

Swift e-Bulletin

**Edition 3/20-21
Week – August 3rd to 7th**

Introduction

We welcome you to our weekly newsletter for this week!

As part of our knowledge sharing and growth, we had launched the 'Swift e-Bulletin' - weekly newsletter, which is specifically designed to cover all regulatory updates and critical judgement passed during the week. We hope that you liked our first and second edition 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, we all are witnessing many relaxations, exemptions and amendments to the various legislations by regulatory authorities to ease out the operations during this time of crisis.

Further, the Reserve Bank of India ("RBI"), the Ministry of Corporate Affairs ("MCA"), the Securities and Exchange Board of India ("SEBI") and the Ministry of Finance ("MOF") have been at the front foot in bringing significant regulatory changes in recent times. With a constant endeavor to cover all regulatory updates at one place, we have prepared a comprehensive summary for quick reference of such updates issued during the week of August 3, 2020 to August 7, 2020.

Thank you,
Swift Team

Table of Contents	
REGULATORY UPDATES	3
MCA UPDATES	3
SEBI UPDATES	3
RBI UPDATES	7
MINISTRY OF FINANCE UPDATES	9
JUDGEMENTS/ORDERS	10
NCLT	10
NCLAT	10
SEBI	12
HIGH COURT	14
SUPREME COURT	16

REGULATORY UPDATES

MCA UPDATES

1. **MCA grants further relaxation for dispatch of notice u/s 62(2) of the Companies Act 2013 for Rights Issue opening up to 31st December 2020 via General Circular dated August 3, 2020:**

The Ministry came up with general circular No 21/2020 dated May 11th 2020 regarding clarification in dispatch of notice under section 62(2) of the companies act 2013 by listed companies for Rights issue opening up to July 31, 2020. Many representations were received for extending the deadline for such dispatch due to the prevailing Pandemic and in the view of this the ministry has decided that clarification given in para 2 of general circular No 21/2020 would continue to be applicable for rights issue, in case of listed companies, opening up to December 31, 2020 and accordingly inability to dispatch the relevant notice to shareholders through registered post, speed post or courier would not be viewed as violation of section 62(2) of the act for rights issues opening up to December 31, 2020. To read more please click on the link below:

Link:- http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.25_03082020.pdf

SEBI UPDATES

1. **SEBI introduces Procedural Guidelines for Proxy advisors vide circular dated August 3, 2020:**

Regulation 24(2) read with 23(1) of SEBI (Research Analyst) Regulations, 2014 mandates proxy advisors to abide by Code of Conduct specified therein. It is decided that proxy advisors shall also comply with the following procedural guidelines:

- *Proxy Advisors shall formulate the voting recommendation policies and disclose the updated voting recommendation policies to its clients and shall ensure that the policies should be reviewed at least once annually. The voting recommendation policies shall also disclose the circumstances when not to provide a voting recommendation.*
- *Proxy Advisors shall disclose the methodologies and processes followed in the development of their research and corresponding recommendations to its clients.*
- *Proxy Advisors shall alert clients, within 24 hours of receipt of information, about any factual errors or material revisions to the report.*

- *Proxy Advisors shall have a stated process to communicate with its clients and the company.*
- *Proxy Advisors shall share their report with its clients and the company at the same time. This sharing policy should be disclosed by proxy advisors on their website.*
- *Proxy Advisors shall clearly disclose in their recommendations the legal requirement vis-a-vis higher standard they are suggesting if any, and the rationale behind the recommendation of higher standards.*
- *Proxy Advisors shall disclose conflict of interest on every specific document where they are giving their advice.*
- *Proxy Advisors shall establish clear procedures to disclose, manage and/or mitigate any potential conflicts of interest resulting from other business activities including consulting services, if any, undertaken by them and disclose the same to client.*

To read the circular, click on the link below:

Link:- https://www.sebi.gov.in/legal/circulars/aug-2020/procedural-guidelines-for-proxy-advisors_47250.html

