Swift e-Bulletin

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Edition 30/21-22
Week – October 25th to October 29th

Quote for the week:

“Outstanding leaders go out of their way to boost the self-esteem of their personnel”

- Sam Walton

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 Ministry of Corporate Affairs ("**MCA**"), the Securities and Exchange Board of India ("**SEBI**"), and the International Financial Services Centre Authority ("**IFSCA**"), and critical judgements and orders passed by the SEBI and High Court.

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

- **MCA relaxes additional fees in case of delay in filing Form 8 (the Statement of Account and Solvency) by Limited Liability Partnerships (LLPs) up to December 30, 2021;**

- **SEBI amends (Issue of Capital and Disclosure Requirements) Regulations, 2018;**

- **IFSCA issues IFSCA (Operations of International Financial Services Centres Insurance Offices) Guidelines, 2021**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of October 25, 2021 to October 29, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

MCA UPDATES

1. **MCA relaxes additional fees in case of delay in filing Form 8 (the Statement of Account and Solvency) by Limited Liability Partnerships (LLPs) up to December 30, 2021 vide General Circular 16/2021 dated October 26, 2021.**

- The Ministry has received a representation seeking extension of timeline for filing the Statement of Account and Solvency without paying additional fees by LLPs on account of challenges faced by the LLPs due to COVID-19 pandemic.

- To promote ease of living and compliances for Micro, Medium and Small Enterprises doing business through the vehicle of LLP, MCA has decided to allow LLPs to file Form 8 (the Statement of Account and Solvency) for the Financial Year 2020-2021 without paying additional fees up to December 30, 2021.

  To read the circular, please click here.

2. **MCA extends last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014 vide General Circular 15/2021 dated October 27, 2021**

- MCA has received representations from various stakeholders for extension of last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014 due to impact of COVID-19 pandemic.

- Due to extraordinary disruption caused by the pandemic, MCA has decided that if cost audit report for the financial year 2020-21 by the cost auditor to the Board of Directors of the companies is submitted by October 31, 2021 then the same would not be viewed as violation of rule 6(5) of Companies (cost records and audit) Rules, 2014. Consequently, the cost audit report for the financial year ended on March 31, 2021 shall be filed in e-form CRA-4 within 30 days from the date of receipt of the copy of the cost audit report by the company. However, in case a company has got extension of time for holding Annual General Meeting under section 96(1) of the Act then e-form CRA-4 may be filed within the timeline provided under the proviso to rule

6(6) of the companies (Cost Records and Audit) Rules, 2014 relating to filing of CRA 4.

To read the Circular, please click here.

3. **MCA provides Relaxation on levy of additional fees in filing of various e-forms under the Companies Act, 2013 vide General Circular 17/2021 dated October 29, 2021**

- In consideration of various requests received from stakeholders regarding relaxation on levy of additional fees for annual financial statement filings required to be done for the financial year ended on March 31, 2021, MCA has decided that no additional fees shall be levied up to December 31, 2021 for the filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL, AOC-4 Non-XBRL and MGT-7/MGT-7A in respect of the financial year ended on March 31, 2021. During the said period, only normal fees shall be payable for the filing of the aforementioned e-forms.

To read the Circular, please click here.

4. **MCA further extends last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014 vide General Circular 18/2021 dated October 29, 2021**

- In continuation to this Ministry's General Circular No.15/2021 dated October 27, 2021, and in view of the disruption caused by the COVID-19 pandemic and after due examination of the representations received from stakeholders, MCA has decided to substitute the word and figures "31st October, 2021" with the word and figures "30th November, 2021" in the said General Circular.

- All other requirements as mentioned in the said General Circular shall remain unchanged.

To read the circular, please click here.

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SEBI UPDATES

1. **SEBI amends (Issue of Capital and Disclosure Requirements) Regulations, 2018 vide Gazette Notification dated October 26, 2021**

- This amendment shall be called SEBI (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2021.

