

Swift e-Bulletin

Edition 9/20-21

Week – September 14th to September 18th

Quote for the week:

“Be passionate and bold. Always keep learning. You stop doing useful things if you don’t learn. So the last part to me is the key, especially if you have had some initial success. It becomes even more critical that you have the learning ‘bit’ always switched on.”

- Satya Nadella, CEO Microsoft

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 Reserve Bank of India (“RBI”), the Insolvency and Bankruptcy Board of India (“IBBI”) and the Ministry of Commerce and Industry, and critical judgements and orders passed by the National Company Law Tribunal (“NCLT”), SEBI, 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 September 14, 2020 to September 18, 2020.

**Thank you,
Swift Team**

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REGULATORY UPDATES

SEBI UPDATES

1. **SEBI introduces clarification on guidelines regarding collection and reporting of margins by Trading Member (TM) / Clearing Member (CM) in cash segment vide circular dated September 15, 2020:**



- ❖ SEBI, vide circulars dated November 19, 2019 and July 31, 2020, issued guidelines with regard to collection of margins from clients and reporting of short collection / non-collection of margins by Trading Member (TM) / Clearing Member (CM).
- ❖ Paragraph 4.1.1 and 4.1.2 of the SEBI circular dated November 19, 2019, specifies that, like in derivatives segment, the TMs/CMs in cash segment are also required to mandatorily collect upfront Value at Risk (VaR) margins and Extreme Loss Margins (ELM) from their clients. The TMs / CMs will have time till 'T+2' working days to collect margins (except VaR margins and ELM) from their clients. It is to be noted that the clients must ensure that the VaR margins and ELM are paid in advance of trade and other margins are paid as soon as margin calls are made by the Stock Exchanges / TMs / CMs. The period of T+2 days has been allowed to TMs / CMs to collect margin from clients taking into account the practical difficulties often faced by them only for the purpose of levy of penalty and should not be construed that clients have been allowed 2 days to pay margin due from them.
- ❖ Paragraph 2.1 of the SEBI circular dated July 31, 2020, inter-alia, specifies that If TM / CM collects minimum 20% upfront margin in lieu of VaR and ELM from the client, then penalty for short-collection / non-collection of margin shall not be applicable.
- ❖ In view of the representations received with regard to levy of penalty for non-collection of "other margins" (other than VaR and ELM) on or before T+2 days from clients by TM / CM, the following has been clarified:
 - If pay-in (both funds and securities) is made by T+2 working days, the other margins would have deemed to have been collected and penalty for short / non collection of other margins shall not arise.

- If Early Pay-In of securities has been made to the Clearing Corporation (CC), then all margins would have deemed to have been collected and penalty for short / non-collection of margin including other margins shall not arise.
- If client fails to make pay-in by T+2 working days and TM / CM do not collect other margins from the client by T+2 working days, the same shall also result in levy of penalty as applicable.

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

2. **SEBI permits listing and trading of units of Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs) on recognized stock exchanges in International Financial Services Centers (IFSC) vide circular dated September 16, 2020:**



- ❖ Securities and Exchange Board of India (IFSC) Guidelines, 2015 were notified by SEBI on March 27, 2015, which came into force on April 01, 2015.
- ❖ Clause 7 of SEBI (IFSC) Guidelines, 2015 specifies the types of securities in which dealing may be permitted by stock exchanges operating in IFSC. SEBI has permitted 'Units of InvITs and REITs by whatever name called in the Permissible Jurisdictions' as permissible security under sub-clause (vi) of Clause 7 of SEBI (IFSC) Guidelines, 2015.
- ❖ Accordingly, 'Units of InvITs and REITs by whatever name called in the Permissible Jurisdictions' meeting the following conditions may be permitted to list on stock exchanges operating in IFSC:
 - Such InvITs and REITs which are incorporated/settled in Permissible Jurisdictions, as may be notified by the Government of India from time to time pursuant to notification no. G.S.R. 669(E) dated September 18, 2019 in respect of sub-rule 1 of rule 9 of Prevention of Money-Laundering (Maintenance of Records) Rules, 2005; In this regard, the Government of India vide notification dated November 28, 2019, has notified the list of Permissible Jurisdictions in pursuance of notification dated September 18, 2019. Accordingly, a list of Permissible Jurisdictions for the purpose of this clause has been placed at **Annexure A** to the circular.
 - Such InvITs and REITs are regulated by the securities market regulator(s) in

the Permissible Jurisdictions.

