Swift India
CORPORATE SERVICES LLP

MUMBAI SILICON VALLEY BANGALORE MUMBAI BKC NEW DELHI

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com
CHANGE IN NAME FROM SWIFTINDIAINC CORPORATE SERVICES LLP AS ON 07.02.2017

Swift e-Bulletin
Edition 28/20-21
Week – January 25th to January 29th

Quote for the week:

"People will love you one week will hate you the next week, make sure you get paid both weeks."

- Connor McGregor

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**"), 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 25, 2021 to January 29, 2021.

Thank you,
Swift Team

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REGULATORY UPDATES

MCA UPDATES

1. **MCA amends the Companies (Incorporation) Rules, 2014 vide Gazette Notification dated January 25, 2021**

- The Rules shall be called as the Companies (Incorporation) Amendment Rules, 2021 and shall come into force with immediate effect.

- This notification amends **Rule 41 (Conversion of Public Company into Private Company)** of the Companies (Incorporation) Rules, 2014, as explained below:

  - *In **sub-rule (6) sub-clause (c)** relating to maximum resubmissions allowed, in cases where such further information called for has not been provided or the defects or incompleteness has not been rectified to the satisfaction of the Regional Director within the period allowed under "sub clause (b)" of sub- rule (6) has been substituted instead of earlier "sub- rule (6)", the Regional Director shall reject the application with reasons within thirty days from the date of filing application or within thirty days from the date of last re-submission made, as the case may be.*

  - *In **sub-rule (6) sub-clause (d)** which allowed automatic conversion of a public company into a private company in case no order for approval or re-submission or rejection has been explicitly made by the Regional Director within the stipulated period of thirty days shall stand to be **omitted**, as a result of which automatic conversion in future without the explicit approval of the Regional Director shall not be allowed.*

  - *The existing **sub-rule (9)** relating to holding of hearings upon objections by regional director in certain cases, **sub-rule (10)** relating to allowing of conversion upon confirmation of no inquiry or prosecution pending against the company, and **sub-rule (11)** relating to filing of order by Regional Director in INC-28 have been renumbered as **sub-rules (7), (8)** and **(9)** respectively.*

  - *The re-numbered **sub-rule (7)** has been substituted with a rule which states if any objection has been received or Regional Director on examining the*

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application has specific objection under the provisions of the Act, the same shall be recorded in writing and the Regional Director shall hold a hearing or hearings within a period of thirty days as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Regional Director shall pass an order either approving or rejecting the application along with the reasons within thirty days from the date of hearing however the line pertaining to which deemed approval would be granted to the applicant over here also has been removed via this said amendment.

To read the Notification in detail, please click here.

2. **MCA provides relaxation on levy of additional fees in filing for e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL and AOC-4 Non-XBRL for the year ended March 31, 2020 vide General Circular No 04/2021 dated January 28, 2021**

- Keeping in view various requests received by stakeholders regarding relaxation on levy of additional fees for annual financial statements filings which are required to be completed for the year ended March 31, 2020, the Ministry has decided that no additional fees shall be levied for such filings of e-Forms AOC-4, AOC-4 (CFS), AOC-4 XBRL and AOC-4 Non-XBRL up to ***February 15, 2021*** in respect of filings for the year ended March 31, 2020 and only normal fees shall be payable for filing the aforementioned e-Forms.

  To read the General Circular in detail, please click here.

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JUDGEMENTS/ ORDERS

NCLT

1. National Company Law Tribunal allows the Restoration of M/s Sangam Buildwell Private Limited

National Company Law Tribunal, New Delhi Bench (Court II) ("Tribunal") accepts the appeal filed by the Ex-director of M/s Sangam Buildwell Private Limited (Company) under section 252 of the Companies Act, 2013 ("**the Act**") and allows the restoration of the Company.

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 failed to file Financial Statements and Annual Returns since March 31, 2016 and has not made any application for obtaining status of the dormant company.

In furtherance of the submissions, Appellant stated that the Appellant Company had purchased various assets for developing them in collaboration with other companies. Tribunal noted the response filed by the RoC, indicating no objections against the restoration of the Appellant Company and the Income Tax Department did not file its reply despite opportunities.

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.

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SEBI

1. **Adjudication order in respect of Adjudication Order in respect of Timbor Home Limited**

In respect of Timbor Home Limited, ('**Noticee'**) Securities and Exchange Board of India ('**SEBI'**) initiated an investigation into the trading in the scrip of the notice related to Initial Public Offering ('IPO') made by the Company, of 36,90,000 equity shares of face value INR 10 (INR Ten) each. As per the investigation report SEBI observed that Noticee had not disclosed the loan of INR 7 crore in its prospectus.