2. SEBI introduces Grievance Resolution mechanism between Listed entities and proxy advisors vide circular dated August 4, 2020:

Regulation 4(2)(a) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR') casts certain obligations on listed entities to protect and facilitate the exercise of the rights of shareholders, including:

- *right to participate in, and to be sufficiently informed of, decisions concerning fundamental corporate changes,*
- *opportunity to participate effectively and vote in general shareholder meetings,*
- *effective shareholder participation in key corporate governance decisions, such as the nomination and election of members of board of directors and*
- *exercise of ownership rights by all shareholders, including institutional investors.*

Proxy advisors, over the past few years, have played a key role in enabling shareholders to effectively participate in corporate governance decisions and thus, furthering the achievement of the above objectives. In order to facilitate resolution of such grievances of listed entities against SEBI registered proxy advisors, the listed entities may approach SEBI which will then examine the matter for non-compliance by proxy advisors with the provisions of the Code of Conduct under regulation 24(2) read with regulation 23(1) of the SEBI (Research Analyst) Regulations, 2014 and the procedural guidelines for proxy advisors issued vide

SEBI circular no. SEBI/HO/IMD/DF1/CIR/P/2020/147 dated August 03, 2020. To read the circular, click on the link below:

Link:https://www.sebi.gov.in/legal/circulars/aug-2020/grievance-resolution-between-listed-entities-and-proxy-advisers_47252.html

3. SEBI amends Regulation 42 of the Listing Obligation and Disclosure Requirements Regulations 2015 vide gazette notification dated August 5 2020:

SEBI made changes In regulation 42, in sub-regulation (1) of the SEBI(LODR) Regulations 2015, the words and symbols “to all the stock exchange(s) where it is listed for the following purposes:”, shall be substituted with the words and symbols “for the following events to all the stock exchange(s) where it is listed or where stock derivatives are available on the stock of the listed entity or where listed entity’s stock form part of an index on which derivatives are available:” and further in sub-regulation (1), the existing clause (e), shall be substituted with the following, namely,- “(e) corporate actions like mergers, de-mergers, splits, etc.”. To view the gazette notification please click on the link below:

Link: <http://egazette.nic.in/WriteReadData/2020/220864.pdf>

4. SEBI introduces guidelines for wholly-owned subsidiary of the stock exchange (stock exchange subsidiary) to administer and supervise IAs registered with SEBI vide circular dated August 6, 2020:

SEBI, vide Circular SEBI/HO/MRD/DSA/CIR/P/2016/113 dated October 19, 2016, allowed registered Investment Advisers (IAs) to use infrastructure of the stock exchanges to purchase and redeem MF units directly from Asset Management Companies on behalf of their clients. As per Regulation 14 of the SEBI (Investment Advisers) Regulations 2013, SEBI can recognize any body/body corporate for the purpose of regulating IAs. It further provides that SEBI may, at the time of recognition of such body or body corporate, delegate administration and supervision of IAs to such body or body corporate on such terms and conditions as may be specified. Considering the growing number of registered investment advisers and the above mentioned provisions, it is decided to recognize a wholly-owned subsidiary of the stock exchange (stock exchange subsidiary) to administer and supervise IAs registered with SEBI. Guidelines were introduced in the following areas:

- *Criteria for Grant of recognition*
- *Setting up requisite systems by the stock exchanges for the purpose*
- *Responsibilities of subsidiary of a stock exchange*

The stock exchanges, fulfilling the criteria stated at para 4 (A) above, may submit the detailed proposal incorporating requisite systems stated at para 4 (B) and mechanism to discharge responsibilities, to SEBI within 30 days from the date of this circular. To read more in detail please click on the link below.

