

ACUITY **LAW**

**CORPORATE
LAW NEWSLETTER**

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acuitylaw.co.in

ABOUT ACUITY LAW

Acuity Law was founded in November 2011. Acuity Law comprises of a team of young and energetic lawyers/ professionals led by Souvik Ganguly, Gautam Narayan, Deni Shah and Renjith Nair who have deep and diverse experiences in their chosen areas of practice. We advise Indian and multinational companies, funds, banks and financial institutions, founders of companies, management teams, international law firms, domestic and international investment banks, financial advisors and government agencies in various transactions in and outside India.

Acuity Law takes pride in rendering incisive legal advice taking into consideration commercial realities. Our areas of practice are divided into three departments. The Corporate practice is led by Souvik Ganguly, the Global Trade and Tax practice is led by Deni Shah and the Disputes practice is led by Gautam Narayan with assistance from Renjith Nair.

As part of the Corporate practice, Acuity Law advises on:

- Mergers and acquisitions;
- Distressed mergers and acquisitions;
- Insolvency Law;
- Private Equity and Venture Funding;
- Employment and labour laws;
- Commercial and trading arrangements; and
- Corporate Advisory

As part of the Global Trade and Tax practice, Acuity Law advises on:

- Cross-border tax planning and jurisdiction analysis
- Strategies for acquisitions, mergers, divestitures, diversification or consolidation of businesses
- Inbound and outbound investment structuring
- Endowment planning / wealth management strategies
- Global Trade & Customs laws, including foreign trade policy
- International supply chain optimization
- Goods & Services Tax and other Indirect taxes

As part of the Disputes practice, Acuity Law advises and represents clients on domestic and cross - border:

- Civil disputes;
- Criminal law matters; and
- Arbitration matters

Acuity Law actively follows legislative and policy developments in its chosen areas of practice and shares such developments with clients and friends on a regular basis.

If you want to know more about Acuity Law, please visit our website acuitylaw.co.in or write to us at al@acuitylaw.co.in.

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INTRODUCTION

This newsletter covers key updates for the month of September 2021 relating to company law, securities laws, and foreign exchange laws. In particular, we have covered:

- (1) Companies law: (a) Extension of timelines for conducting annual general meetings (“**AGM**”); and (b) The scheme of arrangement and amalgamation of Protrans Supply Chain Management Private Limited.
- (2) Securities law: Securities and Exchange Board of India (“**SEBI**”) order in the matter of Re: Trading in shares of Zee Entertainment Enterprises Ltd (“**ZEE**”).
- (3) Foreign Exchange Law: Increase in permissible levels of foreign investment in the telecom sector
- (4) Competition Law: Suo Motu Action of Competition Commission of India (“**CCI**”) In Re: Alleged anti-competitive conduct in the Beer Market in India.

1. COMPANIES LAW

Please see below the summary of the key company law updates for September 2021

1.1. Extension of timelines for Conducting AGMs

- 1.1.1. The Ministry of Corporate Affairs (“**MCA**”) vide an office memorandum dated 23 September 2021 had advised each of the Registrar of Companies (“**ROCs**”) to grant an extension of time to the companies for holding AGMs for the financial year ended on 31 March 2021. The extension has been granted in view of the covid-19 pandemic.
- 1.1.2. Subsequent to the office memorandum issued by the MCA, a number of ROCs have extended the time limit within which the companies must hold their AGM, by a period of 2 (two) months. The due date for these companies to hold their AGM has accordingly been extended from 30 September 2021 to 30 November 2021. This relaxation of 2 (two) months is not available for companies who are required to hold their first AGM by 31 December 2021.
- 1.1.3. The extension under the orders passed by the ROCs, also cover the applications that would have been filed for extension in the due date of the AGMs, which were yet to be approved or had been rejected, or where the extension approved was for a period less than 2 (two) months. However, the orders do not cover the applications for which an extension of more than 2 (two) months has already been granted.
- 1.1.4. Please click [here](#) to view the orders passed by the various ROCs.

1.2. The scheme of arrangement and amalgamation of Protrans Supply Chain Management Private Limited

- 1.2.1. In an order dated 29 September 2021, the National Company Law Tribunal (“**NCLT**”) approved a scheme of arrangement and amalgamation, which included conversion of equity shares of the company into preference shares, stating that the scheme of arrangement and amalgamation appeared to be fair and reasonable, and not contrary to the public policy.
- 1.2.2. The proposed scheme was objected on a number of grounds by the ROC, which included the existence of pending litigation and certain inconsistencies in relation to annual filings of the transferee company. The NCLT rejected the ROC’s arguments in this regard, stating that as the transferee company was proposed to continue after the scheme of amalgamation, the objections on the above grounds were devoid of merit.
- 1.2.3. The ROC was also of the view that the conversion of equity shares into preference shares as envisaged under the scheme may not be permissible since the value, terms, rights attached to these shares were distinct from each other. In this regard the ROC also placed reliance on a letter, issued by MCA which stated that the conversion of equity shares into preference shares and vice versa had already been rejected by ROC, Delhi on an earlier instance. Based on this precedent, the ROC contended that the conversion of equity shares into preference shares may not be considered desirable.
- 1.2.4. The petitioners argued that the conversion of equity shares into preference shares was not specifically barred under any provision of the Companies Act, 2013 including section 61, which provides limited companies with the power to reorganize its share capital. The petitioners also relied earlier Supreme Court judgments whereby it has held that as a matter of general principle a prohibition cannot be presumed, and that every procedure must be understood to be permissible till it is shown to be prohibited under law.
- 1.2.5. Further, rebutting the argument of the ROC, that the scheme was undesirable as per an opinion given by the MCA, the petitioners argued that such executive action cannot be binding on judicial authorities at the time of interpretation of the statutes. This is also a settled principle of law as per several SC judgments.

