Swift e-Bulletin

Swift e-Bulletin
Edition 26/21-22
Week – September 27th to October 1st

<u>Quote for the week:</u>

"In attaining our ideals, our means should be as pure as the end!"

- Dr. Rajendra Prasad

Introduction

We welcome you to our weekly newsletter!

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.

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") and Insolvency and Bankruptcy Board of India ("IBBI"), and critical judgements and orders passed by the National Company Law Tribunal ("NCLT"), SEBI, High Court and Supreme Court.

The Regulatory authorities provided various updates/relaxations, some of which being:

- SEBI frames new Risk Management Framework ("RMF") for Mutual Funds ("MF");

- IBBI amends the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of September 27, 2021 to October 01, 2021.

Thank you,
Swift team

Table of Contents

REGULATORY UPDATES

SEBI UPDATES

1. **SEBI frames new Risk Management Framework (“RMF”) for Mutual Funds (“MF”) vide Circular dated September 27, 2021.**

- SEBI vide its earlier Circular dated **September 30, 2002**, had prescribed certain systems, procedures and practices that must be followed by all MFs with regards to risk management in various areas. However, since the date of issuance of the said Circular, there have been significant developments specially in the MF industry and financial markets. Pursuant to such developments, SEBI has decided to twerk the RMF to make it more suitable to the current business environment.

- The updated RMF provides a set of principles or standards, which inter alia comprise the policies, procedures, risk management functions and roles & responsibilities of the management, the Board of Asset Management Companies (“**AMC** “) and the Board of Trustees, which has been provided in ***Annexure -A*** of this Circular. The said revised RMF shall come into effect from **January 01, 2022** However, AMCs may choose to adopt the provisions of this circular before the effective date.

- The elements of RMF have been segregated into ‘***mandatory elements'*** which should be implemented by the AMCs and ‘***recommendatory elements'*** which address other leading industry practices that can be considered for implementation by the AMCs.

- Compliance with the RMF should be reviewed annually and the reports of such review shall be placed before the Board of the AMC and trustees for their consideration. Trustees may voluntarily forward the findings and steps taken to mitigate the risk along with their comments to SEBI in the half-yearly trustee reports.

  To read the Circular in detail, please click here.

2. **SEBI proposes various amendments and regulations at its Board Meeting vide Press Release dated September 28, 2021**

- The SEBI Board met and took some decisions in relation to various regulations, some of which has are highlighted below:

- SEBI approved the framework for Gold Exchange and SEBI (Vault Managers) Regulations, 2021, some of the salient features of which are:

  - *The instrument representing gold will be called 'Electronic Gold Receipt' ("**EGR**") and will have similar features akin to other securities and recognized stock exchange, existing as well as new, can launch trading in them in a separate segment. The denomination for trading of EGR and conversion of EGR into gold, can be decided by the recognized stock exchanges, with the approval of SEBI.*
  - In *respect of Vault Managers regulations, they will have to be incorporated as a body corporate having net worth of at least 50 crores.*

- SEBI approved the framework for Social Stock Exchange, some of the salient features of which include:

  - *It shall be a separate segment of the existing stock exchanges.*
  - *Eligible entities who can participate - (Non-Profit Organization – **("NPO")** and For-Profit Social Enterprise – **("FPE")** having social intent and impact as their primary goals. Social Enterprises will have to engage in a social activity out of the list of 15 broad eligible social activities approved by the Board.*

- SEBI has reviewed the delisting framework pursuant to open offer to make M&A transactions for listed companies a more rational and convenient exercise.

- SEBI has reviewed provisions on Related Party Transactions ("**RPT**") whereby, some of the key amendments being:

  - *The definition of RPT has been updated and shall include all persons or entities forming part of promoter or promoter group and all person/entity holding equity shares in the listed entity directly or indirectly to the extent 20% or more (**10% from April 01, 2023**).*
  - *Prior approval of the shareholders of the listed entity shall be required for material RPTs having a threshold of lower of Rs. 1000 crore or 10% of the consolidated annual turnover of the listed entity.*

- SEBI also approves suggested changes to certain provisions of the Superior Voting Rights **("SR")** framework, to inter alia cap a Superior Rights shareholder's net worth (as an individual) at Rs. 1000 Crs (against existing Rs. 500 Crs.) and reduces the minimum gap between issuance of SR shares and filing of Red Herring Prospectus from existing 6 months, to 3 months.