Link:https://www.sebi.gov.in/legal/circulars/aug-2020/administration-and-supervision-of-investment-advisers_47276.html

5. SEBI amends the Securities and Exchange Board of India (International Financial Services Centers) Guidelines, 2015 vide circular dated August 07, 2020:

In order to further streamline the operations at IFSC, based on consultations held with the stakeholders, it has been decided to amend clause 4 (2) of SEBI (IFSC) Guidelines, 2015 to read as follows:

“4.2(A) Eligibility and shareholding limit for clearing corporations desirous of operating in IFSC Any Indian recognized stock exchange or clearing corporation, or, any recognized stock exchange or clearing corporation of a foreign jurisdiction shall form a subsidiary to provide the services of clearing corporation in IFSC wherein at least fifty-one per cent. of paid up equity share capital is held by such stock exchange or clearing corporation.

2(B) The remaining share capital may be acquired or held by any other person (whether Indian or of foreign jurisdiction) and such person shall not at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than five per cent of the paid up equity share capital in a recognized clearing corporation in IFSC, subject to applicable law: Provided further that i) any other stock exchange, ii) a clearing corporation, iii) a depository, iv) a banking company, v) an insurance company, Securities and Exchange Board of India whether Indian or of foreign jurisdiction for (i) to (v) vi) a public financial institution of Indian jurisdiction, vii) a foreign commodity derivatives exchange; and viii) a bilateral or multilateral financial institution approved by the Central Government, may acquire or hold, either directly or indirectly, either individually or together with persons acting in concert, up to fifteen per cent. of the paid up equity share capital of such clearing corporation:

2(C) for the purpose of clause 2(A) and 2(B) above, that the provisions of Regulation 19, 19A and 20 of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 should be, mutatis mutandis, complied with”. To read more in detail please click on the link below:

Link:https://www.sebi.gov.in/legal/circulars/aug-2020/sebi-international-financial-services-centres-guidelines-2015-amendment_47281.html

RBI UPDATES

1. RBI Notifies New Discipline for opening up of Current Account vide notification dated August 06, 2020

RBI has introduced new revised instructions in relation to restriction of opening up of current accounts for customers who have availed loans and who have a cash credit and overdraft from banking system, offering of working capital demand loan / working capital term loan facility to borrower in terms of exposure of the Bank to the Borrower, among other instructions. Banks shall monitor all current accounts and CC/ODs regularly, at least on a quarterly basis, specifically with respect to the exposure of the banking system to the borrower, to ensure compliance with these instructions. also, the Banks should not route drawal from term loans through current accounts. Since term loans are meant for specific purposes, the funds should be remitted directly to the supplier of goods and services. Expenses incurred by the borrower for day to day operations should be routed through CC/OD account, if the borrower has a CC/OD account, else through a current account. As regards existing current and CC/OD accounts, banks shall ensure compliance with the above instructions within a period of three months from the date of this circular. To read revised instructions in detail, please click on the link below.

Link:

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT20097D966B84C34C0CA1B6D2E0A62B5BFD.PDF>

2. RBI extends scheme of restructuring of MSME advances vide circular dated August 06, 2020:

To support the viable MSME entities on account of the fallout of Covid19 and to align these guidelines with the Resolution Framework for COVID 19 - related Stress announced for other advances existing loans to MSMEs classified as 'standard' may be restructured without a downgrade in the asset classification, subject to fulfilment of certain conditions given below:

- *The aggregate exposure, including non-fund based facilities, of banks and NBFCs to the borrower does not exceed ₹25 crores as on March 1, 2020.*
- *The borrower's account was a 'standard asset' as on March 1, 2020.*
- *The restructuring of the borrower account is implemented by March 31, 2021.*
- *The borrowing entity is GST-registered on the date of implementation of the restructuring. However, this condition will not apply to MSMEs that are exempt from GST-registration. This shall be determined on the basis of exemption limit obtaining as on March 1, 2020.*

- *Asset classification of borrowers classified as standard may be retained as such, whereas the accounts which may have slipped into NPA category between March 2, 2020 and date of implementation may be upgraded as 'standard asset', as on the date of implementation of the restructuring plan. The asset classification benefit will be available only if the restructuring is done as per provisions of this circular.*
- *As hitherto, for accounts restructured under these guidelines, banks shall maintain additional provision of 5% over and above the provision already held by them.*

