

Swift e-Bulletin

Edition 6/20-21
Week – August 24th to 28th

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. This newsletter covers various circulars/notifications issued by certain regulatory authorities such as the Reserve Bank of India ("RBI"), the Ministry of Corporate Affairs ("MCA"), the Securities and Exchange Board of India ("SEBI"), 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 24, 2020 to August 28, 2020.

Thank you,
Swift Team

Table of Contents

REGULATORY UPDATES	3
MCA UPDATES	3
SEBI UPDATES	6
RBI UPDATES	10
JUDGEMENTS/ ORDERS	12
NCLT ORDER	12
NCLAT ORDERS	13
SEBI ORDERS	14
HIGH COURT ORDERS.....	17
SUPREME COURT ORDERS	20

REGULATORY UPDATES

MCA UPDATES

1. **MCA amends the Companies (Corporate Social Responsibility Policy) Rules, 2014 of the Companies Act, 2013 vide Gazette notification dated August 24, 2020**



- ❖ MCA vide Notification dated August 24, 2020 has widened the scope of Corporate Social Responsibility activities by amending item (ix) of the Schedule VII of the Companies Act 2013 to include more entities like Ministry of AYUSH etc., engaged in research and development for new vaccine, drugs or medical devices, to whom contribution shall be treated as Contribution for Corporate Social Responsibility (“CSR” Activities as required under Section 135 of Companies Act, 2013.
- ❖ In the Companies (Corporate Social Responsibility Policy) Rules, 2014 (hereinafter referred to as the said rules), in rule 2, in sub-rule (1), in clause (e), the following proviso shall be inserted, namely

“Provided that any 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 and 2022-23 subject to the conditions that-

 - (i) *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.*
 - (ii) *details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board’s Report.*
- ❖ There have also been some amendments in terms of omissions in Rule 4 and Rule 6 of the above-mentioned rules.

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

2. **MCA amends Schedule VII of the Companies Act, 2013 vide Gazette Notification dated August 24, 2020**



- ❖ Schedule VII relates to Activities which have to be included by companies in their Corporate Social Responsibility Policies (Section 135 of Companies Act, 2013). MCA amended the schedule to include the following activities:

In the said Schedule, for item (ix) and the entries thereto, the following item and entries shall be substituted, namely: -

“(ix) (a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and

(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organization (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)”.

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

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3. MCA amends the Companies (Management and Administration Rules) 2014 vide Gazette notification dated August 28, 2020:



- ❖ Rule 12 deals with the extract of annual return to be attached in the Board's report and in the Companies (Management and Administration) Rules, 2014, in rule 12, in sub-rule (1), the following proviso was inserted, namely:

*“Provided that a company shall not be required to attach the extract of the annual return with the Board's report in **Form No. MGT.9**, in case the web link of such annual return has been disclosed in the Board's report in accordance with sub-section (3) of section 92 of the Companies Act, 2013.”*

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

4. MCA notifies provision of clause (ii) of section 23 of the Companies Amendment Act 2017 vide Gazette Notification dated August 28, 2020:



- ❖ Section 23(ii) of the Companies Amendment Act 2017 states -***Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.*** The following clause was not earlier notified and now shall come into force by this gazette notification.

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

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SEBI UPDATES

1. SEBI introduces Master Circular on Mutual Funds dated August 24, 2020



- ❖ SEBI has issued Master Circular for Mutual Funds in order to enhance and enable the industry and other users to have access to all the applicable circulars at one place. This Master Circular is a compilation of all the circulars issued by SEBI with regard to Mutual Funds, which are operational as on date of this circular and shall supersede the previous Master Circular No. SEBI/HO/IMD/DF5/CIR/P/2018/109 dated July 10, 2018.
- ❖ In case of any inconsistency between the master circular and the applicable circulars, the contents of the relevant circular shall prevail.
- ❖ This Circular contains 18 chapters covering every aspect of Mutual Funds in a structured manner along with Format and annexures. It covers a wide range of areas pertaining to Mutual Funds namely offer Documents for scheme, new products, Risk Management schemes, Disclosure and Reporting norms, Governance Norms etc.