To read the Press Release in detail, please click here.

3. **SEBI introduces Swing Pricing Framework for Mutual Funds vide its Circular dated September 29, 2021.**

- SEBI pursuant to its consultation paper and feedback received introduces a swing pricing framework for open ended debt mutual fund schemes (except overnight funds, Gilt funds and Gilt with 10-year maturity funds).

- This Circular shall be applicable with effect from ***March 1, 2022***.

- Swing Pricing Framework will be made applicable only for scenarios related to net outflows from the schemes.

- The Circular, inter alia among other things, includes:

  - *Swinging Pricing for normal times*
  - *Swinging Pricing for market dislocation*
  - *Other aspects pertaining to swing pricing*

  To read the Circular in detail, please click here.

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IBBI UPDATES

1. **IBBI amends the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 vide Gazette Notification dated September 30, 2021.**

- These Regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2021.

- Among other changes outlined in the Notification, some of the changes are mentioned below:

    - *In respect to invitation for expression of interest, a new sub regulation 4A has been introduced whereby any modification in invitation for expression of interest can be made provided there are in the similar manner as the initial expression of interest was made and such modification is not permitted more than once.*
    - *In Regulation 39 (**Approval of Resolution Plan**) henceforth Resolution Professional (**RP**) can permit modification of the resolution plan but not more than once and he can also permit a challenge mechanism to enable resolution applicants to improve their plans.*
    - *In Regulation 39 a new sub regulation 1B has been added whereby it describes situations where the committee shall not consider resolutions plans which:*

        - *Are received after the time as specified by the committee;*
        - *Are received from a person who does not appear in the final list of prospective resolution applicants.*

To read the Notification in detail, please click here.

2. **IBBI amends the IBBI (Liquidation Process) Regulations, 2016 vide Gazette Notification dated September 30, 2021**

- These Regulations may be called the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2021.

- Among other changes outlined in the Notification, some of the changes are mentioned below:

- *In Regulation 39 (**Stakeholders Consultation Committee**), a new sub regulation has been added whereby the liquidator shall constitute a consultation committee within sixty days from the liquidation commencement date, based on the list of stakeholders.*
- *In the principal regulations, in Schedule I henceforth, the liquidator shall not require payment of any non-refundable deposit or fee for participation in an auction under the liquidation process however the earnest money deposit shall not exceed ten percent. of the reserve price.*
- *Further, where the liquidator rejects the highest bid in an auction process, he shall intimate the reasons for such rejection to the highest bidder and mention it in the next progress report.*

To read the Notification in detail, please click here.

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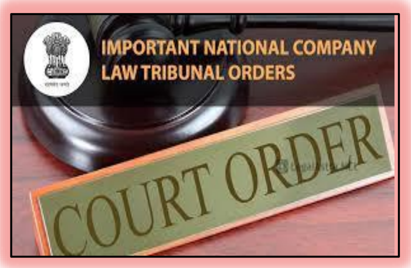
NCLT

1. National Company Law Tribunal allows the Restoration of M/s Sharad Propmart Private Limited



National Company Law Tribunal, **("Tribunal")** accepts the appeal filed by M/s. Sharad Propmart Private Limited **("Appellant Company")** under section 252 of the Companies Act, 2013 **("the Act")** and allows the restoration of the Appellant Company.

The Registrar of Companies Delhi and Haryana **("RoC")**, had struck off the name of Appellant Company from the register of companies due to default in statutory compliances namely non-filing of financial statements and annual returns from financial year 2007-2008 onwards thereby giving rise to the surmise that the business of the company was not in operation, in accordance with section 248 of the Act. Further, the Appellant Company had not filed application under section 455 of the Act for obtaining status of Dormant Company.