To read more in detail about the conditions, click on the link below:

Link:<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT17996B01058D314E1FA0CD74067DE933AD.PDF>

3. RBI introduces Resolution Framework for corporate exposures for COVID-19-related Stress vide circular dated August 06,2020

RBI has provided a window under the Prudential Framework to enable the lenders to implement a resolution plan in respect of eligible corporate exposures without change in ownership, and personal loans, while classifying such exposures as Standard, subject to specified conditions. To read the circular, click on the link below:

Link:<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT168F87DBE0F71643B3B17BC8278108C16B.PDF>

4. RBI has increased the permissible loan to value ratio against pledge of gold ornaments and jewellery for non-agricultural purposes vide circular dated August 06,2020

To enable the borrowers to tide over their temporary liquidity mismatches on account of COVID 19 and to further mitigate the economic impact of the Covid19 pandemic on households, entrepreneurs and small businesses, it has been decided to increase the permissible loan to value ratio (LTV) for loans against pledge of gold ornaments and jewellery for non-agricultural purposes from 75 per cent to 90 per cent. This enhanced LTV ratio will be applicable up to March 31, 2021 to enable the borrowers to tide over their temporary liquidity mismatches on account of COVID 19. Accordingly, fresh gold loans sanctioned on and after April 1, 2021 shall attract LTV ratio of 75 per cent. To read the circular, click on the link below:

Link:<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT19E6AA6A77013644B0B96C2CD7DD4BD825.PDF>

MINISTRY OF FINANCE UPDATES

1. **Ministry of Finance Amends Securities Contracts (Regulation) Rules, 1957 vide Gazette notification dated July,31,2020**

As per Rule 19A every listed company [Other than public sector Company] shall maintain public shareholding of at least twenty-five percent. And every such listed company having public shareholding less than twenty-five percent shall increase its public shareholding to at least twenty-five percent within a period of two years from the date of Securities Contract (Regulation) (Second Amendment) Rules,2018. Pursuant to Securities Contracts (Regulation) (Second Amendment) Rules, 2020 the words “two years” the words “*three years*” shall be substituted. To read the gazette notification please click on the link below:

Link: <http://egazette.nic.in/WriteReadData/2020/220809.pdf>

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JUDGEMENTS/ORDERS

NCLT

1. In the matter of M/s Krishna Industrial Corporation Limited, application was filed by the Resolution Professional under section 33 (2) of the Insolvency and Bankruptcy Code, 2016 (I & B code, 2016) praying NCLT Chennai to pass an order to Liquidate the Corporate Debtor (applicant) under I & B code 2016.

Mr. S. Rajendran was appointed as Interim Resolution Professional (IRP) and taken over the management of the corporate debtor and issued publication in newspaper inviting the claims from creditors. Upon claims received from creditor, the IRP constituted Committee of Creditors (CoC). The IRP also invited Expression of Interest. The CoC in the second meeting decided to liquidate the corporate debtor and appointed the present Resolution professional as liquidator.

In view of the facts and circumstance NCLT Chennai passed the liquidation order stating that Mr. S. Rajendran appointed as the Liquidator of the applicant; he shall issue the public announcement that the applicant is in liquidation; the liquidator shall investigate the financial affairs in relation to the preferential transaction or undervalue transaction and fraudulent preferences; shall give necessary intimation to the Income Tax Department; shall submit preliminary report to the Authority within 75 days from the liquidation commencement date. To read the Order in detail, click on the link below:

Link:

<https://nclt.gov.in/sites/default/files/July-final-orders-pdf/MA%20376.pdf>

NCLAT

1. The 'RoC' had initiated action for non-filing of Annual Returns for the years 2015-2016 and 2016-2017. The NCLT has granted relief to the Appellant subject to payment of costs of INR 25,000/- in the Prime Minister Relief Fund along with INR 50,000/- in the Ministry of Corporate Affairs (**MCA**). The matter was appealed before the NCLAT, New Delhi. The Learned Counsel for the Appellant states that the Appellant is in the profession of Education and has been suffering losses and thus the costs should not have been imposed.

