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 5/20-21
Week – August 17h to 21st

Introduction

We welcome you to our weekly newsletter for this week!

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, 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, various regulatory authorities have been proactive in bringing significant regulatory changes in recent challenging times. These newsletter covers various circulars / notification issued by certain regulatory authorities such as Ministry of Corporate Affiars ("MCA") Securities and Exchange Board of India ("SEBI") Reserve Bank of India ("RBI") and critical Judgements and orders passed by National Company Law Tribunal ("NCLT"), National Company Law Appellate Tribunal ("NCLAT"), SEBI, RBI, Supreme Court and High Court. With a constant endeavor to cover all regulatory updates and judgements/orders at one place, we have prepared a comprehensive summary for quick reference of such updates and Judgements / orders issued during the week of August 17, 2020 to August 21, 2020.

Thank you,
Swift Team

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

Table of Contents

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

REGULATORY UPDATES

MCA UPDATES

1. **MCA issues clarification on extension of Annual General Meeting ("AGM") for the Financial year ended March 31, 2020 vide general circular dated August 17, 2020**

   - The Ministry of Corporate Affairs **("MCA")** has received several representations for providing relaxations in the provisions of Companies Act, 2013 **("the Act")** or rules made thereunder to allow companies to hold their Annual General Meeting **("AGM")** for the financial year ended on March 31, 2020 beyond the statutory period as provided in Section 96 of the Act.

   - MCA had clarified in its general circular No. 20/2020 dated May 05, 2020 regarding holding of AGM through video conferencing or other audio visual means. It has been stated that, all the companies which, despite availing the relaxations provided in the general circular No. 20/2020, dated May 05, 2020, are not able to conduct their AGM for the financial year ending on March 31, 2020, ought to file their applications in e-form GNL-1 for seeking extension of time in holding of AGM for the financial year ended on March 31, 2020 with the concerned Registrar of Companies ***on or before September 29, 2020***.

   - The Registrars of Companies have been advised to consider all such applications liberally in view of the hardships faced by the stakeholders and to grant extension for the period as applied for (up to three months) in such applications.

     To read more in detail, please click here.

SEBI UPDATES

1. **SEBI introduces Corrigendum to Master Circular for Depositories dated October 25, 2019 on preservation of records vide circular dated August 18, 2020**

   - SEBI vide its earlier circular MRD/DoP/DEP/Cir- 20/2009 dated December 9, 2009 on preservation of records mentioned that Depositories and Depository Participants are required to preserve the records and documents for a minimum period of five years in terms of regulations 38 and 49 of the SEBI (Depositories and Participants) Regulations, 1996.

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com

- Further, in terms of Regulations 54 and 66 of the SEBI (Depositories and Participants) Regulations, 2018 (herein referred to as D&P Regulations, 2018) notified on October 03, 2018, Depositories and Depository Participants are required to preserve the records and documents for a ***minimum period of eight years***.

- In order to align the provisions of the D&P Regulations, 2018 with that of Master Circular for Depositories dated October 25, 2019, Section 4.6 (i) - Preservation of Records shall be replaced with the following:

  "Depositories and Depository Participants are required to preserve the records and documents for a minimum period of 8 years".

- Further, footnote of "Preservation of records" shall be replaced with "Reference Circular MRD/DoP/DEP/Cir-20/2009 dated December 9, 2009 and Regulations 54 and 66 of the SEBI (Depositories and Participants) Regulations, 2018".

- Paragraph 2 of SEBI circular MRD/DoP/DEP/Cir- 20/2009 dated December 9, 2009 stands partially modified as under:

  "In terms of Regulations 54 and 66 of the SEBI (Depositories and Participants) Regulations, 2018 (herein referred to as D&P Regulations, 2018) notified on October 03, 2018, Depositories and Depository Participants are required to preserve the records and documents for a minimum period of eight years"

- It may be noted that the other provisions of SEBI circular MRD/DoP/DEP/Cir20/2009 dated December 9, 2009 shall remain unchanged.

- The Depositories are advised to: a) make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision, as may be applicable/ necessary; b) to carry out system changes, if any, to implement the above; c) disseminate the provisions of this circular on their website; d) communicate to SEBI, the status of implementation of the provisions of this circular in their Monthly Development Report.

  To read more in detail, please click here.

