

Swift e-Bulletin

Edition 27/20-21

Week – January 18th to January 22nd

Quote for the week:

“Success usually comes to those who are too busy to be looking for it.”

- Henry David Thoreau

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”), and the International Financial Services Centres Authority (“IFSCA”) and critical judgements and orders passed by the National Company Law Tribunal (“NCLT”), 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 18, 2021 to January 22, 2021.

**Thank you,
Swift Team**

Table of Contents

REGULATORY UPDATES.....	3
MCA UPDATES	3
1. MCA amends the Companies (Corporate Social Responsibility Policy) Rules, 2014 via Gazette Notification dated January 22, 2021	3
SEBI UPDATES.....	5
1. SEBI extends relaxations from strict enforcement of certain Regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, pertaining to Rights Issue opening vide Circular dated January 19, 2021.....	5
2. SEBI further amends Securities and Exchange Board of India (Intermediaries) Regulations, 2008 vide Gazette notification dated January 21, 2021	5
IFSCA UPDATES	8
1. IFSCA issues clarifications for maintenance of Solvency Margin for IFSC Insurance Offices (IIOs) vide Circular dated January 21, 2021.....	8
JUDGEMENTS/ ORDERS	9
NCLT	9
1. National Company Law Tribunal Initiates Corporate Insolvency Resolution Process (“CIRP”) against VRX Hospitality Services Private Limited.....	9
SEBI.....	11
1. Adjudication order in respect of Mansoor Khanda and Firoz Khanda in the matter of their non-compliance with the order of disgorgement of SEBI.	11
HIGH COURT	12
1. The Delhi High Court directed the Petitioner to approach the Appellate Tribunal under Section 26 of the Prevention of Money Laundering Act, 2002, to file an application against the adjudicating authority.....	12
2. The Delhi High Court directed the directors of Patanjali Buildcon Private Limited to reactivate their DINs & DSCs and the Company was permitted to file the documents in terms of the Scheme for condonation of delay for companies.....	13
SUPREME COURT	14
1. The Supreme Court of India set aside the judgement of High Court in case of expansion of National Highway 45-A between Villuppuram to Nagapattinam.	14

REGULATORY UPDATES

MCA UPDATES

1. MCA amends the Companies (Corporate Social Responsibility Policy) Rules, 2014 via Gazette Notification dated January 22, 2021



- ✚ This Rule shall be called as the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 and shall come into force with immediate effect.
- ✚ CSR has been redefined and shall not include the following activities undertaken by a Company:
 - *activities undertaken in pursuance of normal course of business of the company however company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions such research and development activities shall be carried out in collaboration with any of the institutes or organizations mentioned in item (ix) of Schedule VII to the Act.*
 - *any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level.*
 - *Activities carried out for fulfilment of any other statutory obligations under any law in force in India.*
 - *activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services etc.*
- ✚ **Rule 4** related to “CSR Activity” shall be substituted by new rule called “CSR Implementation” which provides for classes of companies/entities who can undertake CSR activities on behalf of a company. However, such entities are required to register themselves with the Central Government by filing the **Form CSR-1** electronically with the Registrar, with effect from the **April 01, 2021** and such company shall be assigned a unique CSR Registration Number. **Rule 6** shall be omitted.

- ✚ In Rule 7 The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year. Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year. Where a company spends an amount in excess of requirement, such excess amount to be set off against the requirement to spend up to immediate succeeding three financial years

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

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SEBI UPDATES

1. SEBI extends relaxations from strict enforcement of certain Regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, pertaining to Rights Issue opening vide Circular dated January 19, 2021



SEBI had earlier vide Circular dated May 06, 2020 granted one time relaxations from strict enforcement of certain Regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, pertaining to Rights Issue opening up to July 31, 2020.

Based on the representations received from the market participants, the validity of these relaxations, as provided above, have been further extended for Rights Issues opening up to December 31, 2020.

The relaxation mentioned in point (iv) of the SEBI Circular dated May 6, 2020 relating to optional mechanism (non- cash mode only) to accept the applications of the shareholders subject to ensuring that no third party payments shall be allowed in respect of any application for a rights issue is further extended and shall be applicable for Rights Issues opening up to March 31, 2021 provided the issuer along with the Lead Manager(s) shall continue to comply with point (v) which ensures that the mechanism mentioned in point (iv) earlier is optional and not a replacement and such optional mechanisms shall be transparent, robust and have adequate checks and balances of the SEBI Circular dated May 06, 2020

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

2. SEBI further amends Securities and Exchange Board of India (Intermediaries) Regulations, 2008 vide Gazette notification dated January 21, 2021



These Regulations may be called the Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2021.