The NCLAT, after considering the default, reduce the costs to payment of INR 25,000/- in the Prime Minister Relief Fund and set aside the direction of the NCLT to pay another INR 50,000/- to the MCA. To read the Order in detail, click on the link below:

Link: <https://nclat.nic.in/Useradmin/upload/2569326555f1ecf16321ea.pdf>

2. **The Adjudicating Authority examined and directed the Corporate Debtor to settle all the claims within a definite time frame rather than settlement of all individual claims in detail.**

The appeal is dismissed bearing in mind that the settlement process set in motion at the pre-admission stage is supported by the Consent Terms filed by some of the stakeholders, though it may not be all encompassing, this appeal would not lie and accordingly it was held that the appeal is not maintainable.

On hearing the Appellants claim, it was find out that the subject matter being a Housing Project with stakeholders, inter alia, being the Allottees and the Investors, the Company Petition came to be disposed of on the basis of Joint Consent terms filed by the parties to the Company Petition. The Adjudicating Authority was of the view that instead of examining all individual claims in detail, the Adjudicating Authority deemed it appropriate to direct the Corporate Debtor to settle all the remaining claims within a definite time frame. It further appears that three months' time was allowed for settlement of the claims by the Corporate Debtor and the Adjudicating Authority observed that if any of the claimants be aggrieved of the settlement process, they would be at liberty to approach the Adjudicating Authority again. To read the Order in detail, click on the link below:

Link: <https://nclat.nic.in/Useradmin/upload/6231251285f22ae7aafc4f.pdf>

SEBI

1. In the matter of Pancard Clubs Limited (**PCL**) SEBI conducted an examination of unauthorized mobilization money from public and it was revealed that PCL was carrying business of Collective Investment Schemes (**CIS**) without obtaining a certificate of registration.

The SEBI after taking into account the entire facts / circumstance of the case mentioned in the Order, and other material available on record, was of the view that the activities carried out by PCL and its directors during examination period was CIS and the same was carried out without obtaining registration from SEBI and imposed penalty of INR 200,000,000/-. To read the Order in detail, click on the link below:

Link:

https://www.sebi.gov.in/enforcement/orders/jul-2020/adjudication-order-in-the-matter-of-pancard-clubs-limited_47241.html

2. In the matter of trading in the scrip of M/s. Parichay Investments Ltd (PIL), SEBI conducted investigation to look into the possible violation of the provisions of the SEBI Act, 1992 and rules and regulation made there under. During the investigation SEBI observed that out of 63 entities constituting the 'Soni Group' 18 entities mentioned in the order traded in the scrip of PIL and found that PIL have violated the legal provisions as mentioned in the order.

After considering all the facts and circumstances of the case, SEBI imposed a penalty of INR 1.20,00,000 on 16 individuals being related or connected with one another. These 16 individuals had executed trades which were manipulative and indulged in trades with manipulative intent to create misleading appearance of trading. These practices certainly are in the nature of causing possible adverse impact in disturbing the equilibrium of fair market mechanism and inducing investors. To read the Order in detail, click on the link below:

Link:

https://www.sebi.gov.in/enforcement/orders/jul-2020/adjudication-order-in-respect-of-16-entities-in-the-matter-of-parichay-investment-limited_47230.html

3. In the matter of VKS Project Limited (**VPL**), SEBI has investigated in the scrip of VPL, SEBI observed that promoters of the Company have together acquired more than 5% of paid up share capital of the Target Company in the financial Year 2013-14 and in accordance with the Regulation 3(2) of SAST Regulations, promoters were required to make an announcement of open offer However, it was observed that they have failed to do so.

SEBI also observed that the Noticee 1 received and transferred shares through off market transactions. However, all the notices have failed to pay the consideration. SEBI further observed that in respect of share transactions the Noticee 1 had failed to make disclosures in terms of SAST and PIT Regulations and initiated adjudication proceedings against all the Noticee.