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com

2. **SEBI introduces consultation paper on Format for Business Responsibility & Sustainability Reporting:**

- SEBI, in 2012, mandated the top 100 listed entities by market capitalization to file Business Responsibility Reports **("BRR")** as per the disclosure requirement emanating from the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business' **("NVGs")**. These guidelines contained comprehensive principles to be adopted by companies as part of their business practices and a structured business responsibility reporting format requiring certain specified disclosures, demonstrating the steps taken by companies to implement the said principles. The requirement for filing BRRs was extended to the top 500 entities companies by market capitalization from the financial year 2015-16. In December 2019, SEBI extended the BRR requirement to the top 1000 listed entities by market capitalization, from the financial year 2019-20.

- In November 2018, the Ministry of Corporate Affairs **("MCA")** constituted a Committee on Business Responsibility Reporting **('Committee')** for finalizing Business Responsibility Reporting formats for listed and unlisted companies, based on the framework of the NGRBCs. SEBI was also part of this Committee and worked on the report.

- The report of the Committee was released on August 11, 2020. Following were some of the recommendations received form the committee:

  - *The Committee recommends that the Business Responsibility Report be called the Business Responsibility and Sustainability Report (BRSR). These disclosures, which are from an Environmental, Social and Governance ("ESG") perspective that have been recommended in the BRSR, are intended to enable businesses to engage more meaningfully with their stakeholders, and encourage them to go beyond regulatory financial compliance and report on their social and environmental impacts.*

  - *The comprehensive format for reporting as recommended by the Committee for listed entities is enclosed at* ***Annex – 1****. Further, in order to enable better reporting by companies, the Committee has also developed a guidance note to define and interpret the scope of each question in the BRSR (enclosed at* ***Annex – 2****).*

  - *It is proposed that the format for business responsibility and sustainability reporting, as recommended by the Committee, shall be applicable to the top 1000 listed entities by market capitalization. It is also proposed that to begin with, the new format will be adopted by such listed entities on a*

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com

voluntary basis for the financial year 2020 – 21 (for those who choose not to adopt the new format, the existing format will apply) and mandatorily from the financial year 2021-22.

To read the consultation paper in detail, please click here.

3. **SEBI introduces consultation paper on recalibration of threshold for Minimum Public Shareholding norms, enhanced disclosures in Corporate Insolvency Resolution Process (CIRP) cases:**

- Learning its lesson from Ruchi Soya Industries' extreme share price movement after the company went through insolvency proceedings, SEBI proposed to rejig the minimum public shareholding norms for firms under insolvency.

- In a consultation paper floated on Wednesday, the markets regulator proposed three options for companies which undergo Corporate Insolvency Resolution Process ("CIRP"), and also sought enhanced disclosure for such companies. SEBI has sought comments by ***September 18, 2020***.

- As per current norms, listed companies should have 25 per cent of minimum public shareholding (MPS). However, companies which undergo an insolvency resolution under the Insolvency and Bankruptcy Code (IBC) are granted a relaxation. For such companies, if due to infusion of fresh funds, the MPS is below 10 per cent then the companies can bring it up to this threshold within 18 months and later to 25 per cent in three years. For companies whose MPS falls below 25 per cent but is above 10 per cent, need to bring it up to 25 per cent in three years from the date of such lapse. and the shares of the incoming investors also stay locked-in for one year.

- Under **first option**, SEBI suggested that post-CIRP companies may be mandated to achieve at least 10 per cent public shareholding within six months and 25 percent within 3 years from the date of breach of minimum public shareholding(MPS)norm.

- Under the **second option**, the post-CIRP companies may be mandated to have at least 5 percent public shareholding at the time of relisting, while third option mandated such companies to have at least 10 per cent public shareholding at the time of relisting. Sebi also suggested doing away from the lock-in period, so as to help achieve MPS, but only to the extent to enable such compliance. SEBI also suggested doing away from the lock-in period, so as to help achieve MPS, but only to the extent to enable such compliance. SEBIi pointed that IBC is an

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com

evolving law and changes shall be implemented according to representations from various stakeholders.

To read the consultation paper in detail, please click here.