The learned counsel of Appellant Company submitted that the default in statutory compliance and non-filing of statutory returns was due to inadvertence and oversight. Further, the Appellant Company did not receive any show cause notice from the Respondent nor any opportunity of being heard was given to explain the reason of said default in statutory compliance and non-filing of statutory returns. In support of the said plea, the learned counsel of Appellant Company had placed before the Tribunal, the copies of audited financial statements from financial year 2007-2008 onwards, copies of ITR Acknowledgements for assessment year 2011-2012 and copies of bank statement as an evidence that the Appellant Company was acting as a going concern during the relevant period. He further affirmed that the Appellant Company shall file all necessary document as may be required by the RoC.

Based on facts presented, the Tribunal was satisfied that during the relevant period the Appellant Company was in fact in operation and passed the restoration order subject to their filing of all statutory returns for the defaulting years as required by law and completion of all formalities and on payment INR 25,000 /- to the Prime Minister Relief Fund along with Rs.50,000/- to the Ministry of Corporate Affairs, New Delhi.

To read the order in detail, please click here.

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SEBI

1. SEBI imposes Interim Order in the matter of insider trading by employees of Infosys Limited and Wipro Limited in the shares of Infosys Limited.

Securities and Exchange Board of India **("SEBI")** alert system generated insider trading alerts for the scrip for Infosys Limited **("INFY")** around the corporate announcement about "the strategic partnership of Infosys with Vanguard" made to BSE and NSE.

INFY, being a public company incorporated on July 02, 1981, listed on both NSE and BSE, whose scrip is in Future and Option segment **("F&O Segment")** and is a part of SENSEX and NIFTY. SEBI conducted a preliminary examination, based on the alert in the scrip of INFY to ascertain whether certain persons / entities traded in the said scrip while they were in possession of / on the basis of unpublished price sensitive information in contravention of the provisions of the Securities and Exchange Board of India Act, 1992 **("SEBI Act")** read with the SEBI (Prohibition of Insider Trading) Regulations, 2015 **("PIT Regulations").**

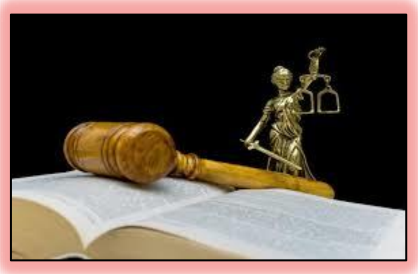
SEBI observed basis the preliminary examination that the corporate announcement of *"the strategic partnership of Infosys with Vanguard"* was made by INFY to BSE and NSE and the information related to the timing of the announcement was Unpublished Price Sensitive Information **("UPSI").** Mr. Ramit Chaudhari (Noticee No. 1), Solution Design Head of INFY, was directly/ indirectly associated with the Vanguard deal and being an officer/ employee of INFY is a connected person, and was reasonably expected to have access / be privy to the UPSI and Mr. Keyur Maniar (Noticee No. 2), who was connected to Mr. Ramit Chaudhari, who had worked together at Wipro BPS. Keyur being the connected person through frequent telephonic communication with Mr. Ramit Chaudhari (an insider) was reasonably expected to have an access to the UPSI, who had traded in the scrip of INFY in the F & O segment just prior to the announcement of the Vanguard deal and soon after the announcement, subsequently offloaded/ squared off his position such that the net position was zero, which generated proceeds of worth INR 261.30 lakhs.

Thus, in view of the foregoing, Noticee No. 1 & 2 had prime facie violated the provisions of the SEBI Act and PIT Regulations, 2015.

To read the order in detail, please click here.