- Such InvITs and REITs are listed on any of the specified international exchanges in the Permissible Jurisdiction. A list of International Exchanges for the purpose of this clause have also been placed at **Annexure A** to the circular.
- ❖ SEBI has also stated that, stock exchanges in IFSC shall evolve a detailed framework prescribing the initial and continuous listing requirements for such InvITs and REITs whose units are listed/proposed to be listed on stock exchanges in IFSC (based on point 3 above).

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

3. SEBI issues circular on Mutual Funds dated September 17, 2020:



- ❖ The circular shall be applicable with effect from January 1, 2021
- ❖ To bring about uniformity in applicability of Net Asset Value (NAV) across various schemes upon realization of funds it has been decided that in respect of purchase of units of mutual fund schemes (except liquid and overnight schemes), closing NAV of the day shall be applicable on which the funds are available for utilization irrespective of the size and time of receipt of such application in partial modification to SEBI Circular No. SEBI/IMD/DF/21/2012 dated September 13, 2012. The existing provision on NAV applicability for liquid and overnight funds and cut-off timings for all schemes shall remain unchanged.
- ❖ It has been decided by the SEBI that Asset Management Companies (AMCs) shall put in place a written down policy which inter-alia detail the specific activities, role and responsibilities of various teams engaged in fund management, dealing, compliance, risk management, back-office, etc., with regard to order placement, execution of order, trade allocation amongst various schemes and other related matters which shall ensure that all the schemes and its investors are treated in a fair and equitable manner. Further, the policy shall be approved by the Board of AMC and the trustees and they shall ensure compliance requirements with orders pertaining to equity and equity related instruments and requirements with respect to investments in all instruments as specified in the circular.

- ❖ AMCs shall have a system based monitoring mechanism to ensure compliance with the requirements for orders pertaining to equity and equity related instruments and with respect to investments in all instruments and shall maintain audit trail of activities related to order placement, trade execution and allocation which shall be available in the system. Further, there should be time stamping with respect to order placed by fund manager, order placed by dealer, order execution and trade allocation.
- ❖ Any non-compliance and all material information in this regard shall be reported to trustees on quarterly basis who shall inform the same to SEBI in their half yearly trustee report.

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

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RBI UPDATES

1. RBI issues guidelines regarding compliance functions in banks and role of Chief Compliance Officer (CCO):



- ❖ As part of robust compliance system, banks are required, inter-alia, to have an effective compliance culture, independent corporate compliance function and a strong compliance risk management programme at bank and group level. Such an independent compliance function is required to be headed by a designated Chief Compliance Officer (CCO) selected through a suitable process with an appropriate 'fit and proper' evaluation/selection criteria to manage compliance risk effectively.
- ❖ In light of diverse practices followed by banks regarding compliance function the following guidelines are issued to bring uniformity in approach followed by banks, as also to align the supervisory expectations on CCOs with best practices.
- ❖ The Guidelines issued by RBI covers the following points:
 - *Policy regarding Compliance function*
 - *Tenor for appointment of CCO*
 - *Transfer / Removal of CCO*
 - *Eligibility Criteria for appointment as CCO (Rank, Age, Experience, Skills, Stature, Others)*
 - *Selection Process for the post of CCO*
 - *Reporting Requirements*
 - *Reporting Line*
 - *Authority of CCO*
 - *The duties and responsibilities of the compliance function*
 - *Internal Audit*
 - *Dual Hatting*
 - *Membership of CCOs in committees*
 - *Typical core elements of the mandate of the CCO*
 - *Overseeing the effective management of the bank's compliance function*

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

IBBI UPDATES

1. Central government amends Insolvency and Bankruptcy Board of India (Annual Report) Rules, 2018



- ❖ In the Insolvency and Bankruptcy Board of India (Annual Report) Rules, 2018, for rule 4, the following shall be substituted, namely