RBI UPDATES

1. **RBI releases framework for authorization of pan-India Umbrella Entity for Retail Payments vide press release dated August 18, 2020**

   - The new framework prescribes norms to be registered as a pan-India umbrella entity / entities focusing on retail payment systems, which include norms such as:

     - *The entities eligible to apply as promoter / promoter group of the umbrella entity shall be owned and controlled by resident Indian citizens. with 3 years' experience in the payments ecosystem as Payment System Operator (PSO) / Payment Service Provider (PSP) / Technology Service Provider (TSP);*
     - *Promoters shall confirm to RBI's fit and proper' criteria.*
     - *The umbrella entity shall have a minimum paid-up capital of ₹500 crores etc.*

   - The framework also covers other areas such as governance structure, scope of activity, business plan and the procedure for application and processing of applications.

   To read more in detail, please click here.

[This space is intentionally left blank]

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com

JUDGEMENTS/ ORDERS

NCLT ORDER

1. **NCLT Mumbai bench Sanctions merger of Indusind Media and Communications Limited with Nxtdigital Limited**

   NCLT allows the scheme of arrangement of Indusind Media and Communications Limited and Nxtdigital Limited. ('Petitioner Companies') on finding that all requirements under section 230 and 232 of the Companies Act, 2013 are satisfied, and does not violate of any provisions of law and is not contrary to public policy. To read the order in detail please click here.

2. **NCLT Mumbai bench allows Corporate Insolvency Resolution Process (CIRP) against MTC ECOM Private Limited.**

   NCLT admits financial creditor's insolvency application and initiate CIRP against the corporate debtor, declares the moratorium period under section 14 of the Insolvency & Bankruptcy Code, 2016 (IBC) and appointed Mr. Dilip Vasudeo Gupta as Interim Resolution Professional (IRP).

   NCLT notes that Corporate Debtor entered into an Optionally Convertible Debenture Agreement (OCDA) with Orios Venture Partners Fund-I and issued 15,00,000 (Fifteen Lakh) Optionally Convertible Debentures (OCD) at the face value of INR 10/- (Ten) aggregating to INR 1,50,00,000 (INR One Crore Fifty Lakh). Corporate debtor repaid the principal sum in part to the extent of INR 50,00,000/- (INR fifty lakhs only) along with interest thereon. Later OCD was transferred to the Financial creditor.

   The Financial Creditor wrote to the Corporate Debtor seeking repayment of the sum of INR 1,23,43,750/- (INR One Crore Twenty-Three Lakh Forty-Three Thousand Seven Hundred and Fifty). However, Corporate Debtor defaulted in paying back.

   NCLT held that, the application made by the Financial Creditor is complete in all respects as required by law. Hence admits this petition and orders initiation of CIRP against the Corporate Debtor. To read the order in detail please click here.

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com

NCLAT ORDERS

1. **NCLAT has set aside the order passed by NCLT, Mumbai bench and observed that the person who may be the head of other organizations cannot be roped and his or her Assets cannot be attached.**

K.V. Brahmaji Rao	**Appellant**
Union of India	**Respondent**

The Appellant filed appeal under section 421 of the Companies Act 2013, against the order passed by National Company Law Tribunal, Mumbai Bench, at Mumbai (**Tribunal**).

Respondent had initiated the petition against the known and unknown person who had committed the huge Financial Scam against the Punjab National Bank (PNB). The CBI filed charge sheet in the case of Nirav Modi's case and Gitanjali Group cases. The investigation by the CBI has revealed that 19 persons (including the Appellant and Ms. Usha Ananthasubramanian) named in the application have also acted dishonestly and fraudulently. Therefore, Respondent filed the Application that these 19 persons be impleaded as Respondents and filed another Application with the prayer to order for frizzing their Assets

Based on the records available and the Judgment passed by the Hon'ble Supreme Court in the case of Ms. Usha Ananthasubramanian, observed that the allegations against the Ms. Usha Ananthasubramanian and K.V. Brahmaji Rao (Appellant) are the same, at the relevant time. Ms. Usha Ananthasubramanian was Managing Director and CEO of PNB, Head Office, New Delhi, whereas the Appellant was the Executive Director of PNB, i.e. employee of other organization. Thus, NCLT allows the appeal and held that the appellant cannot be impleaded as Respondent in the Company Petition NO. 277 of 2018. Which is against the Nirav Modi Group and Gitanjali Group of Companies.