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

2. SEBI extends the implementation timeline for “Procedural guidelines on Proxy Advisors” vide circular dated August 27, 2020:



- ❖ SEBI had earlier issued “Procedural Guidelines for Proxy Advisors” vide Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/147 dated August 03, 2020. The provisions of this Circular were going to be applicable from September 1, 2020. After taking into consideration requests received from registered proxy advisors, and the prevailing business and market conditions due to CoVID-19 pandemic, it has been decided to extend the timeline for compliance with the requirements of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/147 dated August 03, 2020, by four months. Accordingly, the provisions of said SEBI Circular shall be applicable with effect from January 01, 2021.

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

3. SEBI extends the timeline for implementation for 'Grievance Resolution between listed entities and proxy advisers' vide circular dated August 27, 2020:



- ❖ SEBI had issued 'Procedural Guidelines for Proxy Advisors' vide Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/147 dated August 03, 2020. Further, SEBI had issued Circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/119 dated August 04, 2020 on 'Grievance Resolution between listed entities and proxy advisers'.
- ❖ The aforesaid Circulars were applicable with effect from September 01, 2020. Subsequently, SEBI vide Circular no. SEBI/HO/IMD/DF1/CIR/P/2020/157 dated August 27, 2020 had extended the timeline for compliance with the requirements of aforesaid Circular dated August 03, 2020, by four months and accordingly, the provisions of said SEBI Circular shall be applicable with effect from January 01, 2021.
- ❖ In view of the above, the provisions of SEBI Circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/119 dated August 04, 2020 shall also be applicable with effect from January 01, 2021.

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

4. SEBI issues guidelines for Execution of Power of Attorney (PoA) by the Client in favor of the Stock Broker / Stock Broker and Depository Participant vide circular dated August 27, 2020:



- ❖ SEBI, vide circular no. CIR/MRD/DMS/13/2010 dated April 23, 2010, issued Guidelines for execution of Power of Attorney (PoA) by the client favoring Stock Broker / Stock Broker and Depository Participant. Certain clarifications were issued later vide circular no. CIR/MRD/DMS/28/2010 dated August 31, 2010.
- ❖ Paragraph 5 of the circular dated April 23, 2010, specifies that: ***"Standardizing the norms for PoA must not be construed as making the PoA a condition precedent or mandatory for availing broking or depository participant services. PoA is merely an option available to the client for instructing his broker or depository participant to facilitate the delivery of shares and pay-in/pay-out of***

funds etc. No stock broker or depository participant shall deny services to the client if the client refuses to execute a PoA in their favor."

- ❖ Further, paragraph 12 – 20 of the Guidelines in SEBI circular dated April 23, 2010, also specifies that the PoA shall not facilitate the stock broker to do certain activities with or on behalf of clients.

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

5. SEBI introduces amendments in Securities and Exchange Board of India (International Financial Services Centers) Guidelines, 2015



- ❖ In order to further streamline the operations at IFSC, based on consultations with the stakeholders, SEBI has amended provisions of the aforesaid guidelines, by incorporating new Clause 8 (3) as under:

"8 (3) An entity, based in India or in a foreign jurisdiction, may provide financial services in IFSC, subject to compliance with the applicable regulatory framework/ guidelines for such financial services, as specified by the Board, from time to time."

