

Swift e-Bulletin

Edition 7/20-21

Week – August 31st to September 4th

Quote for the week:

"Success is the ability to go from failure to failure without losing your enthusiasm."

- Sir Winston Churchill

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 week's newsletter covers various circulars/notifications issued by certain regulatory authorities such as the Securities and Exchange Board of India ("SEBI"), the Ministry of Finance ("MOF") and the Insolvency and Bankruptcy Board of India ("IBBI") and critical judgements and orders passed by National Company Law Tribunal ("NCLT"), National Company Law Appellate Tribunal ("NCLAT"), SEBI, Reserve Bank of India ("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 31, 2020 to September 4, 2020.

**Thank you,
Swift Team**

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REGULATORY UPDATES

SEBI UPDATES

1. **SEBI introduces temporary relaxation in processing of documents pertaining to Foreign Portfolio Investors (“FPIs”) due to COVID-19 vide circular dated August 31, 2020**



- ❖ SEBI had issued circular No. SEBI/HO/FPI&C/CIR/P/2020/056 dated March 30, 2020, wherein it had prescribed temporary relaxation in processing of documents pertaining to FPIs due to COVID-19. Further, vide circular No. SEBI/HO/FPI&C/CIR/P/2020/104 dated June 23, 2020, the temporary relaxations were extended till August 31, 2020.
- ❖ In view of the representations received from various stakeholders, it has been decided that for the entities from jurisdictions which are still under lockdown, the temporary relaxations shall be extended to the entities from such jurisdictions till the time lockdown is lifted from such jurisdictions.
- ❖ However, in-transit applications shall be processed on the basis of provisions of aforesaid circular dated March 30, 2020. It has further been stated that for the entities from jurisdictions where lockdown has already been lifted, the relaxation provided under the aforesaid circular dated March 30, 2020 shall not be applicable. All other terms and conditions specified in the aforesaid circular dated March 30, 2020 shall remain unchanged.

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

2. **SEBI introduces relaxation from default recognition due to restructuring of debt. vide circular dated August 31, 2020:**



- ❖ Credit Rating Agencies (“CRAs”) recognize default based on the guidance issued vide SEBI circulars dated May 3, 2010 and November 1, 2016. Further, SEBI vide circular dated March 30, 2020 had provided for relaxation from recognition of default owing to moratorium permitted by RBI and lockdown due to COVID-19 pandemic.

- ❖ SEBI has extended the relaxation given for default recognition on account of restructuring of debt. SEBI, in this regard, has directed that “based on its assessment, if the CRA is of the view that the restructuring by the lenders/ investors is solely due to COVID-19 related stress or under the RBI resolution framework, CRAs may not consider the same as a default event and/or recognize default till **December 31, 2020**”. However, appropriate disclosures in this regard shall be made in the Press Release.

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

3. SEBI introduces a revised format as part of a review of debt and money market securities transactions disclosure vide circular dated September 01, 2020:



- ❖ In order to enhance transparency, SEBI vide its circular has provided that w.e.f. **October 01, 2020**, the details of debt and money market securities transacted (including inter scheme transfers) in its schemes portfolio shall be disclosed on daily basis with a time lag of 15 days in a revised format as prescribed in **Annexure A** as attached to the circular. The disclosure shall be in a comparable, downloadable (spreadsheet) and machine readable format.

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

4. SEBI introduces disclosures on Margin obligations given by way of Pledge/ Re-pledge in the Depository System vide circular dated September 02, 2020:



- ❖ Regulation 29 (4) of the Takeover Regulations provides that for the purposes of disclosure under regulation 29 (1) and (2), shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified.
- ❖ SEBI vide circular dated February 25, 2020 issued guidelines on acceptance of collateral from clients in the form of securities by Trading Member(TM) / Clearing Member (CM), only by way of 'margin pledge', created in the depository system.
- ❖ For ease of doing business, SEBI has provided that disclosures specified under Regulation 29(4) of Takeover Regulations, in relation to shares encumbered with TM /CM as collateral from clients for margin obligation in the ordinary course of stock broking business are dispensed with.