“(4) Time Schedule for submission of annual report. -

The dates for submission of the annual report referred to in rule 3 of annual accounts for audit leading to the issue of Audit Certificate by the Comptroller and Auditor General of India and for submission to the Ministry of Corporate Affairs for timely submission to the Parliament are listed below: -

- *approved and authenticated annual accounts to be made available by the Insolvency and Bankruptcy Board of India to the concerned Audit Office and commencement of audit of annual accounts- 30th June;*
- *issue of the final Separate Audit Report (SAR) in English with Audit Certificate to Insolvency and Bankruptcy Board of India-31st October;*
- *submission of the annual report and audited accounts to the Ministry of Corporate Affairs for it to be laid on the Table of the Parliament- 31st December.”*

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

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MINISTRY OF COMMERCE AND INDUSTRY UPDATES

1. **Department for Promotion of Industry and Internal Trade (DPIIT) introduces revision if Foreign Direct Investment (FDI) Policy in Defence Sector vide Press Note 4, dated September 17, 2020:**



- ❖ Foreign direct investment in the defence sector Industrial license under the Industries (Development & Regulation) Act, 1951 and Manufacturing of small arms and ammunition under the Arms Act, 1959 has been increased to 74% in the automatic route from the earlier cap of 49% under the revised FDI Policy. The revised limit of 74% under the automatic route shall be only permitted to companies seeking new industrial licenses.
- ❖ The fresh foreign investment up to 49% in a company not seeking industrial license or which already has Government approval for FDI in Defence, shall require mandatory submission of a declaration with the Ministry of Defence in case change in equity/shareholding pattern or transfer of stake by existing investor to new foreign investor for FDI up to 49%, within 30 days of such change. Such proposals will also require government approval.
- ❖ The DPIIT, Ministry of Commerce & Industry, in consultation with Ministry of Defence and Ministry of External Affairs will consider License applications. The Foreign investment in the defence sector would be subject to security clearance by the Ministry of Home Affairs and as per guidelines of the Ministry of Defence.
- ❖ The Investee company shall be structured to be self-sufficient in the areas of product design and development. The investee/joint venture company along with the manufacturing facility, shall also have maintenance and life cycle support facility of the product being manufactured in India.

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

JUDGEMENTS/ ORDERS

NCLT

1. NCLT Bengaluru Bench allowed Restoration of Ace Paddlers Private Limited

The Bengaluru Bench of National Company Law Tribunal (NCLT) has allowed restoration of M/s Ace Paddlers 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 40,000 of default within a period of Three weeks from the date of this order.



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

SEBI

1. Exemption Order Under Regulation 11(5) Of SEBI (SAST) Regulations, 2011 in the Matter of Indo Asia Finance Limited

Indo Asia Finance Limited	Target Company
Saravana Global Holdings Limited	Acquirer



In the matter of acquisition of shares and voting rights, an application was filed before SEBI seeking exemption from the applicability of Regulations 3 and 4 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations”) in the matter of proposed acquisition of shares and voting rights in Indo Asia Finance Limited.

SEBI granted exemption to the Proposed Acquirer from complying with the requirements of Regulations 3 and 4 of the Takeover Regulations with respect to the proposed acquisitions in the Target Company, by way of the proposed transactions. The exemption granted above is limited to the requirements of making open offer

under the Takeover Regulations and shall not be construed as exemption from the disclosure requirement the exemption was granted, solely from the perspective of fulfilling the regulatory capital requirements without, at the same time, jeopardizing the interests of the public shareholders.

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

2. Adjudication Order in the matter of Genus Prime Infra Limited

In the matter of Genus Prime Infra Limited, SEBI imposed a total penalty of INR 14,00,000 (INR Fourteen lakh) on three entities, payable jointly and severally, for the violation of Regulation 8(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (SAST Regulations) and Regulations 3(2), 30(1) and 30(2) of SAST Regulations, 2011 on failure to make an open offer and made delayed disclosures to the company.