NCLAT has set aside the order passed by NCLT, Mumbai bench and observed that the person who may be the head of some other organizations cannot be roped and his or her Assets cannot be attached in exercising the powers under Sections 337 & 339 of the Companies Act, 2013. To read the complete judgement please click here.

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com

SEBI ORDERS

1. **Final Order in respect of Shri Sasidhar V in the matter of Schemes of Taurus Mutual Fund holding debt instruments of Ballarpur Industries Ltd.**

   In the matter of Schemes of Taurus Mutual Fund holding debt instruments of Ballarpur Industries Ltd. SEBI impose penalty of INR 5, 00, 000 (INR Five Lakh) on the noticee for deliberate tempering of the Date and Time Stamping Machine (DTSM) to give favour to certain investors so that their units can be redeemed at a higher NAV prior to the mark down in the value of Ballarpur Industries Limited. To read the order in detail please click here.

2. **Adjudication Order in respect of Goldcrest Jute Fibre Limited in the matter of SCORES Authentication**

   In respect of Goldcrest Jute Fibre Limited (**Noticee**), Securities and Exchange Board of India ("**SEBI**") observed that notice failed to obtain SEBI Complaints Redress System (**SCORES**) authentication, hence violated SEBI circular CIR/OIAE/1/2013 dated April 17, 2013 and noticee is liable for penalty under Section 15HB of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**").

   Show cause notice (**SCN**) was issued by Adjudication officer (**AO**), however SCN was undelivered from the last known address of the Noticee. Upon transfer of the proceedings, an attempt was made to deliver the SCN to the Noticee by way of publication in newspapers in August 10, 2020 editions of Times of India and Rajasthan Patrika. Upon publication of the SCN, an Email dated August 14, 2020 was received from M/s Exhibitors Syndicate Limited ("transferee company") stating that "The company has already been amalgamated with the transferee Company vide order dated July 08, 2005 passed by Hon'ble High Court at Calcutta". So, the noticee sought dropping of the proceedings against it. Further, the name of the company has been struck off by the Register of companies.

   From available records, AO observed that Goldcrest Jute and Fibre Limited and the Noticee must be the same as the only difference between the names of the two entities is the word "and" forming part of the one and not forming part of the other. AO further states that status of the Noticee is shown as 'strike off' in the SCORES record and the status of Goldcrest Jute and Fibre Limited is also shown as 'strike off' in the 'master data' on the website of Ministry of Corporate Affiairs (MCA).

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com

After taking into consideration the facts and circumstances mentioned in the order AO disposed of the SCN. To read the order in detail please click here.

3. **Adjudicating officer imposed penalty of INR 2,00,000 (INR Two lakhs) for violation of the SEBI (Prohibition of Insider Trading) Regulations, 1992 and Listing Agreement.**

In the matter of The Orissa Minerals Development Company Limited (**OMDC/Company**) Securities and Exchange Board of India ("**SEBI**"), conducted investigation into the alleged delayed disclosure of the price sensitive information ("**PSI**") by the Company, in the scrip of OMDC, to the Stock Exchanges.

Based on the observation mentioned the order Adjudicating office (AO) hold that Company have violated the provisions of Clause 2.1of the Code of Corporate Disclosure Practice for Prevention of Insider Trading contained in Schedule II read with Regulation 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 1992. Further, OMDC, also violated Clause 36 of the Listing Agreement read with Section 21 of Securities Contracts (Regulation) Act, 1956 and imposed penalty of INR 2,00,000 (INR Two Lakhs). To read the order in detail please click here.

HIGH COURT ORDERS

1. **Assets Transfer Agreement was merely a ploy used and denial of the liability, cannot be faulted.**

Welworth Software Private Limited	**Petitioner**
Sun Distribution Services Private Limited & ANR.	**Respondents**

Date of Judgement: August 17, 2020

The Petition was dismissed with no merit and no order as to costs. The Petition was filed challenging the order passed by the Telecom Disputes Settlement and Appellant Tribunal, New Delhi, directing the petitioner and the respondent Number 2 (Multi System Operators providing cable TV services and the subscribers) to jointly and severally pay to respondent number 1 (Broadcaster of TV Channels) within one month from the date of passing of the said order.

Based upon the facts of the case, the High Court of New Delhi provided reference of a judgement made by the Supreme Court where it held that "the concept of corporate entity was evolved to encourage and promote trade and commerce and

not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned."