After considering all the facts and circumstances, the submission made by the notice imposed penalty of INR 10,00,000/- under section 15H of the SEBI Act and INR 60,00,000 under section 23H of SCRA and INR 10,00,000 under section 15A (b) of the SEBI Act. To read the Order in detail, click on the link below:

Link:

https://www.sebi.gov.in/enforcement/orders/aug-2020/adjudication-order-in-the-matter-of-vks-project-limited_47271.html

4. SEBI in its final order in the matter of Aurobindo Pharma Limited (**APL**) directed Top Class Capital Markets Private Limited to disgorge the illegal gains of INR 3,78,00,000 along with interest at the rate of 12% per annum within 45 days from the effective date of the Order and also restrained from accessing the securities market and is prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year from the date of this order.

Further, in view of the extraordinary circumstances arisen because of COVID-19 pandemic and consequential lockdown imposed till August 31, 2020, the direction contained in para 35(i) of the final order, shall come into force on September 01, 2020 or on such date when the lockdown if extended beyond August 31, 2020, comes to an end. To read the Order in detail, click on the link below:

Link: -

https://www.sebi.gov.in/enforcement/orders/aug-2020/final-order-in-the-matter-of-aurobindo-pharma-ltd_47259.html

HIGH COURT

1. Petition filed under Arbitration and Conciliation Act, was concluded by the Hon'ble Justice that the application has become infructuous and was disposed with no costs.

Jaguar Overseas Limited Petitioner
versus
Seagull Maritime Agencies Private Limited..... Respondent

Date of Judgement: August 06, 2020

The Petitioner has filed the petition under the Arbitration and Conciliation Act, 1996 for seeking reliefs from the respondent on: (a) Immediate payment to the Port authorities towards the 'detention & demurrage' and other charges incurred on 41 containers halted at Port. (b) Disclose all details, along with supporting documents, w.r.t payment which shall be made to the Port authorities. (c) Make full efforts to apply to the Port authorities, seeking discount/waiver on the 'detention & demurrage' and other charges incurred on 41 containers halted at Port and in case any refund is received on the said payments, disclose all details, along with the supporting documents. (d) Restraining from obstructing and halting the movement of 20 other containers, assigned under the Agreement and facilitate their movement and complete the shipment of 61 containers as per the terms of the Agreement at the earliest. (e) And requesting the Hon'ble Court to pass any other Order(s) as it may deem fit and proper in the facts and circumstances of the present case.

The Petition was disposed off with no costs by the Hon'ble Justice, by concluding that the application has become infructuous and is disposed of as such with the following directions (a) That the respondent shall convey to the petitioner the demurrage charges which are payable to the port authorities after ascertaining the same from the port authorities, within 3 days from the date of the order; (b) Once the amount due to the port authorities is conveyed to the petitioner, the petitioner and the respondent shall equally pay (i.e. 50% each) the demurrage charges to the port authorities within 3 days thereafter and on such payment, the respondent shall get the containers released and transport them to the sites at Zambia; (c) Once the delivery of the said containers is completed, the amount shall be released to the respondent by the petitioner within 2 days thereafter; (d) The dispute with regard to the demurrage charges paid by the parties in view of (b) above, shall be a question which shall be determined in the arbitration, along with any other claim(s) (if any) as and when raised by either of the parties in accordance with law. To read the Order in detail, click on the link below:

Link: <http://164.100.69.66/jsearch/>

2. Writ Petition was disposed off with no orders as to costs with directions, where a final award was passed by the Competent Authority nominated by the Central Government for payment of compensation amount to the petitioner for the land in question.

Premier Limited ... Petitioner
Vs.
Union of India And Others ... Respondents

Date of Judgement: August 03, 2020

Writ Petition was filed under Articles 226 and 227 of the Constitution of India, by petitioner seeks a direction to the respondent to release the compensation amount in favour of the petitioner as per final award along with interest from the date of the final award till payment or realization thereof.