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

6. SEBI introduces amendments in Securities and Exchange Board of India (International Financial Services Centers) Guidelines, 2015



- ❖ Referring to SEBI (IFSC) Guidelines, 2015 which were notified by SEBI on March 27, 2015, SEBI Circular dated August 31, 2017 and February 27, 2020 and in order to further streamline the operations at IFSC, based on consultations with stakeholders, SEBI has amended the provisions of the aforesaid guidelines, which are as follows:

- ❖ The amended Clause 19 of SEBI (IFSC) Guidelines, 2015 as follows:

"19. The entities issuing and/or listing their debt securities in IFSC shall prepare their statement of accounts in accordance with IFRS/ US GAAP/ IND AS or accounting standards as applicable to them in their place of incorporation. In case an entity does not prepare its statement of accounts in accordance with IFRS/ US GAAP/ IND AS, a quantitative summary of significant differences

between national accounting standards and IFRS shall be prepared by such entity and incorporated in the relevant disclosure documents to be filed with the exchange. Provided that quantitative summary of significant differences is not required and a statement of differences between local accounting standards and IFRS/ US GAAP/ IND AS would suffice, if the issue is targeted to institutional investors, along with a disclaimer that issuer has not quantified the effect of

applying IFRS/ US GAAP / IND AS to its financial information and investor may make their own judgment in accessing the financial information”.

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

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RBI UPDATES

1. **RBI extends timeline for submission of returns under Section 31 of the Banking Regulation Act, 1949 (AACS) vide Notification dated August 26, 2020**



- ❖ In terms of Section 31 of the Banking Regulation Act, 1949 (“the Act”) read with Section 56 the Act [as amended by the Banking Regulation (Amendment) Ordinance, 2020], accounts and balance-sheet referred to in Section 29 of the Act together with the auditor's report shall be published in the prescribed manner and three copies thereof shall be furnished as returns to the Reserve Bank within three months from the end of the period to which they refer.
- ❖ In terms of the first proviso to the above section, Reserve Bank may in any case extend the said period of three months for the furnishing of such returns by a further period not exceeding three months.
- ❖ Since the aforesaid Ordinance amending, inter alia, Section 31 has been notified on June 29, 2020 for the primary (urban) co-operative banks (UCBs) and also as UCBs may be facing difficulties in submission of the returns due to the ongoing COVID-19 pandemic, it is considered necessary to allow more time for submission of the aforesaid return for the financial year ended on March 31, 2020.
- ❖ In view of the above, Reserve Bank has extended the said period of three months for the furnishing of the returns under Section 31 of the Act for the financial year ended on March 31, 2020 by a further period of three months. Accordingly, all UCBs shall ensure submission of the aforesaid returns to Reserve Bank on or before September 30, 2020.

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

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2. RBI releases clarifications on New Definition of Micro, Small and medium enterprises



- ❖ In view of the representations from IBA and banks regarding applicability of certain aspects contained in the Gazette Notification No. S.O. 2119(E) dated June 26, 2020 on new criteria for classifying the enterprises as micro, small and medium enterprises, The RBI has issued clarification on the following:

- Classification of Enterprises as per new definition: Classification/re-classification of MSMEs is the statutory responsibility of the GoI, Ministry of MSME, as per the provisions of the MSME Act, 2006 and as per para 2 of the said Gazette notification all enterprises are required to register online and obtain 'Udyam Registration Certificate'. All lenders may, therefore, obtain 'Udyam Registration Certificate' from the entrepreneurs.
- Validity of EM Part II and UAMs issued till June 30, 2020: The existing Entrepreneurs Memorandum (EM) Part II and Udyog Aadhaar Memorandum (UAMs) of the MSMEs obtained till June 30, 2020 shall remain valid till March 31, 2021. Further, all enterprises registered till June 30, 2020, shall file new registration in the Udyam Registration Portal well before March 31, 2021. The 'Udyam Registration Certificate' issued on self-declaration basis for enterprises exempted from filing GSTR and / or ITR returns will be valid for the time being, up to March 31, 2021.
- Value of Plant and Machinery: Pursuant to notification RBI has Clarified that the value of Plant and Machinery or Equipment for all purposes for classifying an enterprise as Micro, Small and medium enterprises shall mean the Written Down Value (WDV) as at the end of the Financial Year as defined in the Income Tax Act and not cost of acquisition or original price, which was applicable in the context of the earlier classification criteria.