In the above facts and circumstances, it was alleged by SEBI that the Noticee and its directors had not disclosed information relating to loan taken by the Noticee and repayment of loan to be made out of IPO proceeds in the prospectus and noticee failed to make material disclosures in the prospectus which are true and adequate so as to enable the applicants to take an informed decision. It was further alleged that, the noticee had made misleading financial information and made a misstatement in the quarterly statement to stock exchange regarding utilization of IPO proceeds for quarter ended December 2013.

Based on the investigation report, the competent authority appointed the adjudicating Officer (AO) to inquire into aforesaid alleged violations by the Noticee and issue show cause notice (SCN) to the noticee. Meanwhile it was learned that the Noticee was under liquidation and the High Court of Gujarat has ordered winding up of the Company and appointed a Liquidator for the same.

Therefore, in view of fact that, the Noticee is under liquidation and Hon'ble High Court of Gujarat has ordered the Noticee to be wound up, SEBI disposed of the SCN issued against the Noticee.

To read the order in detail, please click here.

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HIGH COURT

1. **The Delhi High Court allowed the Plantiff's application for adjudication by the arbitral tribunal for deeper consideration.**

Knowledge Podium Systems Private Limited	**Plaintiff**
S M Professional Services Private Limited	**Defendant**

Date of Judgement: January 25, 2021

The present application is filed under Section 8 of the Arbitration and Conciliation Act, 1996 by the Plaintiff for the recovery of about INR 2.6 Crore, being the refund of the available interest-free refundable security deposit together with interest. The Delhi High Court in this case, stated that for rejection of a Section 8 application, a party has to make out a prima facie case of non-existence of valid arbitration agreement, by summarily portraying a strong case. But when in doubt, the court has to refer the matter to arbitration. The court should refer the matter if the validity of the arbitration agreement cannot be determined on a prima facie basis.

The defendant had leased to the plaintiff the office premises on the First Floor and Second Floor at Dehradun, Uttarakhand admeasuring 39,614 sq.ft. and simultaneously, a Maintenance Agreement was also executed between the parties which was co-terminus with the Lease Deed for payment of fit out and maintenance charges for the said premises. Basis the facts of the case, the present application was allowed stating that it cannot be prima facie said that there is a completely new contract and that the old registered Lease Deed read with the Maintenance Agreement of the same date have been novated and substituted by a completely new contract.

Considering the facts of the case and the issue requiring deeper consideration which required arbitral tribunal to adjudicate upon, the Sole Arbitrator was appointed to

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
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adjudicate the dispute between the parties, as in the opinion of the Delhi High Court, an email sent by the defendant merely agrees to reduction of rent and does not specifically state that all the terms and conditions of the Lease Deed and the Maintenance Agreement stand superseded or novated.

To read the Judgement in detail, please click here.

2. **The application filed by Centrient Pharmaceuticals Netherlands B.V was dismissed by the Delhi High Court for want of merit, where the suit was filed for seeking permanent injunction against the defendant**

Centrient Pharmaceuticals Netherlands B.V. ANR.	**Plaintiffs**
Dalas Biotech Limited	**Defendants**

Date of Judgement: January 27, 2021

In the present case, the Plaintiff had filed a suit for seeking permanent injunction against the defendant restraining the defendant from violating and infringing the rights of the plaintiffs in its patent titled as *"Process for preparing Amoxicillin Trihydrate"* by discharging the onus to prove infringement of the suit patent in its plaint by way of test reports. However, the defendant has completely failed to discharge the burden of proof as stipulated in Section 104A (1) (b) of the Patents Act.

This being the case, the present application was dismissed and the Court was of the view that the application filed by the plaintiffs calling upon the defendant to file response to the interrogatories cannot be allowed, as there is no any merit in the application, because the Plaintiff had pleaded that the defendant has added optionality to the process to contend that the patent has not been infringed, can be taken care of by the plaintiffs through the process of cross examination of the defendant's witness to test the credibility of the stand of the defendant. The Court in other words also stated that, interrogatories by the plaintiffs to extract something, which it could do so in the course of cross examination, cannot be allowed.

To read the Judgement in detail, please click here.