Petitioner was the lawful owner of land, which was acquired by the Government of India by a special railway project, called as 'Western Dedicated Freight Corridor'. Respondent had issued a notification declaring the intention to acquire various lands including the land in question belonging to the petitioner. However, no any objection was raised by the Petitioner on the acquisition of the land in question though by such acquisition the remaining portion of land not acquired would be rendered economically unviable. A joint survey of the land in question was carried out to ascertain the measurement of the land and for demarcation of the land. There was an internal report forwarded by the Petitioner. After necessary publication in the official gazette by the competent authority, and issuance of notification to the persons interested in the said land to submit their claims in writing within 30 days from the date of publication of the notification. Final award was passed by the competent Authority nominated by the central government.

Despite the land in question being vested with the central government, no compensation amount has been paid to the petitioner even though final award has been passed. Hence, the aggrieved, petitioner preferred the present writ petition seeking the reliefs.

The Writ Petition is disposed off with no orders as to costs with directions, to pay the due compensation to the petitioner and such other person(s) who may lodge claim thereto as per award within a period of six weeks from the date of receipt of this order; to pay interest @ 6 per cent per annum on the compensation amount to be paid to the petitioner from the date of deposit of the awarded amount by the central government till the date of payment to the petitioner; to issue notice in writing to the petitioner and such other person(s) who may be found to be in possession of the land in question to surrender or handover possession to the competent authority within a period of 60 days from the date of receipt of the

notice; and in the event of refusal or failure to comply with above direction, the third respondent shall take appropriate action in terms of the Act. To read the Order in detail, click on the link below:

Link:

<https://bombayhighcourt.nic.in/generatenewauth.php?bhcpair=cGF0aD0uL3dyaXRlcmVhZGRhdGEvZGF0YS9jaXZpbC8yMDIwLyZmbmFtZT1XUDI1MTEyMDAzMDgyMC5wZGYmc21mbGFuPU4mcmp1ZGRhdGU9JnVwbG9hZGR0PTAzLzA4LzlwMjA mc3Bhc3NwaHJhc2U9MDcwODlwMTMwMzE3>

SUPREME COURT

- 1. Appeal was disposed, by setting aside the judgment of the High Court only on one question of law, namely the expression “may” which cannot be read as “shall”.**

The Chairman, Board of Trustees, Cochin Port Trust ...Appellant

VERSUS

M/s Arebee Star Maritime Agencies Private Limited. & Ors. ...Respondents

Date of Judgement: August 05, 2020

Appeal was disposed of that was filed against the impugned judgment of the Kerala High Court, which was set aside on one question of law, namely, that the expression “may” in sections 61 and 62 of the Major Port Trusts Act, which cannot be read as “shall”, subject to the caveat that as the “State” under Article 12 of the Constitution, a Port Trust must act reasonably, and attempt to sell the goods within a reasonable period from the date on which it has assumed custody of them.

Original petition was filed by various shipping agents in the Kerala High Court, where the question before the High Court was whether the liability to pay the “ground rent” on containers unloaded at Cochin Port, can be imposed on the owners of the vessel/steamer agents beyond the period of 75 days. There where sequence of events that led to the stalemate, where the containers with synthetic woollen rags were destuffed to facilitate Customs examination and to return the empty containers to the steamer agents. Since the destuffed cargo occupied much larger space, which constituted mostly of brand new clothes which could not have been cleared due to the hurdles placed by the Customs stating that the cargo did not constituted of old woollen rags, as declared by the consignees. Here the “modus operandi” of the consignees/importers attracted wide attention of all concerned and taking note of the probable extent of liability to be imposed by the Customs Department, and the liability to be satisfied to the Port and others concerned, the consignees did not turn up to clear the goods and they were lying idle in the Port premises for quite long.” To read the Order in detail, click on the link below:

Link:

https://main.sci.gov.in/supremecourt/2012/270/270_2012_34_1501_23302_Judgement_05-Aug-2020.pdf

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