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

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JUDGEMENTS/ ORDERS

NCLT ORDER

1. NCLT, KOCHI BENCH, WAIVE THE CONDITIONS SPECIFIED UNDER SECTION 244 OF THE COMPANIES ACT, 2013 AND ALLOWED THE APPLICANT WHO DO NOT HAVE QUALIFYING SHARES TO PREFER COMPANY PETITION UNDER SECTION 241 OF THE COMPANIES ACT, 2013.



Muhammad Abdul Jabbar Arackal and two others
M/s Delta Finster Limited and 4 others

Applicants/Petitioners
Respondents

The Petitioner filed to waive the condition under section 244 of the Companies Act, 2013 (“CA 2013”) and allow the petitioners who did not have the qualifying shares to prefer the Company Petition under Section 241 of CA 2013.

The applicant contended that, respondent have the possession of all the documents of the company and never revealed any details to other stakeholders. The respondent never issues notice of the meeting nor circulated any resolution passed in the general meeting. Further, respondent issued shares to herself and her daughter without informing or getting consent of other shareholders and even changed the registered office of the company so that no communication goes to the old address.

National Company Law Tribunal (“NCLT”), Kochi bench read the section 244 which makes it clear that, Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) to enable the members to apply under Section 241 of CA 2013. Hence, NCLT allowed the application and waived the condition under Section 244 of the CA 2013 and allowed the applicants who did not have the qualifying shares to prefer this Company Petition under Section 241 CA 2013. To read the order in detail please click [here](#).

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NCLAT ORDERS

1. NCLAT set aside order of NCLT New Delhi and confirms “Reduction of share capital” of the Company



Economy Hotels India Services Private Limited
Registrar of Companies

Appellant
Respondents

The Appellant filed petition against the impugned order passed by the National Company law tribunal (“NCLT”) New Delhi, Bench V rejecting the petition filed under Section 66(1)(b) of the Companies Act, 2013 (“CA 2013”) and granting liberty to file fresh application after complying with all the requirements of Section 66 of the CA 2013.

NCLT New Delhi observed that the company has not met the specific requirement of Section 66 of the CA 2013 by passing ‘**Special Resolution**’ for reduction of share capital. The Company has also not complied with the requirements of its own Articles of Association.

On a careful consideration of the respective contentions, observed that the Appellant admitted its typographical error in the extract of Minutes and filed special resolution which satisfies the requirement of Section 66 of the CA 2013. Hence, NCLAT set aside the impugned order passed by the NCLT New Delhi Bench V and confirm the reduction of share capital of the Appellant Company.

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

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SEBI ORDERS

1. SEBI IMPOSED PENALTY OF INR 5,00,000 (INR FIVE LAKHS ONLY) ON MCS SHARE TRANSFER AGENT LIMITED ON FAILURE TO PROVIDE DOCUMENTS



In the matter of Inspection/Audit of Books of MCS Share Transfer Agent Limited, Securities and Exchange Board of India ('SEBI') appointed ASA & Associates LLP ('Auditor') to conduct the audit in terms of Regulation 21 of SEBI (Registrars to an Issue and Share Transfer Agent Regulations), 1993 [SEBI (RTI and STA) Regulations, 1993] for the preceding 3 years i.e. April 01, 2013 to March 31, 2016, ('inspection period') with respect to only the listed companies being served by MCS Share Transfer Agent Limited ('Noticee').

The Auditors submitted that, noticee did not provide all samples requested by them. In view of this notice violated the provisions of SEBI (RTI and STA) Regulations, 1993 and code of conduct for registrar to an issue and Share Transfer Agent.

The Adjudicating Officer (AO) found that, noticee failed to provide the documents required by the Auditor and thereby they have violated the provisions of SEBI (RTI and STA) Regulations, 1993. AO further states that it does not quantify any disproportionate gains or unfair advantage made by the notice and consider the same as non-repetitive nature. However, AO consider the below observations made by the Hon'ble Securities Appellant Tribunal (SAT) in the matter of Akriti Global Traders Ltd. Vs. SEBI –

“...penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay”

and impose penalty of INR 5,00,000 (INR Five Lakh) on the noticee. To read the order in details please click [here](#).