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

5. **SEBI introduces review of provision regarding segregation of portfolio due to the COVID - 19 pandemic vide circular dated September 2, 2020.**



- ❖ In terms of the SEBI circular No. SEBI/HO/IMD/DF2/CIR/P/2018/160 dated December 28, 2018, segregated portfolio can be created in a Mutual Fund scheme by Asset Management Company (“AMC”) in case of a credit event, which includes downgrade to below investment grade and subsequent downgrades in credit rating by the SEBI registered Credit Rating Agency.
- ❖ RBI vide circular No. RBI/2020-21/16 DOR.No.BP.BC/4/21.04.048/2020-21 dated August 06, 2020 has permitted the lending institutions to extend the resolution facility under ‘Prudential Framework for Resolution of Stressed Assets’ and has allowed all lenders of the borrower to sign the Inter Creditor Agreement (“ICA”) for resolving the stressed assets.
- ❖ SEBI has reviewed the provision regarding segregation of portfolio due to the COVID - 19 pandemic in partial modification to SEBI circular dated December 28, 2018. SEBI, under the modification, provided that, the date of proposal for restructuring of debt received by AMCs shall be treated as the trigger date for the purpose of creation of segregated portfolio. Such proposal of restructuring of debt received by AMCs shall be immediately reported to the Valuation Agencies, Credit Rating Agencies, Debenture Trustees and Association of Mutual Funds in India (“AMFI”). AMFI, on receipt of such information, shall immediately disseminate it to its members.
- ❖ Further, all other relevant provisions of Circular dated December 28, 2018 and Circular No. SEBI/HO/IMD/DF2/CIR/P/2019/127 dated November 07, 2019 issued with respect to Segregation of Portfolio and the letter No. SEBI/HO/IMD/DF2/OW/2019/22447/1 dated August 29, 2019 issued with respect to Prudential Framework for Resolution of Stressed Assets shall remain applicable.
- ❖ The above modifications permitted to SEBI circular dated December 28, 2018 shall be in force till **December 31, 2020**.

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

MOF UPDATES

1. **Department of economic affairs hereby notifies certain financial products and financial services that shall also be covered under the authority framed under the International Financial Services Centers Authority Act, 2019 vide gazette notification dated August 31, 2020.**



Vide this notification following financial products and financial services have been included:

- ❖ Financial products such as:
 - *bullion spot delivery contract; and*
 - *bullion depository receipt with underlying bullion.*
- ❖ Financial Services such as:
 - *trading in bullion depository receipts with underlying bullion in relation to bullion spot delivery contracts; and*
 - *provision of bullion financing, bullion based loans, bullion loans against collateral, bullion vaulting, clearing and settlement services in relation to bullion spot delivery contracts and bullion depository receipts;*

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

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IBBI UPDATES

1. **IBBI releases new guidelines known as Insolvency and Bankruptcy Board of India (Use of Caveats, Limitations, and Disclaimers in Valuation Reports) Guidelines, 2020 dated September 01, 2020.**



- ❖ The Companies (Registered Valuers and Valuation) Rules, 2017 provides a comprehensive framework for development and regulation of the profession of valuers. These Rules set standards of professional conduct and performance for the valuation profession. They come into force on or after **October 01, 2020**
- ❖ Rule 8 of the said rules states ‘*caveats, limitations and disclaimers*’ to the extent *they explain or elucidate the limitations faced by Valuer, which shall not be for the purpose of limiting his responsibility for the valuation report*. This Rule aims to ensure that a valuation report does not carry a disclaimer, which has the potential to dilute the responsibility of the Registered Valuer (“RV”) or make the valuation unsuitable for the purpose for which the valuation was conducted.
- ❖ However, the RV’s did not have a standard practice in presentation of caveats, limitations and disclaimers in valuation reports which lead to inconsistency and confusion between different users and RV’s.
- ❖ Hence a need to provide standard template for disclaimers was required.
- ❖ This Rule provides RV’s with guidance on the use of Caveats, Limitations, and Disclaimers in the interest of credibility of the valuation reports it also provides list of Caveats, Limitations, and Disclaimers which shall not be used in a valuation report.
- ❖ The aforesaid Guidelines are divided into three sections The first section elaborates on the need for Caveats, Limitations, and Disclaimers in a valuation report. The second section provides a guidance note on the use of Caveats, Limitations, and Disclaimers, while the third section provides an illustrative list of Caveats, Limitations, and Disclaimers for each asset class provided in the Rules

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

JUDGEMENTS/ ORDERS

NCLT

1. NCLT Ahmadabad Bench Allowed Restoration of D Mars Hospitality Private Limited

The Ahmadabad Bench of National Company Law Tribunal (“NCLT”) has allowed restoration of M/s D Mars Hospitality Private Limited (“Company”) struck off from the Registrar of Companies (“RoC”) on petition filed by the Company under section 252 (3) of the Companies Act 2013, subject to payment of costs of INR 25,000 for each year of default within a period of 30 (Thirty) days from the date of this order.

