from **April 1, 2021**. SEBI Circular dated September 07, 2016 and Clause 1(a) of SEBI Circular dated January 15, 2016 relating to Reduction in Daily Price Limits (DPL) shall stand repealed from the date of implementation of this Circular.

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

### 3. SEBI issues clarification on Volatility Scan Range (“VSR”) for Option contracts in Commodity Derivatives Segment vide Circular dated January 11, 2021



- SEBI vide circular dated June 13, 2017 regarding ‘Option on Futures’ inter alia advised Exchanges to fix and determine the VSR values as below:

*“Exchanges shall fix prudent price scan range, volatility scan range and/or plausible changes in any other parameters impacting options price. Exchange shall*



*impose appropriate short option minimum margin, calendar spread charge and extreme loss margin for option contracts.”*

- ✚ Further, SEBI vide circular dated January 16, 2020 on ‘Option on Goods’ advised Clearing Corporations (“CCs”), inter alia, to fix prudent VSR1. In light of the increased market volatility in the recent past, the adequacy of current VSR values used by CCs in their margin framework was examined. This was done in the context of Committee on Payment and Settlement Systems and International Organization of Securities Commissions (“CPSS-IOSCO”) prescription for margin models which limits the need for destabilizing and pro-cyclical changes
- ✚ SEBI in consultation with CCs, has decided to prescribe minimum VSR values for underlying commodities based on their volatility viz, high, medium and low as categorized in SEBI circular dated January 27, 2020.
- ✚ The VSR in respect of various categories of commodities shall be subject to following minimum values:

Volatility Category	Minimum VSR %	
	Non Agri commodities	Agri Commodities
Low	4	5
Medium	5	6
High	6	7

- ✚ CCs (providing clearing and settlement for options) shall review the value of VSR by back testing on a monthly basis using last 3 years’ data by 15th of every month and any change in VSR shall be implemented from 1st trading day of the following month.
- ✚ The back testing shall be done by using appropriate models to extract volatility (such as EWMA (Exponentially Weighted Moving Average) volatility of the underlying futures contract, implied volatility of options, etc.) over the relevant MPOR (Margin Period of Risk) period.
- ✚ The circular shall be effective from the first trading day of the month of **April 01, 2021.**

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

#### 4. SEBI amends Securities and Exchange Board of India (Investment Advisers) Regulations 2013 vide Gazette Notification dated January 11, 2021



- ✚ These Regulations may be called the Securities and Exchange Board of India (Investment Advisers) (Amendment) Regulations, 2021.

- ✚ In the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013, after clause (m) of regulation 6 relating to Consideration of application and eligibility criteria for Investment Advisers (“IA’s”), the following clause shall be inserted, namely:

***“(n) Whether the applicant is a member of a recognized body or body corporate as specified under regulation 14:***

***Provided that the existing investment advisers shall comply with the requirement under this clause in such manner as may be specified by the Board.”***

- ✚ In the Second Schedule of the regulations pertaining to fees following changes are made:

- Application fees for grant of registration has been subsequently reduced as under:

- *For Individuals and Firms – from INR 5,000 to INR 2000*
- *Body Corporates including LLP- From INR 25,000 to INR 10,000*

- Registration fees paid by every applicant at the time of grant of certificate by the Board has been subsequently reduced as under:

- *For Individuals and Firms – from INR 5000 to INR 3000*
- *Body Corporates including LLP- From INR 5,00,000 to INR 15,000*

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

## IBBI UPDATES

### 1. IBBI further amends Insolvency and Bankruptcy Board of India (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 vide Gazette Notification dated January 14, 2021



✚ These regulations may be called the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2021.

✚ This Circular amends Regulation 5 (Composition of the Governing Board):

➤ after sub-regulation (4), the following sub-regulation shall be inserted:

*“A shareholder director shall be an individual, who satisfies the eligibility norms, including experience and qualification, as decided by the Governing Board”*

➤ In sub-regulation (6), for clause (b), the following clause shall be substituted:

*“who has expertise in the field of finance, law, economics, accountancy, valuation, management or insolvency”*

➤ after sub-regulation (13), the following sub-regulations shall be inserted:

*“A director shall disclose any order of any authority that affects his character or reputation, to the insolvency professional agency, within one week of issue of such order”.*

And that copy of the order shall also be placed forthwith on the website of the insolvency professional agency and in case where the order disqualifies him to be a director the such director shall also cease to be a director of the insolvency professional agency.

✚ After regulation 5B the following new regulations shall be inserted as under:

➤ **Self-evaluation (Regulation 6)**

- *The Governing Board shall evaluate its performance in a financial year within three months of the closure of the year, in the manner decided by it.*
- *The insolvency professional agency shall publish a report on self-evaluation referred to in sub-regulation (1) on its website.*

➤ **Compliance Officer (Regulation 7)**

- *An insolvency professional agency shall designate or appoint a compliance officer who shall be responsible for ensuring compliance with the provisions of the Code and regulations, circulars, guidelines, and directions issued thereunder*
- *The compliance officer shall, immediately and independently, report to the Board any non-compliance of the provisions*
- *The compliance officer shall submit a compliance certificate to the Board annually, verifying that the insolvency professional agency has complied with the provisions. The Governing Board shall appoint or remove the compliance officer only by means of a resolution passed in its meeting*

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

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## JUDGEMENTS/ ORDERS

### NCLT

#### 1. National Company Law Tribunal Initiates Corporate Insolvency Resolution Process ("CIRP") against Icon Cables Limited.