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2. ADJUDICATION ORDER IN RESPECT OF SHRI ANOOP KUMAR GARG IN THE MATTER OF CENTRON INDUSTRIAL ALLIANCE LIMITED



In the matter of Centron Industrial Alliance Limited, adjudicating officer imposed penalty of INR 2,00,000 (INR Two Lakh only) on Mr. Shri Anoop Kumar Garg, Director of Centron Industrial Alliance Limited for not making disclosures under Regulation 13(4) read with 13(5) of PIT Regulations, 1992 in 35 instances regarding his change in shareholding by more than 25,000 shares and 2 instances regarding his change in shareholding by more than 2%. To read order in detail please click [here](#).

3. SEBI IMPOSED PENALTY ON THE PROMOTER ON FAILURE TO MAKE COMPLETE DISCLOSURES TO BOMBAY STOCK EXCHANGE



In the matter of SRK Industries Limited (**SRK**), Securities and Exchange Board of India ('SEBI') had conducted an investigation in the matter of trading in the scrip of the SRK by its promoter Mr. Sorabh Rakesh Jain ("the Noticee") to ascertain whether there was any violation of the provisions of SEBI (Prohibition of Insider Trading) Regulation, 1992 ("**PIT Regulations**") during the period March 01, 2010 to December 31, 2014.

SEBI observed that:

1. Merger of Transcend Commerce Limited with SRK, on March 22, 2013 the shareholding of existing promoters such as the Noticee increased by 9,01,320 shares (2.30%) from 13,700 shares (0.03%) to 9,15,020 shares (2.33%). The Noticee was required to make requisite disclosures under regulation 13(4A) read with 13(5) of the PIT Regulations to SRK and Bombay Stock Exchange (BSE) since change in shareholding of the Noticee exceeded 1% of the total shareholding.
2. On July 12, 2013, the noticee had sold 4200 shares of SRK and transaction value based on the closing price was INR 14,43,430 (INR Fourteen Lakh Forty-Three Thousand Four Hundred and Thirty). The Noticee was required to make requisite disclosure to SRK and to Bombay Stock Exchange under section 13(4A) of the PIT Regulations, since the value of transaction of the Noticee exceeded INR 5,00,000 (INR Five Lakh only).

Based on the facts and circumstance mentioned in the order, SEBI imposed a penalty of INR 1,00,000 (INR One lakh only) on the Promoter and Managing Director of M/s SRK Industries Ltd on failure to make complete disclosures to BSE, required under Regulation 13(4) and 13(4A) of PIT Regulations. To read the order in detail please click [here](#).

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HIGH COURT ORDERS

1. **Tax effect being less than 1,00,00,000 (INR One Crore only) as per the Circular issued by the CBDT, stands dismissed.**



The Commissioner of Income-Tax
The Deputy Commissioner of Income-Tax
M/s. Bangalore Electricity Supply Co. Ltd

Appellants
Respondent

Date of Judgement: August 24, 2020

Appeal filed under Section 260-A of the Income-Tax Act, 1961 for the Assessment Year 2008-2009 praying for formulating the substantial questions of law stated therein and allow the appeal and set aside the Order of the Income-Tax Appellate Tribunal, Bangalore, confirming the Order of the Appellate Commissioner and confirm the order passed by the Deputy Commissioner of Income-Tax, Bangalore.

The appeal stands dismissed basis the appeal filed was not maintainable in view of the Circular issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board Direct Taxes Judicial Section issued at New Delhi on August 8, 2019, where the learned counsel of the respondent submits that tax effect in the said appeal is less than INR 1,00,00,000 (INR One Crore), where the learned counsel of the appellants also fairly submitted that the tax effect is less than INR 1,00,00,000 (INR One Crore), due to which the appeal may not be maintainable. Hence the appeal was dismissed.