✚ In **Regulation 25** (Issuance of Notice) under **chapter V** of the aforesaid regulations which talks about **Actions in Case of default and manner of suspension or cancellation of Certificate** granted to such intermediaries shall be substituted with the following:

- *The Designated Authority (“DA”) shall issue a notice to a person against whom an enquiry has been initiated, to show cause as to why the action as contemplated against such person should not be recommended.*
- *The notice shall be called upon to submit a written reply to the notice within a specified period not exceeding **twenty-one days** from the date of service along with documentary evidence, if any in support of such written reply.*
- *Such notice issued shall specify the contravention alleged to have been committed by the notice by indicating the provisions of the securities laws or the direction or the order of the Board alleged to have been contravened along with copies of documents relied upon by the Board and extracts of relevant portions of the reports containing the findings arrived at in an inquiry, investigation or inspection.*
- *If the notice demands inspection of such documents within the period specified and the DA is of the opinion that the same may be granted, then the designated authority may issue or cause to issue a notice fixing a date for inspection of document however the date for inspection of documents shall be within **thirty days** from the date of receipt of such request.*
- *However, if the notice does not reply to the notice issued or fails to appear on the scheduled date of hearing and the DA is satisfied that sufficient opportunity has been given to the notice, the DA may conclude the proceedings after recording the reasons for doing so, on the basis of the material available on record.*

✚ Regulation 26 shall be substituted by the following:

- After considering the material available on record and the reply, if any, the designated authority may by way of a report, recommend the following measures:
 - *disposing of the proceedings without any adverse action.*
 - *cancellation of the certificate of registration.*
 - *suspension of the certificate of registration for a specified period.*
 - *prohibition of the notice from taking up any new assignment or contract or launching a new scheme for such the period as may be specified.*
 - *debarment of a branch or an office of the notice from carrying out activities for such period as may be specified.*

- *issuance of a regulatory censure to the notice.*

✚ Regulation 27 Shall be substituted as follows:

- *On receipt of the report containing the measures recommended by the designated authority, the designated member shall cause to forward a copy of the report submitted by the designated authority and call upon the notice to make its submission, in writing, as to why the measures recommended by the designated authority or any other action as contemplated in these regulations, should not be taken*
- *The notice shall submit, within a period as specified in the notice, but not exceeding **twenty-one days** from the date of service thereof, a written submission, along with documentary evidence, if any, in support of the written submission*
- *After considering the submission of the notice, the designated member may if deemed fit, for reasons to be recorded by it in writing, remit the matter to the DA to enquire afresh or to further enquire and resubmit the report.*
- *The designated member may grant an opportunity of personal hearing where the DA has recommended cancelation of certificate of registration or the designated member is of the prima facie view that it is a fit case for cancellation of certificate of registration.*

✚ **Regulation 28 Shall be omitted.**

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

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IFSCA UPDATES

1. IFSCA issues clarifications for maintenance of Solvency Margin for IFSC Insurance Offices (IIOs) vide Circular dated January 21, 2021.



✚ Clause 21 (f) of IRDAI (IFSC Insurance Office) Guidelines, 2017 vide Guidelines dated December 21, 2017 stipulates that, “The IIO shall prepare and submit a separate statement of assets, liabilities and solvency margin requirements in the manner as may be specified in the IRDAI (Assets, Liabilities and Solvency Margin of General Insurance Business) Regulations, 2016 and IRDAI (Assets, Liabilities and Solvency Margin of Life Insurance Business) Regulations, 2016.”

✚ Based on the discussions and representations from stakeholders IFSCA has clarified that for the initial period of five years, the maintenance of stipulated solvency margin at head office of the company of Insurance Offices (“IIOs”) in IFSC, shall be considered as compliance of the aforesaid provisions, provided that.

- The assets backing such solvency margin should be invested in government bonds;
- The assets backing the solvency margin are unencumbered at all times;
- The IIO shall furnish a quarterly certificate signed by the appointed Actuary of the company, to the effect that assets, liabilities and solvency margin are being maintained at Head Office of the company on its behalf;

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

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JUDGEMENTS/ ORDERS

NCLT

1. National Company Law Tribunal Initiates Corporate Insolvency Resolution Process (“CIRP”) against VRX Hospitality Services Private Limited.



NCLT, Ahmedabad Bench (“Tribunal”) admits the application filed by M/s. Care Global Services (“Operational Creditor”) 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 VRX Hospitality Services Pvt. Ltd. (“Corporate Debtor”).