NCLT, New Delhi Bench ("Tribunal") admits the Operational Creditor's application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") and Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and initiates CIRP against the Icon Cables Limited ("Corporate Debtor").



The Corporate Debtor had availed the services from the Applicant for dispatching of consignments/goods from Neemrana. The Corporate Debtor had made a part payment for availing the aforesaid services from the Applicant, after which the Corporate Debtor had informed its' inability to make payments on account of non-payment from various customers, negative effect on cash flow which lead to huge financial burden on the Company. The Applicant had stated that the Corporate Debtor kept on giving false assurances and hopes over the relevant period to the Applicant about clearing its liability towards the outstanding dues.

These defaults in payment by the Corporate Debtor led to issue of notice under section 8 of the IBC. However, due to non-receipt of any kind of response from the Corporate Debtor, the Applicant filed present application under section 9 of IBC, 2016. The corporate debtor replied to the application asserting that due to the deficiency in services provided by the Applicant, the Corporate Debtor had suffered losses and was also undergoing a huge financial crisis.

Based on the facts presented, Tribunal was satisfied that Corporate Debtor had tried to create and raise a pre-existing dispute by asserting the deficiency services being rendered by the Applicant and the Corporate Debtor has not placed on record any document which exhibits the plausible dispute between the parties and the default had occurred with respect to the payment of the operational debt of the Applicant.

Tribunal admitted the said application filed by the Operational Creditor and declared moratorium in accordance to section 14 of the IBC. Tribunal resolved to appoint Mr. Anurag Nirbhaya to act as the Insolvency Resolution Professional (“IRP”). Tribunal further directed the Operation Creditor to pay an advance amount of INR 2,00,000 (INR Two Lakh only) to the IRP for ensuring smooth conduct of CIRP.

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

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## SEBI

### 1. Adjudication Order in respect of Fortis Healthcare Holdings Private Limited



In respect of Fortis Healthcare Holdings Private Limited (**Noticee**), a Draft letter of offer was filed with Securities and Exchange Board of India (**SEBI**), by managers to the open offer. On perusal of the draft letter of offer, SEBI observed that noticee made non-compliance with the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (SAST Regulations, 2011) and appointed Adjudicating Officer to enquire into the alleged violations of Regulations 29(2) read with 29(3) of SAST Regulations, 2011 by the Noticee.

The AO issued show cause notice (SCN) dated October 27, 2020 and in response to the SCN, it was requested to hold the proceedings as the promoters of Noticee has been sent to judicial custody. Further, AO issued hearing Notice dated December 02, 2020, in which an opportunity of personal hearing was provided to the Noticee.

SEBI was of the view that principle of natural justice has been followed and provided enough opportunities for replying to the SCN and of being heard. SEBI further noted that no prior default of the Noticee is available on record. However, the facts of the case clearly bring out the default made by the Noticee.

After considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of Adjudication Rules, SEBI imposed a penalty of INR 1,00,000 (INR One lakh) on Fortis Healthcare Holdings Private Limited, the erstwhile promoter of the Fortis Healthcare Limited for failure to make timely disclosures in the prescribed format and thereby violated Regulations 29(2) read with 29(3) of SEBI (SAST) Regulations, 2011.

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

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## HIGH COURT

1. Delhi High Court disposes of the petition filed by M/s. OPG Power Generation Private Limited to approach the Debt Recovery Tribunal under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act")



M/s. OPG Power Generation Private Limited  
IFCI Limited

Petitioner  
Respondent

**Date of Judgement:** January 11, 2021

The Present petition was filed by M/s. OPG Power Generation Private Limited praying for (a) Issue a writ of certiorari or any other writ, order or direction of like nature quashing the auction and sale of the assets of Bellary Steel & Alloys Limited (Sponge Iron Division) initiated by the Respondent through the public notice dated December 08, 2010 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") and the Security Interest (Enforcement) Rules, 2002 (hereinafter, the "2002 Rules"); (b) Issue a writ of certiorari or any other writ, order or direction of like nature quashing the purchase by the Petitioner of the assets of Bellary Steel & Alloys Limited (Sponge Iron Division) initiated by the Respondent, under the SARFAESI Act and the 2002 Rules; (c) Issue a writ of mandamus or any other writ, order or direction of like nature directing the Respondent to refund the sale consideration of INR 64.90 Crores paid by the Petitioner towards purchase of the assets of Bellary Steel & Alloys Limited (Sponge Iron Division), along with interest @ 18 % thereon and all other costs and expenditure incurred by the Petitioner;"

The Respondent, IFCI Limited issued a public notice inviting offers in the sealed cover on "AS IS WHERE IS BASIS AND WHATEVER THERE IS BASIS" for purchase of the assets of Sponge Iron Division of Bellary Steels and Alloys Limited (hereafter BSAL").