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

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

2. **Judgement and Order passed by the Division Bench, directed the Commissioner of Customs for provisional release of the goods of the petitioner.**



Pushkar Lakhani
The Commissioner of Customs (Preventive) & ANR

Petitioner
Respondent

Date of Judgement: August 25, 2020

Writ Petition was disposed of, basis the observations that the petitioner to make the payment of remaining duty and keeping in mind the judgment and order passed by the Division Bench of this Court, it is hereby directed the Commissioner of Customs to decide the application for the provisional release of the goods, in accordance with law. It was also directed that the petitioner shall prefer application for provisional release of goods within a period of one week from the date of the judgement. Further, the Commissioner of Customs decide the provisional release application preferred by the petitioner under Section 110-A of the Customs Act, 1962 within a period of two weeks from the date of the receipt of the provisional release application from the petitioner.

Original writ petition was preferred with the following prayers:

- (i) *“Issue a writ of Mandamus or any other writ, order or direction in the nature of Mandamus directing the Respondents to forthwith release the goods seized vide Panchnama dated 29.10.2012 from the premises of the Petitioner and Ms. Shikha Pahwa, provisionally; and/or*
- (ii) *Issue a writ of Mandamus or any other writ, order or direction in the nature of Mandamus directing the Respondents to forthwith release all the goods seized vide Panchnama dated October 29, 2012 by accepting and acknowledging the balance deposit of INR 24,68,913/- (INR Twenty-Four Lakhs Sixty-Eight Thousand Nine Hundred and Thirteen) in terms of the letter dated March 24, 2014 and the show cause notice dated September 24, 2014, both issued by the Respondent No.1;*
- (iii) *to pass such other order or orders as may be deemed fit and proper in the interest of justice.”*

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

3. Invocation of Bank Guarantees stayed on an ad interim basis for last two months, were directed to continue for a further period of ten days.



**Hindustan Construction Co. Ltd.
National Hydro Electric Power Corporation Ltd.**

**Petitioner
Respondent**

Date of Judgement: August 27, 2020

The present petition is dismissed with no order as to costs, keeping in view the invocation the Performance Bank Guarantee, Retention Bank Guarantee and Advance Bank Guarantee was stayed on an ad interim basis, which direction has continued for the last two months, have been directed to continue for a further period of ten days.

The petitioner being a company engaged in the business of executing infrastructure projects, had filed a petition under the Arbitration and Conciliation Act, 1996 seeking an order restraining the respondent, who being a public-sector enterprise, dealing with the setup and execution of hydroelectric power generation projects across the country. The said petition was filed seeking an order from the respondent from invoking or encashing the bank guarantees amounting to a cumulative sum, which were furnished by the petitioner as per the terms of the contract executed between the parties. Invitation for bids from prequalified bidders for turnkey execution of the 330 MW hydroelectric power plant on the Krishnganga River. The bid submitted by the petitioner was accepted by the respondent by issuing a Letter of Acceptance (LOA) and subsequently the parties executed a contract. Further the contract required the petitioner to furnish security in the nature of Performance Bank Guarantees, Retention Bank Guarantees and Advance Bank Guarantees. The petitioner on complaining about the obstacles faced in timely execution of the contractual work, the respondent granted extension three times to carry out the work. However, due to the delay caused in executing the contractual work and blaming each other, the parties invoked arbitration, where a three-member arbitral Tribunal in its award granted extension of time as claimed by the petitioner.

The Court stated that, in the light of the settled legal position that an unconditional bank guarantee is an independent contract between the Bank and the Beneficiary, the question as to whether the petitioner is in default of the contract or not would not be relevant. Once these unconditional bank guarantees warrant payment to the Beneficiary without any demur or protest, the Bank is bound to honour the bank guarantees, irrespective of any disputes raised by the petitioner. Even though the Court is not convinced by the arguments made against the invocation of the Bank Guarantees, which more likely forced the Court to note that the blockage prevailing between the parties in the present case is impacting on the completion of the said project. On this the Court concluded that, irrespective of the disputes between the parties, greater regard ought to be given to the fact that ultimately it is the general public which would benefit from this project and, therefore, an endeavor should be made to provide the petitioner the benefit of continuing the Bank Guarantees by an arrangement for a further period of ten days at the earliest. To read the Judgement in detail, click [here](#).