The Petition was dismissed basis the above view given by the Supreme Court in one of its judgements and upon the prima facie finding of the learned Tribunal that the Assets Transfer Agreement was merely a ploy used by the respondent number 2 and the petitioner to deny the liability of the broadcasters, including the respondent Number 1 herein, cannot be faulted. At the least it cannot be said that the above finding is beyond the jurisdiction of the learned Tribunal or suffering from any error apparent on the face of the record. To read the Judgement in detail, click here.

2. Credit Ratings of a company are surveillance ratings and no mandatory injunction can be granted to remove the Grade Rating Rationales.

Jindal Power Limited	**Plaintiff**
ICRA Limited.	**Defendant**

Date of Judgement: August 18, 2020

Suit and application filed by Jindal Power Limited against ICRA Limited, a credit rating agency was consequently dismissed by the competent court. The Plaintiff had filed this suit praying for a decree of declaration passed by the defendant, for declaring the Credit Rating Rationales or any other similar credit rating rationales downgrading the plaintiff's credit rating from BBB+ (given for stable outlook) to BBB (given for negative outlook) as null, void, unenforceable and ineffective and to also seek decree of mandatory injunction to withdraw the said credit rating rationales from physical as well as electronic records including those on the worldwide web. However, the Competent Court noted that the evidentiary value of opinion of an expert has to be decided on the basis of the credibility of the expert and the relevant facts supporting the opinion and therefore, the emphasis has to be on the data on the basis of which opinion is formed. Further, if the opinion is intelligible, convincing, and based on reasoning, no decree declaring the said opinion as null and void, unenforceable and ineffective cannot be passed as is

prayed by the plaintiff in respect of the Credit Rating Rationales passed by the defendant. Further the Competent Court also noted that, the Credit Ratings in question as specified by the defendant are surveillance ratings and no mandatory injunction can be granted to remove the Grade Rating Rationales from the physical as well as electronic record of the defendant on the worldwide web, even if Jindal Power Limited objects to the same.

The competent Court before concluding with its judgement, noted that ICRA had downgraded the credit rating from AAA to BBB+ of Jindal Power Limited in the previous year as well, and neither any suit was filed raising objection for such downgrading of the credit rating nor on publishing of the credit rating. Further it was also noted that Jindal Power Limited cannot seek to set aside the said credit rating, which were utilized for receiving the financial facility, unless such credit rating is irrational, arbitrary or is mala fide and cannot seek any decree that the said rating be not disclosed or published. To read the Judgement in detail, click here.

3. **Deduction allowed by the Assessing Office was found to be erroneous and prejudicial to the interest of the revenue.**

The Director of Income-Tax Exemptions	**Appellants**
The Deputy Director of Income-Tax Exemptions	**Appellants**
India Heritage Foundation	**Respondent**

Date of Judgement: August 18, 2020

India Heritage Foundation, registered under Section 12AA of the Income-Tax Act, 1961, a Trust engaged in the business of construction and real estate activates, had filed the return of income for the Assessment year 2009-10 and declared the income as NIL and claimed deduction. The aforesaid deduction was allowed by the Assessing Officer, which was found to be erroneous and prejudicial to the interest of the revenue. In this respect a show cause notice was issued by the Director of Income-Tax (Exemption) to the assesse proposing to disallow deduction, quashing the order passed by the Assessing Officer and directed him to disallow the deduction as claimed by the assesse. Being aggrieved, the assesse filed an appeal before the Income-Tax Appellate Tribunal.

The Bench of this Court, keeping in view of the preceding analysis, the substantial questions of law framed, are answered in favour of the revenue and against the assessee, quashing the order passed by the Income Tax Appellate Tribunal. The Bench of this Court also quashed the order passed by the Director of Income-Tax

(Exemption), which contained the direction to the Assessing Officer to disallow the deduction, and directed the Assessing Officer to deal with the aforesaid claim of the assesses afresh in accordance with law. Accordingly, the appeal was disposed off. To read the Judgement in detail, click here.

SUPREME COURT ORDERS

1. **Irregularities in the case only highlight the impossibility of holding an action of imposing the general liability under section 31 of the Specific Relief Act, 1963.**

Deccan Paper Mills Co. Limited **Appellant**
Regency Mahavir Properties & ORS. **Respondents**

Date of Judgement: August 19, 2020

The appeal stands dismissed with the finding of law, that the judgement of the District Court and the High Court in the case need no further interference.