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



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NCLAT

1. **NCLAT States that Once the 'Debt' is Converted into "Capital" It cannot be termed as 'Financial Debt' and the appellant cannot be described as 'Financial Creditor'.**



Mrs. Rita Kapur

Invest care Real Estate LLP

Mr. Samar Vijay

Mr. Ajit Sinha

Mr. Ajit Kumar Mishra

Appellant

Respondent no. 1

Respondent no. 2

Respondent no. 3

Respondent no. 4

The Appellant filed appeal against the impugned order passed by the National Company law tribunal (“NCLT”) New Delhi, Bench VI rejecting the petition filed under Section 7 (5) of the Insolvency and Bankruptcy Code, 2016 (“I&B Code, 2016”)

The learned counsel for the Appellant submitted that, the appellant has given loan of INR 40 Lakhs (INR Forty Lakhs) to the respondent no.1 and the same was to be repaid in four installments to the Appellant and further submitted that she has not been paid neither the principal amount nor interest thereon. Her grievance was there that the ‘loan’ has been converted into ‘equity’ and there was irregularity in purchase of Non-Judicial Stamp Paper. The Applicant also cited some of the judgement to prove her stand including on the issue of striking down and unfair an unreasonable contract; dishonesty should not be permitted to bear the fruits and benefits to the persons who played fraud or made misrepresentation.

From the provisions of I&B Code, 2016, it is clear that once the ‘Debt’ is converted into “Capital” it cannot be termed as ‘Financial Debt’ and the Appellant cannot be described as ‘Financial Creditor’. Hence, NCLAT dismissed the application stating that the case the grievance of the Appellant does not fall under the provision of ‘I & B Code, 2016’.

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

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SEBI

1. Exemption Order Under Regulation 11 of SEBI (SAST) Regulations, 2011 In the Matter of Bharat Forge Limited and 6 Other Companies.



Target Company	Bharat Forge Limited, BF Utilities Limited, BF Investment Limited, Kalyani Steels Limited, Kalyani Investment Company Limited, Automotive Axles Limited, Hikal Limited
Acquirer Trust	Babasaheb Kalyani Family Trust

In the matter of proposed acquisition of shares and voting rights in target company, an application was filed for seeking exemption from the applicability of Regulations 4 and 5 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**Takeover Regulations**”) to SEBI on behalf of the acquirer.

As per the application, Mr. Babasaheb Neelkanth Kalyani (“**BNK**”) is the settlor of the Acquirer and holds control over Promoters Controlled Companies (“**PCCs**”). BNK proposed to transfer his entire shareholding in PCCs to the Acquirer Trust for the purpose of welfare and succession planning of his family members. The same would result in the indirect acquisition of shares in, and control of the Target companies by the Acquirer Trust and the same would attract the applicability of Regulations 4 and 5 of the Takeover Regulations 2011.

On behalf of Acquirer trust, it was contended that the proposed transaction is only in the nature of transfer of equity shares of the PCCs within the promoter or promoter group, with no change in the overall promoter/promoter group shareholding in the Target companies; proposed acquisition would not result in any change in the control of the Board of Directors.

After considering the facts and circumstances, SEBI granted exemption to the proposed Acquirer from complying with the requirements of Regulations 4 and 5 of the Takeover Regulations.

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

2. SEBI Imposed Penalty on Whitefeathers Realty Private Limited for not making Disclosure under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011.

In the matter of Mapro Industries Limited, adjudicating officer imposed penalty of INR 1,00,000 (INR One Lakh) on Whitefeathers Realty Private Limited for not making disclosures under Regulation 29(1) read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (“SAST Regulations, 2011”).

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

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HIGH COURT

1. **Appeal filed for recovery stands dismissed, directing the office to transmit the Trial Court records, immediately.**

M/s. AAF India Private Limited

Appellant

M/s. KBR Industries

Respondent



Date of Judgement: August 31, 2020

The appellant in his argument strongly contended the relevant Section of the Karnataka Value Added Tax Act, 2003 with regard to the assessment of tax and when the tax has been paid while purchasing the materials from the respondent company, the Trial Court should have declared the suit against the respondent. Hence, interference of the High Court was required.

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

2. **Writ Petition dismissed for want of inherent right to have the defense assistant of choice.**

Sri. Kishor Kumar G. C.

Petitioner

Karnataka State Handicrafts Development Corporation Ltd.

(A Government of Karnataka Enterprises)

Respondents

Date of Judgement: September 02, 2020

The Writ Petition was dismissed for lack of merits, as in the present case the petitioner does not have an inherent right to have the defense assistant of his choice.

In the current case, Sri Kishor Kumar G. C. was appointed as a General Manager (Finance) in the Karnataka State Handicrafts Development Corporation Ltd., ("**Corporation**") who was entrusted with the work allocation of all matters relating to accounting, finance, insurance and audit and was also assigned with the operation of all bank accounts of the Corporation. However, the Corporation found out certain irregularities in respect of the banking transactions, and consequently an enquiry was initiated and the petitioner was placed under suspension. An Enquiry Officer was appointed and consequent to the enquiry proceedings a charge memo consisting the list of charges was issued. Sri Kishor Kumar G. C. stated that the charge memo is illegal and submitted a detailed reply, denying the allegations made.