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3. **A former judge of the Delhi High Court, Justice (Retired) R.C. Chopra, was appointed as the Sole Arbitrator to adjudicate the disputes that have arisen between the parties in connection with the Work Order.**

Score Information Technologies Limited	**Petitioners**
GR Infra Projects Limited	**Respondent**

Date of Judgement: January 28, 2021

The present petition was filed under Section 14 and 15 of the Arbitration and Conciliation Act, 1996 by Score Information Technologies Limited, seeking that the mandate of the learned Sole Arbitrator appointed by the respondent be terminated. There was a dispute between the parties which has arisen out of the contract whereby the repondent Company had sub-contracted the work of "Trenching, Laying Installation, Testing of Optical Fiber Cable, PLB-Duct and accessories for construction of exclusive optical NLD backbone and optical access routes on turnkey basis for Defence Network for specified part of Package F totaling to 224 Km (approx.) in the State of West Bengal. Bharat Sanchar Nigam Limited (BSNL) had also invited tenders w.r.t turnkey basis for the defence network, where the tender was for the Network for Spectrum (NFS) project of the Ministry of Defence, Government of India.

In the present case it was submitted that, the petitioner had agreed to the appointment of the learned Arbitrator and therefore, waived the applicability of Section 12(5) of the Arbitration and Conciliation Act and it was not open for the petitioner to now challenge the appointment of the learned Arbitrator. The learned counsel also referred to the minutes of the first meeting held before the Arbitral Tribunal wherein the Arbitrator had recorded the statement made on behalf of the parties that they had no objection to the constitution of the Arbitral Tribunal.

The petition was allowed on aforesaid terms as in view of the Delhi High Court, it noticed that the petitioner had in its letter, clearly stated that it had not submitted to the jurisdiction of the learned Sole Arbitrator. Although the petitioner had not specifically referred to its objection to the respondent unilaterally appointing the learned Arbitrator, it nonetheless, had expressed its opposition to the appointment of learned Arbitrator. Thereafter, the petitioner had objected to the appointment of the learned Arbitrator and contended that the respondent had appointed the Arbitrator as a dilatory tactic to withhold the payments due to the petitioner. Thus, it is difficult to accept that the petitioner had not objected to the appointment of the learned Arbitrator and the mandate of learned Arbitrator unilaterally appointed by the respondent stands terminated.

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A former judge of the Delhi High Court, Justice (Retired) R.C. Chopra, was appointed as the Sole Arbitrator to adjudicate the disputes that have arisen between the parties in connection with the Work Order. Further, the Delhi High Court was of the view that the parties are at liberty to approach the Learned Arbitrator for further proceedings.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **The Supreme Court affirmed that once procession is taken by the State, the land vests absolutely with the State and the title of the landowner ceases**

Assam Industrial Development Corporation Limited — **Appellant (s)**

Gillapukri Tea Company Limited & ORS. ETC. — **Respondent (s)**

Date of Judgement: January 28, 2021

Assam Industrial Development Corporation Limited has filed these appeals challenging the judgment and order in Writ Appeal whereby the Division Bench of the High Court of Guwahati has dismissed the said appeals confirming the order of the Learned Single Judge in Review Petition. This is the case for setting up a plastic park, where the Government of Assam had decided to acquire a portion of the land belonging to the first respondent situated at Gillapukri Tea Estate, Village Gillapukri, Tinsukia, Assam. In exercise of the power vested in it under Section 4 of the Land Acquisition Act, 1894 (L.A. Act), the Government of Assam issued a notification which was published in the Assam Gazette on expressing its intention to acquire the land of the aforesaid Gillapukri Tea Estate.

It was clear from the materials on record that the plastic project for which the subject Land Acquisition was initiated has already been developed on the acquired land including boundary wall, entrance gate, laying of roads, drains and electrical distribution networks, electrical substation, industrial sheds and warehouses. This being the scenario the arguments of the first respondent are untenable and once the award has been approved, compensation has been paid thereunder and possession of the land has been handed over to the Government, acquisition proceedings could not have been reopened, including by way of re-notification of the already acquired land under Section 4 of the L.A. Act by the Government.

The Supreme Court affirmed that once procession is taken by the State, the land vests absolutely with the State and the title of the landowner ceases and further stated that there is no reason to deviate from this settled position of law and thus are unable to agree with the High Court's reliance on the letters and to nullify the original award and allow fresh

acquisition proceedings in respect of the first respondent's land which had already been acquired and has been under the possession of the appellant.

Therefore, the Supreme Court, for the foregoing reasons, the appeals succeed and are accordingly allowed and the Orders of the High Court we set aside.

To read the Judgement in detail, please click here.