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

3. Ex-Parte Ad-Interim Order Cum Show Case Notice in the matter of Kalyani and Kalyani Developers (India) Limited

In the matter of Kalyani and Kalyani Developers (India) Limited (“**KKDIL**”) Securities and Exchange Board of India (“**SEBI**”) received a complaint and It was alleged that KKDIL mobilized funds through certain schemes and made public issues of equity shares and Cumulative Redeemable Preference Shares (“**CRPS**”) without following the issue and listing norms, the same is detrimental to the interest of investors.

In view of the same, SEBI issued an immediate ex parte ad-interim Order cum Show Case Notice to KKDIL directed to cease to mobilize fresh funds from investors through the offer and allotment of any securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly. KKDIL and its directors shall not buy, sell or otherwise deal in the securities (including units of mutual funds), either directly or indirectly or associate themselves with securities market, any listed company or company intending to raise money from the public in any manner whatsoever.

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

HIGH COURT ORDERS

1. Petition stands disposed of, directing the Assessing Officer of Income-Tax to decide the petitioner's application for stay by way of a reasoned order



M/s. Gateway Global Buildwell Private Limited
Income-Tax Officer, Ward - 10 (1), Delhi

Petitioner
Respondent

Date of Judgement: September 14, 2020

Application filed by M/s. Gateway Global Buildwell Private Limited ('Petitioner') was disposed of, by directing the Assessing Officer to decide the petitioner's application for stay by way of a reason order within two weeks after hearing the petitioner or its authorized representative on September 18, 2020 at 11:00 AM, who has not yet disposed of the petitioner's application for stay dated February 07, 2020 till date.

The petition for stay filed by the petitioner was filed, challenging the legality and validity of the notice dated February 12, 2020, issued by the Income-Tax Officer under Section 226 (3) of the Income Tax Act, 1961, issued primarily on the ground without considering the stay application filed by the petitioner and demanded to attach the bank account of the petitioner.

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

2. Petition stands allowed with extended period of one year on aforesaid terms

Era Infra Engineering Limited
National Thermal Power Corporation Limited

Petitioner
Respondents

Date of Judgement: September 15, 2020

Petition filed under Section 29A (4) and (5) of the Arbitration & Conciliation Act, 1996 for extension of the time available with the learned Sole Arbitrator, stands allowed with aforesaid terms that, in any event, in view of the consent granted by learned Counsel for the respondent, the time available with the learned Sole Arbitrator to complete the arbitral

proceedings and render the award thereon, stands extended by a period of one year, from today.

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

3. Two applications narrated separately under a common order, with one application stood disposed and another being listed before the Court under the heading 'Directions' on a future date.

CS (COMM) 654/2019, I.A. 16991/2019, I.As. 16992/2019,
16993/2019

Mr. Anil Rathi

Plaintiff

Shri Sharma Steeltech (India) Private Limited & Ors.

Defendant

and

CS (COMM) 655/2019, I.A. 16994/2019 I.As. 16995/2019,
1332/2020, I.A. 4013/2020,4014/2020, 4217/2020,
4255/2020 & CRL.M.A. 7204/2020

ANIL RATHI

Plaintiff

M/s. Garg Steel & Ors.

Defendants

Date of Judgement: September 15, 2020

Applications filed under CS (COMM) 654/2019, I.A. 16991/2019, I.As. 16992/2019, 16993/2019, was disposed of and applications filed under CS (COMM) 655/2019, IAs. 16995/2019, 1332/2020, IA 4013/2020, 4014/2020, 4217/2020, 4255/2020 & CRL.M.A. 7204/2020, will be listed before the Court under the heading 'Directions' on November 26, 2020.

It was made clear that the aforesaid conclusion arrived at in the present case are tentative and it was informed that, defendant Nos. 1 to 6 and 8 in CS (COMM) 654/2019 as well as defendant Nos. 1 to 9 in CS (COMM) 655/2019 and their directors, executives, partners, proprietors, as the case may be, their officers, servants and agents or anyone acting for and on their behalf are hereby restrained from issuing licenses, manufacturing, exporting, marketing, offering for sale, selling, advertising or in any manner dealing in TMT Bars, Steel bars, common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal under the trademark 'RATHI' or from adopting any other mark or label which

is identical or deceptively similar to registered trade mark 'RATHI' amounting to infringement of registered trademark, passing off, dilution and unfair competition, during the pendency of the Suits.