Considering the facts of the case, regarding the allegations that all the relevant documents were not provided to Sri Kishor Kumar G. C., which the Corporation states that it has provided. The Court was of the view that, if any relevant document is not provided, the petitioner is at liberty to seek for the same and the respondents are obliged to provide. Based on the aforementioned reasons, the petition was dismissed and the Court directed the Corporation to provide the copies of such documents to Sri Kishor Kumar G. C. as sought by him and shall pay him the subsistence allowance while under suspension, as per Regulations, if the same is not being paid.

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

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SUPREME COURT

1. Appeal was partly allowed directing to charge interest, to be compounded per annum and SBAR interest would not be charged in excess of 2% for interest/late payment surcharge.



Civil Appeal No(s). 8625-8626 of 2019

Jaipur Vidyut Vitaran Nigam Ltd & ORS
Adani Power Rajasthan Limited & ANR.

Appellants
Respondents

With

Civil Appeal No(s). 3021 of 2020 (Dairy No. 27976 of 2019)

With

Civil Appeal No(s). 3022-3023 of 2020 (Dairy No. 39030 of 2019)

Date of Judgement: August 31, 2020

The appeal was partly allowed with no order as to cost, to the extent as indicated below:

A question was raised concerning the maintainability of the appeal of the All India Power Engineers Federation. It is important to mention that the All India Power Engineers Federation was not the party before the Rajasthan Electricity Regulatory Commission ("RERC"), and the Appellate Tribunal for Electricity ("APTEL") rejected its intervention application. The Supreme Court interfered with this order and agreed that the appeal preferred by Rajasthan Discoms, has not been examined for the maintainability of the All India Power Engineers Federation's appeal that was argued as the locus to file the said appeal for quashing the order that was passed by the APTEL and concluded with leaving the question open.

Considering the facts of this case and keeping in view that the RERC and APTEL have given concurrent findings in favour of the respondent with regards to change in law. Based on which it was now agreed to deal with the question of liability of appellants as raised by the Rajasthan Discoms with regards to late payment surcharge. The said liability of the late payment surcharge has been a burden upon the appellants to be paid on the amount of the outstanding payment, calculated on a day-to-day basis (and compounded with monthly rest) for each day of the delay, at the rate of 2% in excess of applicable ("SBAR") per annum.

Considering the huge liability of payment of 'Late Payment Surcharge' upon the appellants, it would be appropriate to direct the appellants to pay the interest/late payment surcharge as per the SBAR for the relevant years not exceeding 9 per cent per annum and it is also directed that that instead of monthly rest, the interest would be compounded per annum and the 2% in excess of SBAR would not be charged.

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

2. Customs Excise and Service Tax Appellate Tribunal upheld the levy of Customs Duty

M/s. L. R. Brothers Indo Flora Ltd.

Appellant

Commissioner of Central Excise.

Respondent

Date of Judgement: September 01, 2020

The appeal filed by M/s. L. R. Brothers Indo Flora Ltd, being a 100% Export Oriented Unit engaged in the production of cut flowers and flower buds of all kinds, which export all articles produced, was dismissed.

Show cause notice was issued to the appellant mentioning that it had suppressed the Domestic Tariff Area ("DTA") sales of cut flowers to evade payment of duty. Appellant being in good faith believed that no duty was payable upon the DTA sales of cut flowers, it would have sought prior approval of the Development Commissioner, which it failed to do and further in the letter seeking export facto approval, the appellant claimed that they had not used any imported input such as fertilizer, plant growth regulations, etc. in growing flowers sold in DTA, despite having imported greenhouse equipment, raw materials like Live Rose Plants and consumables like planting materials and fertilizers. However, it appeared that the suppression to evade payment of duty by the appellant was "willful". The burden of proving to the contrary rested upon the appellant, which the appellant failed to discharge by failing to establish that the imported inputs were not used in the production of the cut flowers sold in DTA.

The Appellant was exempted from payment of customs duty on the imported inputs used during production of the exported articles, vide Notification No. 126/94Cus dated June 03,1994. Under the said notification, exemption on levy of customs duty had been extended even to the inputs used in production of articles sold in domestic market, in accordance with the Export Import ("**EXIM**") Policy and subject to other conditions specified by the Development Commissioner. Though the appellant was obliged to comply with the conditions prescribed by the EXIM Policy, to avail the exemption under the stated notification; and failure to do so, must remove them of the exemption so granted. Since the charging rate prescribed under the exemption notification was under question, any ambiguity in regard to the date of application of the amendment thereto would necessarily

have to be construed in favour of the State, unless shown otherwise by judicially acceptable parameters. Thus, basis the foregoing discussion and observations, the Court was of the

view that the Customs Excise and Service Tax Appellate Tribunal (“CESTAT”) has rightly upheld the levy of customs duty.

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

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