HIGH COURT

1. **Petition filed under Article 227 of the Constitution of India by Smaash Entertainment Private Limited was dismissed for lack of merit**



Smaaash Entertainment Private Limited	**Petitioner**
Varsicon Engineering Private Limited	**Respondent**

Date of Judgement: September 29, 2021

Smaaash Entertainment Private Limited, being the petitioner in the present case, had filed the present petition under Article 227 of the Constitution of India against the Order passed by the learned Trial Court, where the suit was filed by Varsicon Engineering Private Limited, being the respondent in the present case against the petitioner for the recovery of sum with interest. The petitioner had thereafter filed a written statement-cum-counter claim towards loss of revenue on account of delay and as for costs and freight charges.

The respondent, thereafter, subsequently filed an application for framing of an additional issue which was allowed by the Trial Court. Aggrieved by this Order and the framing of the additional issue, the petitioner submitted that an issue could be framed only on material proposition of facts or law and that unnecessary issues were only delaying tactics and framing such issue must be abjured by the Court.

The Court observed no perversity or error in the challenged order calling for interference by this Court and held that the petition lacks merit and is accordingly dismissed.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **Supreme Court was of the view that an exercise of judicial re-drafting of Rule 29(4) of the Copyright Rules 2013 was unwarranted, particularly at the interlocutory stage.**

Saregama India Limited	Appellant (s)
Next Radio Limited & Ors	Respondent (s)

Date of Judgement: September 27, 2021

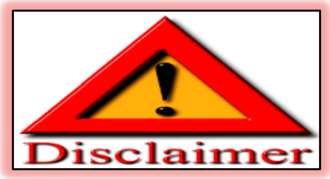
Writ Petitions have been instituted before the High Court under Article 226 of the Constitution to challenge the validity of Rule 29(4) of the Copyright Rules 2013. The appeals that arise from an interim order of a Division Bench of the High Court of Judicature of Madras, directed that:

I. No copyrighted work may be broadcast in terms of Rule 29 without issuing a prior notice;
II. Details pertaining to the broadcast, particularly the duration, time slots and the like, including the quantum of royalty payable may be furnished within fifteen days of the broadcast or performance;
III. Compliance be effected with a modified regime of post facto, as opposed to prior compliance mandated by Rule 29(4) and the statutory mandate of a twenty-four-hour prior notice shall be substituted by a provision for compliance within fifteen days after the broadcast; and
IV. The interim order will be confined to the petitioners before the High Court and the copyrighted works of the second and third respondents which are sought to be exploited.

The Supreme Court was clearly of the view that an exercise of judicial re-drafting of Rule 29(4) was unwarranted, particularly at the interlocutory stage. The difficulties which have been expressed before the High Court by the broadcasters have warranted an early listing of the matter and this Court has been assured by the copyright owners that they would file their counter affidavits immediately so as to facilitate the expeditious disposal of the proceedings. That having been assured, we are of the view that an exercise of judicial re-writing of a statutory rule is unwarranted in the exercise of the jurisdiction under Article 226 of the Constitution, particularly in interlocutory proceedings.

The Supreme Court allowed the appeals by setting aside the interim order of the High Court, however, subject to clarification that the Supreme Court has not expressed any opinion on the merits of the rival submissions which would fall for determination in the exercise of the writ jurisdiction of the High Court in the pending proceedings.

To read the Judgement in detail, please click here.



+91 22 6669 5000

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About Swift

Swift India Corporate Services LLP ("Swift") (Formerly known as SwiftIndiaInc Corporate Services Private Limited) established in the year 2005, is an associate entity of Nishith Desai Associates — Legal & Tax Counseling Worldwide (legal and tax consulting firm).

We are a team of professionals with rich corporate, legal and secretarial backgrounds. We are a premier corporate compliance firm that caters to the needs and demands of our global clients. Swift aims to provide quick and pragmatic corporate solutions alongside high-quality compliances.

Swift India Corporate Services LLP

Regd. Office: 91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
LLPIN: AAH-4705, registered under the Limited Liability Partnership Act, 2008
Tel +91 22 6669 5000, Fax +91 22 6669 5001

www.swiftindiallp.com