The Operational Creditor had availed the consultancy services from the Corporate Debtor to set up the business and / or supplying Business Process Outsourcing services. As a part of the service agreement, the Operational Creditor had made an advance payment of INR 3,00,000 (INR Three Lakhs Only) as a security deposit for availing the aforesaid services from the Corporate Debtor.

The Corporate Debtor did not render required services to Operational Creditor and hence the Operational Creditor demanded from the refund of security deposit. In spite of persuasion and receipt of Demand Notice in accordance to section 8 of IBC, the Corporate Debtor did not refund the security deposit amount nor pointed out any dispute relating to same. On the date of the final hearing of the matter, no one appeared for Corporate Debtor before Tribunal and hence the hearing of this application proceeded ex-parte against the Corporate Debtor.

Based on the facts presented, Tribunal was satisfied that the Corporate Debtor did not render due services and did not refund the security deposit amount nor pointed out any dispute relating thereto, 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. Anish Babubhai Shah to act as the Insolvency Resolution Professional (“IRP”). Tribunal further directed the Operation Creditor to pay an advance amount of INR 25,000 (INR Twenty-Five Thousand only) to the IRP for ensuring smooth conduct of CIRP.

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

National Company Law Appellate Tribunal

1. NCLAT dismisses appeal for name restoration

R Narayanasamy	Applicant
The Registrar of Companies, Tamil Nadu	Respondent



The Appeal was filed to National Company Law Appellate Tribunal (**NCLAT**) New Delhi against the impugned order passed by the National Company Law Tribunal, Division Bench – I Chennai (NCLT) which was filed for restoration of the name of the Company “Shri Laxmi Spinners Private Limited.” Which was struck off by the ROC Chennai.

The Appellant claimed that in the absence of expert professional guidance, the Company did not file Balance Sheets and Annual Returns since incorporation and striking off was prejudicial to the interest of the Company and Returns were not filed out of ignorance and inadvertence.

NCLAT holds that It is not sufficient merely to make affirmation, but it is necessary to support the affirmation with necessary documents, which may be claim regarding litigation or may be claim regarding property so as to consider if it is “just” to restore name of the Company. Therefore, NCLAT concludes that the Appellant has not made out a just reason to seek restoration of the Company name, and no positive material is put on record of preparations to start production if name is restored. NCLAT further holds that due to inadvertence and lack of professional advice, returns could not be filed, has no substance. Hence in the absence of requisite material, NCLAT dismissed the appeal of name restoration.

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

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SEBI

1. Adjudication order in respect of Mansoor Khanda and Firoz Khanda in the matter of their non-compliance with the order of disgorgement of SEBI.



The Securities and Exchange Board of India (“SEBI”) had received complaints against Mansoor Rafiq Khanda and Firoz Rafiq Khanda (**Notice No.1”**and **“Notice No. 2”** respectively) alleging that they were offering trading tips through WhatsApp messages and internet websites. Pursuant to a preliminary examination, SEBI had found the Notices have engaged in providing investment advisory services to investors without obtaining registration from SEBI to act as ‘Investment Adviser’. Upon completion of the investigation, SEBI had issued “Impounding Order” to impound the unlawful gains and asked Notice No.1”and “Notice No. 2 to pay the amount within 45 days from the date of the order.

The SEBI appointed Adjudicating Authority (**AO**) to enquire into and adjudge under section 15HB of the SEBI Act, 1992 for the alleged violations by the Notices and issue show cause notice (**SCN**). SCN was delivered to Notice no. 2 and was undelivered to Notice no. 1. Further AO uploaded the scan copy of notice to the website of SEBI and an advertisement regarding the informing about the said SCN was also published in English and Gujarati language.

SEBI noted that the Notices had challenged the SEBI order before the Hon’ble SAT. Therefore, it is established that they knew about the SEBI order and its contents and was also aware of their duties to comply with the said SEBI order within the timeline as stipulated therein.

SEBI further noted that the, Notices have not paid the disgorgement amount even as on November 19, 2020, i.e., the date of the notices of attachment issued by SEBI and after eleven months have passed subsequent to the order of the Hon’ble SAT.

After considering the all the facts and circumstances of the case SEBI imposed a penalty of INR 25,00,000/- (INR Twenty-Five lakh only) on the Notices for not complying with the directions of SEBI.