- Under Regulation 6 (**Eligibility Requirements for an IPO**) an issuer who has issued SR equity shares to its promoters/ founders shall be allowed to do an IPO of only ordinary shares for listing on the Main Board provided that the SR equity shares holder whose collective net worth is more than rupees 500 crore shall not be part of the promoter group.

- Vide this amendment the said limit of 500 crores has been enhanced to 1000 crores as determined by a registered valuer, and While determining the individual net worth of the SR shareholder, his investment/ shareholding in other listed companies shall be considered only and not his shareholding in the issuer company.

To read the Gazette Notification in detail, please click here.

2. **SEBI amends Foreign Portfolio Investors (FPI) Regulations, 2019 vide Gazette Notification dated October 26, 2021.**

- This amendment shall be called SEBI (Foreign Portfolio Investors) (Second Amendment) Regulations, 2021 and shall come into force immediately.

- Under Regulation 4 (**Eligibility Criteria of Foreign Portfolio Investor**) ("**FPI**") new categories of resident Indian's other than individuals who can apply for registering as an FPI have added and shall now also include:

  - *Alternative Investment Fund setup in the International Financial Services Centres and regulated by the IFSCA*
  - *Resident Indian, other than individuals, is a Sponsor or Manager of the applicant and the contribution of such resident Indian, other than individuals, shall be:*
    - *2.5% of the corpus of the applicant or US $ 7,50,000 (whichever is lower), in case the applicant is a Category I or Category II Alternative Investment Fund; or*

- *5% of the corpus of the applicant or US $ 1.5 million (whichever is lower), in case the applicant is a Category III Alternative Investment Fund;"*

To read the Gazette Notification in detail, please click here.

3. **SEBI issues Guiding Principles for bringing uniformity in Benchmarks of Mutual Fund Schemes vide Circular dated, October 27, 2021**

- In order to standardize and bring uniformity in the Benchmarks of Mutual Fund Schemes, SEBI has decided on a two-tiered structure for benchmarking of schemes for certain categories of schemes.

- The first-tier benchmark shall be reflective of the category of the scheme, and the second-tier benchmark should be demonstrative of the investment style / strategy of the Fund Manager within the category. All the benchmarks followed should necessarily be Total Return Indices.

- The Circular further contains guiding principles for various types of schemes as mentioned in detail in the said Circular and it shall be effective from December 01, 2021

To read the Circular in detail, please click here.

4. **SEBI modifies Investment/ trading in securities by employees and Board members of AMC(s) and Trustees of Mutual Funds vide Circular dated October 28, 2021**

- SEBI vide circular dated November 17, 2016, has specified the norms for investment/ trading in securities by employees of Asset Management Companies (AMC(s)) and Trustees of Mutual Funds and consolidated the provisions of all the previous circulars as ***Annexure A*** to the said circular. Subsequently, SEBI vide circular dated March 04, 2021, partially modified Annexure A of the circular dated November 17, 2016.

- Based on the representations received from the industry participants & Association of Mutual Funds in India (**AMFI**) and recommendations of Mutual Fund Advisory Committee, SEBI decided to review the circular and partially modify the provisions of the circular dated November 17, 2016.

- The modifications have been made in the following areas some of which are definition of 'access person', investments not covered under the guidelines under Paragraph II(C)(1)(b)(iii) of Annexure A of the circular dated November 17, 2016, obtaining prior approval for personal investment transactions, g investments in units of Mutual Fund Schemes etc.

To read the circular in detail, please click here.

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IFSCA UPDATES

1. **IFSCA issues International Financial Services Centres Authority (Operations of International Financial Services Centres Insurance Offices) Guidelines, 2021. vide Circular dated October 27, 2021**

- The Authority had notified the IFSCA (Registration of Insurance Business Regulations), 2021 on October 21, 2021. Under the said regulations, the Authority was required to specify certain Guidelines, Forms etc. for compliance by international Financial Services Centres Insurance Office ("**IIOs**") / the Applicants of IIO. Hence in pursuance of the above said regulation, these Guidelines has been notified.

- These Guidelines aim to put in place a framework to address operational issues of such IIOs.