1.2.6. The NCLT concluded that the conversion of equity shares into preference shares as sought by the petitioner companies under the present scheme cannot be deemed to be impermissible. The NCLT accordingly, allowed the petition and approved the scheme, after taking note of the official liquidator's report, that the affairs of the company were not being conducted in a manner prejudicial to the interests of the members or to the public interest.

1.2.7. Please click [here](#) to read the order.

2. SECURITIES LAW

Please see below the summary of the key securities law updates for September 2021.

2.1. SEBI order in the matter of Re: Trading in shares of ZEE.

2.1.1. SEBI vide order dated 27 September 2021, disposed of the proceedings against E-City Hi-Tech Projects LLP and Atul Goel in the matter pertaining to the alleged insider trading in the scrip of ZEE.

2.1.2. SEBI had initiated an investigation to ascertain whether the noticees had traded in the scrip of ZEE, while in possession of certain unpublished information prior to the release of an open letter and a press release by the chairman of ZEE.

2.1.3. SEBI while considering the matter, looked into whether the alleged information was unpublished or price sensitive in nature, SEBI held that the information contained in the open letter and the press release was information that was related to the securities, the information was not generally available and upon becoming generally available, the information was likely to materially affect the price of the securities.

2.1.4. SEBI however noted that since the noticees were not promoters of ZEE and could not be categorised as immediate family members to any insiders or connected persons of ZEE, the noticees could not be categorised as insiders for the purposes of the SEBI (Prohibition of Insider Trading) Regulations, 2015. Further, SEBI held that the noticees had been able to present evidence to discharge their onus to show that they were not directly or indirectly associated with ZEE and therefore they were not reasonably expected to have access to unpublished price sensitive information.

2.1.5. The show cause notice and the subsequent proceedings were accordingly disposed of by the SEBI whole time member.

2.1.6. Please click [here](#) to read the SEBI order.

3. FOREIGN EXCHANGE LAW

Please see below the summary of the key foreign exchange law updates for September 2021.

3.1. Foreign Investment in the telecom sector

3.1.1. A number of structural and process reforms in the telecom sector, were approved by the union cabinet on 15 September 2021. One of the structural and regulatory reforms which were approved is the increase in the permitted levels of foreign investment in the sector.

3.1.2. Pursuant to the implementation of this change, 100% (one hundred percent) foreign direct investment has now been permitted in the telecom sector under the automatic route. Prior to this, foreign investment in the telecom sector was permitted up to 100% (one hundred percent), and government approval was required beyond 49% (forty nine percent).

3.1.3. The Department for Promotion of Industry and Internal Trade has released Press Note 4 of 2021, dated 6 October 2021, implementing the above relaxation in obtaining foreign investment.

3.1.4. Please click [here](#) and [here](#) to read the press release for reforms in the telecom sector, and Press Note No. 4 of 2021 issued by the Department for Promotion of Industry and Internal Trade.

4. COMPETITION LAW

Please see below the summary of the key competition law updates for September 2021

4.1. Suo Motu Case Re: Alleged anti-competitive conduct in the Beer Market in India

4.1.1. The present suo motu action was initiated by the CCI for alleged cartelisation in relation to the production, marketing, distribution, and sale of beer in India. After a detailed probe, the CCI directed the companies, association, and individuals to cease and desist from indulging in any practice, conduct, activity, which has been found in the present order to be in contravention of the provisions of the Competition Act, 2002.

- 4.1.2. CCI observed that 3 (three) companies were engaged in price coordination, collectively restricting the supply of in sharing of the market in various States and Union Territories in India through the platform of All India Brewers' Association ("AIBA"). AIBA was found to be actively involved in facilitating such cartelisation, thus contravening the provisions of the Competition Act, 2002.
- 4.1.3. CCI found the existence of a nation-wide cartel amongst the parties, and that the 'relevant turnover/profit' of the parties to be the turnover/profit earned by the parties from the sale and purchase of beer and ancillary products like beer bottles in India, during the cartel period.
- 4.1.4. CCI observed that, in cases of cartelisation, CCI is empowered to impose upon the contravening entities, penalty of up to 3 (three) times of its profit for each year of the continuance of the cartel, or 10% (ten percent) of its turnover or each year of the continuance of the cartel, whichever is higher. Accordingly, the quantum of penalties to be imposed was determined by the CCI.
- 4.1.5. Furthermore, CCI contended that for the purpose of Competition Act, 2002, the information used in the order does not qualify for a grant of confidential treatment. In conclusion, CCI held these companies liable for the anti-competitive conduct of their respective companies, associations and penalties totalling over INR 8,730,000,000 (Rupees eight point seven three billion) was imposed.
- 4.1.6. Please click [here](#) to read the CCI order.

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