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

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HIGH COURT

1. The Delhi High Court directed the Petitioner to approach the Appellate Tribunal under Section 26 of the Prevention of Money Laundering Act, 2002, to file an application against the adjudicating authority



**M/s. Hamilton Houseware Private Limited
Union of India & ANR.**

**Petitioner
Respondent**

Date of Judgement: January 11, 2021

Present petition was filed by M/s. Hamilton Houseware Private Limited, challenging the final order passed by the Adjudicating Authority under Section 8 of the Prevention of Money Laundering Act, 2002. The said petition was moved to a specific application with prayers, to pass necessary order and direction as directed by the applicant, so that an effective reply could have been filed as per the directions of the Hon'ble Adjudicating Authority and to pass any other order or direction as the Hon'ble Adjudicating Authority deem fit.

Appealable order under Section 26 of the Prevention of Money Laundering Act, 2002 was filed by the Respondent and the said appeal filed lies to the Appellate Tribunal against an order of the Adjudicating Authority under the said Section, as the Adjudicating Authority should have decided that the application and thereafter the proceeded to finally adjudicate the matter. Merely because of the fact the application was not decided by the authority would not be sufficient ground to entertain the present writ petition. However, the submission as to availability of an alternate remedy is not without merit.

Accordingly, the Delhi High Court directed the Petitioner to approach the Appellate Tribunal under Section 26 of the Prevention of Money Laundering Act, 2002, to file an application and shall proceed to hear the appeal on merits, against the adjudicating authority. It was further directed that the attachment of the Petitioner's Bank account would continue during the pendency of the appeal before the Appellate Tribunal. and accordingly, the present petition along with all pending applications was disposed of.

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

2. The Delhi High Court directed the directors of Patanjali Buildcon Private Limited to reactivate their DINs & DSCs and the Company was permitted to file the documents in terms of the Scheme for condonation of delay for companies

Balwan Singh & ANR.

Petitioners

Ministry Of Corporate Affairs & ANR.

Respondents

Date of Judgement: January 18, 2021

The present petition was filed by the Directors of Patanjali Buildcon Private Limited, whose name was struck off by the Registrar of Companies, due to which the directors were disqualified and their DIN/DSC have been deactivated. Further as per the order passed by the NCLT, Delhi on December 21, 2020, the petitioners submission was being restored.

The Registrar of Companies came out with a Scheme for condonation of delay for companies restored on the Registrar of Companies between December 01, 2020 and December 31, 2020 under Section 252 of the Companies Act, 2013 dated January 15, 2020. However, as per the said Scheme, considering that various NCLT benches have restored several companies which were struck off, during the period December 01, 2020 to December 31, 2020, but the said company was unable to avail of the benefit of the Companies Fresh Start Scheme, 2020 and file their documents in time, the time for filing any overdue forms has been extended till March 31, 2021.

The Delhi High Court disposed of the petition by directions that within a period of one week, the DINs and DSCs of the directors of Patanjali Buildcon Private Limited be reactivated in order to enable the Directors to file the relevant documents and the Company is permitted to file the documents in terms of the Scheme of condonation of delay for companies restored on the Registrar of Companies dated January 15, 2021 before the concerned ROC.

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

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SUPREME COURT

1. The Supreme Court of India set aside the judgement of High Court in case of expansion of National Highway 45-A between Villuppuram to Nagapattinam.



**The National Highways Authority of India
Pandarinathan Govindarajulu & ANR.**

**Appellant (s)
Respondent (s)**

Date of Judgement: January 19, 2021

The dispute in the present appeal pertains to a project for widening and improvement of the existing 4-laning carriage way in the State of Tamil Nadu and the Territory of Puducherry, pertaining to the environmental clearance for expansion of National Highway 45-A between Villuppuram to Nagapattinam.

Further to the discussions on approvals being granted by the Competent Authority (Special District Revenue Officer for Land Acquisition and Writ Petitions filed in this respect, the Supreme Court of India allowed the appeal(s) and had set aside the judgement of the High Court and issued the followed directions:

- a) Obtaining of environmental clearances is not required if the land acquisition is not more than 40 meters on existing alignments and 60 meters on realignments or by passes, for NH 45-A between Villuppuram to Nagapattinam;
- b) The Appellant was directed to strictly conform to the relevant Notifications in the matter of acquisition of land being restricted to 40 meters on the existing alignments and 60 meters on realignments.
- c) The Ministry of Environment, Forest and Climate Change, Government of India shall constitute an Expert Committee to examine whether segmentation is permissible for National Highway projects beyond a distance of 100 Kms and, if permissible, under what circumstances.
- d) The Appellant is directed to fulfil the requirement of reforestation in accordance with the existing legal regime.

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

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