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SUPREME COURT ORDERS

1. Judgement and Order issued by the National Consumer Disputes Redressal Commission (NCDRC) was found erroneous and hence civil appeals allowed.



WG. CDR. Arifur Rahman Khan and Aleya Sultana and ORS.
DLF Southern Homes Private Limited
(now Known as Begur OMR Homes Private Limited) and ORS.

Appellant

Respondents

With

Civil Appeal No. 6303 of 2019

Date of Judgement: August 24, 2020

The civil appeals were allowed, basis the conclusion that the dismissal of the complaint by the National Consumer Disputes Redressal Commission ("**NCDRC**") was erroneous, by setting aside the impugned judgement and order of the NCDRC dismissing the consumer complaint and following directions were issued:

- (i) *Save and except for eleven appellants who entered into specific settlements with the developer and three appellants who have sold their right, title and interest under the ABA, the first and second respondents shall, as a measure of compensation, pay an amount calculated at the rate of 6 per cent simple interest per annum to each of the appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective flats with effect from the date of expiry of thirty-six months from the execution of the respective ABAs until the date of the offer of possession after the receipt of the occupation certificate;*
- (ii) *The above amount shall be in addition to the amounts which have been paid over or credited by the developer at the rate of INR 5 (INR Five) per square foot per month at the time of the drawing of final accounts; and*
- (iii) *The amounts due and payable in terms of directions (i) and (ii) above shall be paid over within a period of one month from the date of this judgment failing which they shall carry interest at the rate of 9 per cent (Nine Percent) per annum until payment.*

Initially a complaint was filed by nine flat buyers who had booked residential flats in a project at Bengaluru which consists of 1980 units, with nineteen towers each consisting of a stilt and eighteen floors. However, the complaint was dismissed by the NCDRC, which was then filed by about 339 flat buyers, accepting the defense of DLF Southern Homes Private

Limited and Annabel Builders and Developers Private Limited. that there was no deficiency of service on their part in complying with their contractual obligations and, that despite a delay in handing over the possession of the residential flats, the purchasers were not entitled to compensation in excess of what was stipulated in the Apartment Buyers Agreement. To read the Judgement in detail Click [here](#)

2. Supreme Court upheld the notifications and trade notices issued under the Foreign Trade (Development and Regulation) Act, 1992

Union of India and Others Appellants
Agricas LLP and Others etc. Respondent



With

Transfer Petition (Civil) No. of 2020 (Diary No. 8823 of 2020)

Date of Judgement: August 26, 2020

Writ Petitions filed by the intervenors stands dismissed along with the pending applications with no order as to costs. The Supreme Court upheld the impugned notifications of the Union of India, which had exercised the powers conferred to it under the Foreign Trade (Development and Regulation) Act, 1992 (“**FTDR Act**”) and the trade notice issued by the Directorate General of Foreign Trade (“**DGFT**”), which had laid down the modalities for making applications for import and rejected the challenge made by the importers.

The High Court concluded that, the imports, if any, made relying on interim order(s) would be held to be contrary to the notifications and the trade notices issued under the FTDR Act and would be so dealt with under the provisions of the Customs Act 1962. Further the Writ Petitions which is the subject matter of the Transfer Petitions are dismissed, basis for some of the importers who had submitted in their appeal that they have preferred statutory appeals against orders suspending or terminating import export code. However, the said aspect has not been examined and decided and the statutory appeals, if any, preferred by

the importer(s) was concluded to be decided in accordance with law. To read the Judgement in detail, click [here](#).

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