The said petition was disposed of with liberty to the petitioner, M/s. OPG Power Generation Private Limited to approach the Debt Recovery Tribunal under Section 17 of the SARFAESI Act.



Further, the Delhi High Court stated that, if the petitioner files such an application within a period of two weeks from date, the concerned Debt Recovery Tribunal shall consider the petitioner's application on merits uninfluenced by any question of delay and dispose of the same as expeditiously as possible and preferably within a period of three months.

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

**2. Subject to the compliances of the directions issued by the Delhi High Court, the Petition filed by Paypal Payments Private Limited was ordered to remain stayed.**

**Paypal Payments Private Limited**

**Petitioner**

**Financial Intelligence Unit India**

**Respondent**

**Date of Judgement:** January 11, 2021

The Director, Financial Intelligence Unit-India, Ministry of Finance, Government of India passed an order, which was challenged by the Petitioner, Paypal Payments Private Limited, who has been held to be a "reporting entity" and a "payment system operator", under Section 2(1)(wa) and Section 2(1)(rc) of the Prevention of Money Laundering Act, 2002 ('PML Act'). Further, the impugned order finds the Petitioner guilty of violations under the provisions of the PML Act, and has imposed a penalty amounting to INR 96 Lakhs. The impugned order, thereafter, directs the Petitioner to register itself as a "reporting entity" with the Financial Intelligence Unit- India ("FIU-IND") as well as to appoint a Principal Officer and communicate the name, designation and address thereof, within a period of 15 days of the receipt of the said order.

Basis the Petitioner's compliance to be below mentioned directions, the impugned order shall remain stayed:

- i. The Petitioner shall, henceforth, maintain records of all transactions under Section 12(1)(a) of the PML Act, in electronic form on a secure server, located in India, for the same to be retrieved, if required, subject to further orders in this writ petition.
- ii. The Petitioner shall furnish a bank guarantee, to the satisfaction of the Registrar General of this Court, for a sum of Rs.96 lakhs. The said bank guarantee shall be deposited within two weeks.
- iii. The Managing Director of the Petitioner Company shall furnish an undertaking to the Court to the effect that it would abide by any orders that may be passed in this petition, including furnishing of data (irrespective of where the servers are located), as may be required by a reporting entity under Section 12 of the PML Act, if the

Petitioner is unsuccessful in this petition. The said affidavit of undertaking be filed within two weeks by the Petitioner.

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

## SUPREME COURT

1. Supreme Court held that the judgement and order passed by the Bombay High Court was set aside and the Secretary General of this Court was directed to impound the Work Order and forward it to the concerned Collector in Maharashtra for the assessment of the Stamp Duty payable on the said instrument.



**M/s. N.N. Global Mercantile Private Limited**

**Appellant**

**M/s. Indo Unique Flame Limited & Others**

**Respondents**

**Date of Judgement:** January 11, 2021

In the present case, the Respondent No-1, Indo Unique Flame Ltd. had applied for grant of Work Order of beneficiation/washing of coal to the Karnataka Power Corporation Ltd. ("KPCL") in an open tender and was awarded the Work Order and in this respect the Company furnished a Bank Guarantee of INR 29.29 crores in favor KPCL through its bankers, State Bank of India (SBI).

The Respondent No.1, Indo Unique Flame Ltd., subsequently entered into a sub-contract termed as a Work Order with the Appellant Company – M/s. N.N. Global Mercantile Pvt. Ltd. ("**Global Mercantile**"), for transportation of coal from its washery.

The issues that have arisen in this case were:

- i. Whether an arbitration agreement would be enforceable and acted upon, even if the Work Order dated September 28, 2015 is unstamped and un-enforceable under the Stamp Act?
- ii. Whether allegation of the fraudulent invocation of the bank guarantee is an arbitrable dispute?
- iii. Whether a Writ Petition under Articles 226 and 227 of the Constitution would be maintainable to challenge an Order rejecting an application for reference to arbitration under Section 8 of the Arbitration Act?

The Supreme Court held that the judgement and order passed by the Bombay High Court was set aside and the Secretary General of this Court was directed to impound the Work Order and forward it to the concerned Collector in Maharashtra for the assessment of the Stamp Duty payable on the said instrument. Further on determining the Stamp Duty payable, the Appellant / Plaintiff was directed to make the payment assessed by the Collector of the Maharashtra Stamp Act, 1958 within a period of four weeks from the date of receipt of communication of the Order and w.r.t the invocation of the Bank Guarantee, the Appellant may seek interim relief U/S 9 of the Arbitration and Conciliation Act, 1996.

Further, the Supreme Court extended the Stay granted by the High Court for a further period of eight weeks and considered that the non-payment of stamp duty on the commercial contract would invalidate even the arbitration agreement, and render it non-existent in law, and un-enforceable, is not the correct position in law, as viewed in the findings in SMS Tea Estates and Garware.

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

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