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

4. Writ Petition filed under Articles 226 and 227 of the Constitution of India

Commune Properties India Private Limited

Petitioner

1. State of Karnataka

2. Anand Rathi Global Finance Limited

Respondents

Date of Judgement: September 15, 2020

Writ Petition stands disposed of which was filed under Articles 226 and 227 of the Constitution of India praying to issue a writ to the respondent-1 directing it to stop all activities of the respondent-2 in the State of Karnataka and further direct the respondent-1 to take action as per law against the respondent-2, since the entire activity of the respondent-2 in the State of Karnataka is illegal and unenforceable being violative of the provisions of the Karnataka Money Lenders Act, 1961 and the Karnataka Prohibition of Charging Exorbitant Interest Act, 2004 and etc.

The said writ petition is not maintainable for seeking writ of mandamus and in order to avoid further delay, the present writ petition is treated as representation on behalf of the petitioner before the respondent-1, who is directed to take appropriate action and pass a suitable order and communicate the same to the petitioner and also to the respondent-2 within a period of six weeks from the date of receipt of this order. Further the Court had ordered both the parties are at liberty to file representations, if any within a week from today.

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

SUPREME COURT ORDERS

1. Civil Appeal filed by the Government of India, which challenged the Judgement and Order passed by the Delhi High Court stands dismissed.



Government of India

1. Vedanta Limited (Formerly Cairn India Ltd.)
2. Ravva Oil (Singapore) Pte. Ltd.
3. Videocon Industries Limited

Appellants

Respondents

Date of Judgement: September 16, 2020

The Civil Appeal was dismissed, with no order as to costs and all pending applications were disposed of accordingly in the Civil Appeal filed by the Government of India which challenged the Judgement and Order passed by the Delhi High Court, wherein the application under Section 48 of the Arbitration and Conciliation Act, 1996 filed by the Government of India has been dismissed and application filed for the enforcement of the foreign award by the Respondents for condonation of delay in filing the execution petition by the Respondents were allowed.

In the year 1993, the Government of India was desirous of exploring and developing the petroleum resources in the Ravva Gas and Oil Fields (lying 10 to 15 KMS offshore in the Bay of Bengal), for which a global competitive tender was floated to invite bids. Pursuant thereto, Videocon International Limited. and Command Petroleum Holdings NV, the predecessors of the Respondents submitted their bid to develop the Ravva Field along with other bidders. The contract for this petroleum development was to be given on a production sharing basis through a Production Sharing Contract ('PSC'), which was executed on October 28, 1994, between the Government of India and the following parties to commercially explore and develop the Ravva Oil and Gas Field:

- (a) Command Petroleum (India) Private Limited, an Australian Company established under the laws of the State of New South Wales, which has since been renamed as Cairn Energy India Pty. Ltd;
- (b) Ravva Oil (Singapore) Pty. Ltd, a company established under the laws of Singapore;
- (c) Videocon Industries Limited, a company established under the laws of India; and
- (d) Oil and Natural Gas Corporation Ltd (ONGC).

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

2. Arbitration Application stands dismissed against the transactions of purchase orders were certain disputes have arisen

**Balasore Alloys Limited
Medima LLC**

**Petitioner(s)
Respondent(s)**

With

Special Leave Petition (Civil) No. 10264 of 2020

Date of Judgement: September 16, 2020

The petition under Section 11(6) read with Section 11(12)(a) of the Arbitration and Conciliation Act, 1996 filed by the applicant, Balasore Alloys Limited, a manufacturer of High Carbon Ferro Chrome, who had entered into transactions agreeing to supply the High Carbon Ferro Chrome manufactured for sale to the respondent in the territory of USA and Canada, praying that a sole arbitrator be appointed to adjudicate upon all disputes that have arisen between the parties in connection with the 37 purchase orders referred to in the application in respect of the said transactions were certain disputes have arisen between the parties which required to be resolved, and alternatively, prayed for a second arbitrator be appointed on account of the failure of the respondent – Medima LLC to nominate an arbitrator in terms of the contracts was dismissed along with Special Leave Petition (Civil) No. 10264 of 2020 with no order as to costs.

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

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