- The broad areas that the new Regulation cover are:

  - *Chapter I - Applicability and legal provisions*
  - *Chapter II - Transaction of Life Insurance/Health Insurance business by IIO*
  - *Chapter III - Re-insurance and Retrocession Requirements*
  - *Chapter IV - Maintenance of Books of Accounts*
  - *Chapter V - Fee Structure*
  - *Chapter VI – Corporate Governance*
  - *Chapter VII – Forms and Annexures*

To read the Guidelines in detail, please click here.

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JUDGEMENTS/ ORDERS

SEBI

1. SEBI imposes penalty on Noticee for not cooperating with Investigation Authorities under SEBI Act

Securities and Exchange Board of India ("**SEBI**") received two complaints w.r.t the scrip of the Videocon Industries Limited ('VIL') alleging price fall during the period of one year. Subsequently, National Stock Exchange ('NSE') was requested by SEBI to carry out examination in the scrip of VIL on the complaint alleging price fall. Based on the report of NSE, SEBI conducted an investigation in the scrip of VIL for the possibility of insider trading and volume manipulation by certain entities. During the investigation, SEBI had observed prima-facie violations of Section 11C (5) of Securities and Exchange Board of India Act, 1992, ("SEBI Act") by Shri Surajit Dutta ("Noticee").

The Adjudicating Officer (**"AO"**) issued Show Cause Notice (**"SCN"**) and to which Noticee requested for additional time and opportunity of personal hearing was also given but the Noticee never responded and attended. Considering which the matter was proceed ex-parte on the basis of material available on record. The AO analyzed the facts of the cases and it was observed that compliance of summons is very important for the purpose of effective investigation proceedings and non-cooperation by an entity can be detrimental to the interest of investors and the securities market on account of delay or hindrance in the investigation. However, the Noticee failed to comply with summons issued. If it had not been that case and Noticee cooperated with investigation authority, a precise conclusion in this case could have been drawn. Further AO quoted "it is well established that timely submission of information is very important for the purpose of effective investigation proceedings and non-cooperation by an entity can be detrimental to the interest of investors and the securities market on account of delay or hindrance in the investigation. Based on documents available on record, I note that there was failure on part of Noticee to comply with the summons issued by Investigating Authority and therefore I conclude that such acts of Noticee hampered the investigation process. Accordingly penalty was imposed.

To read the order in detail, please click here

HIGH COURT

1. Oyo Hotels petition was allowed for appoint of Sole Arbitrator to adjudicate the dispute.

Oyo Hotels and Homes Private Limited	**Petitioner**
Zreyah Semiconductors Private Limited	**Respondent**

<u>Date of Judgement</u>: October 26, 2021

Oyo Hotels and Homes Private Limited, being the petitioner company is registered under the Companies Act, 2013 and is engaged in the business of managing hospitality establishments and claims to be world's leading chain of hotels, homes, and spaces, has filed the present petition seeking appointment of Sole Arbitrator under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996.

Vendor Agreement was entered between respondent Company - Zreyah Semiconductors Private Limited for the purpose of purchase of electronic components and products as detailed in Schedule - A of the Vendor Agreement.

According to petitioner, in terms of the Vendor Agreement dated December 23, 2019, petitioner placed an order for 52,360 switches for an amount of INR. 10,34,89,540/-, payment for which was to be made within 30 days of receipt of undisputed invoices, subject to Clause 3.2 of the Vendor Agreement, which specified that the products were to be first delivered as per the agreed delivery date under the purchase orders. However, petitioner released substantial advance of 50% of the Purchase Order value i.e. INR. 5,17,00,000/- on October 25, 2019 upon representation of the respondent that it would deliver 52,360 switches within the prescribed timeline i.e. by January 2020. However, despite, the receipt of advance payment and follow-up on delivery schedules, the respondent failed to deliver a single product in terms of the purchase order.

The petition was allowed and Mr. Justice (Retd.) A.K. Phatak was appointed as Sole Arbitrator to adjudicate the dispute between the parties.

To read the Judgement in detail, please click <u>here</u>.

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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.

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