Original Agreement was entered between Deccan Paper Mills Co. Limited, being the owner of land situated at Village Mundhwa, in Pune District and Regency Mahavir Properties, a partnership firm, it was noted that the agreement contained a clause wherein the owner has provided his no objection during the continuance of the said agreement, the respondent can execute an agreement with a third party without violating any of the terms of the terms and conditions of the original agreement. However, in furtherance of the original agreement which did not contain an arbitration clause, there was an agreement entered into between the Regency Mahavir Properties (Respondent Number 1) and Ashray (being respondent Number 2) which contained an arbitration clause.

Further upon the findings of the law, the Supreme Court dismissed the appeal by stating that the reasoning in the aforesaid judgment would again expose unsuitable result of the Specific Relief Act being held to be imposing a provision under general liability. Therefore, when it comes to the cancellation of a deed by an executant to the document, such person can approach the Court, but when it comes to the cancellation of a deed by a non-executant, the non-executant must approach the Court under the Specific Relief Act, 1963. Cancellation of the very same deed, therefore, by a non-executant would be an action against a specific person, since a suit has to be filed under section 34 of the said Act. However, cancellation of the same deed by an executant of the deed, being under section 31 of the said Act, would somehow convert the suit into a suit being filed imposing the general liability. All these irregularities only highlight the impossibility of holding

that an action instituted under section 31 of the Specific Relief Act, 1963 is an action imposing the general liability. To read the Judgement in detail, click here.

2. **Supreme Court remanded the matter for adjudication by the ADJ, Mohali for fresh disposal in accordance with law.**

Avitel Post Studioz Limited and ORS	**Appellants**
HSBC PL Holdings (Mauritius) Limited	**Respondent**

and

HSBC PL Holdings (Mauritius) Limited	**Appellant**
Avitel Post Studioz Limited and ORS	**Respondents**

With

Civil Appeal of 2016

Date of Judgement: August 19, 2020

Two Civil Appeals being filed, one by Avitel Post Studioz Limited and its Promoters and another the cross appeal filed by the HSBC PL Holdings (Mauritius) Limited. The said appeals were referred to the Civil Appeal of 2016 to dispose of. The Appellant had filed a petition before the learned ADJ, Mohali, which held that the Board Resolution only showed that any disputes raised by the Appellant shall be referred to arbitration in accordance with Indian law, provided they are arbitrable disputes. It was then held that as serious allegations of fraud were raised by HSBC in the dispute between HSBC and the Avitel Group/Jain family, such dispute would not be arbitrable as per Indian law. Even otherwise, according to the learned ADJ, the dispute between HSBC and the Avitel Group/Jain family is pending adjudication before the Supreme Court of India, and any decision made by that Court shall have a direct bearing on the dispute between the parties in this case also.

Further there was an appeal filed against the judgment of learned ADJ, to the Punjab and Haryana High Court, where the learned Single Judge of the High Court held that the final relief sought for is the return of an invested amount with interest together with cancellation of the shares. The learned Single Judge of the said High Court stated that such disputes would be governed by the Companies Act, 2013 and therefore, following some of the judgments of the Supreme Court, the remedy for arbitration sought by the Appellant would be barred by implication in view of the provisions of the Companies Act, 2013. After discussing the “fraud exception”

in some detail and stating that serious allegations of fraud and impersonation are not arbitrable, the said High Court concluded that:

"For the foregoing reasons, I am of the view that primarily, the appellant is trying to make out a case of parity with the case of HSBC, which is already a matter sub-judice before the Competent Court, but as per the facts narrated above, I am of the view that the prima facie allegation of fraud*, as already noticed above, would not fall in the realm of arbitrable dispute and therefore, rightly so, the court below has declined to grant the interim relief as sought. I do not intend to differ with the order under challenge. No ground for interference is made out. The appeal is dismissed."*

However, the Supreme Court in its judgement, allowed the civil appeal, keeping aside the judgments of the learned ADJ and the learned Single Judge, that are challenged in this appeal in view of the judgement in Civil Appeal 2016, and the matter was remanded for adjudication to the ADJ, Mohali for fresh disposal in accordance with law. To read the Judgement in detail, click here.