Swift e-Bulletin

Swift e-Bulletin
Edition 32/21-22
Week – November 08th to November 12th

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

"If you get tired learn to rest, not to quit"

- Banksy

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**"), Securities and Exchange Board of India ("**SEBI**"), and critical judgements and orders passed by High Court and Supreme Court.

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

- **MCA initiates process for de flagging of eligible DINs**
- **SEBI permits Foreign Portfolio Investors ("PFI") to write - off debt securities**
- **IFSCA issues clarity on minimum holding period on sale/transfer of loan assets**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of November 08, 2021 to November 12, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

MCA UPDATES

1. **MCA initiates process of de- flagging of eligible DINs vide Notice dated November 10, 2021.**

- Directors who have been disqualified under provision of Section 164 (2) (a) for a period of five years w.e.f from November 01, 2016, MCA has begun the process of de flagging of eligible DINs on expiry of the above five years.

- Pursuant to which the DINs of the respective Directors shall be activated.

To read the Notice in detail, please click here.

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SEBI UPDATES

1. **SEBI permits Foreign Portfolio Investors ("PFI") to write - off debt securities vide Circular dated November 08, 2021.**

- SEBI had vide Circular dated November 05, 2019 read with Circular dated September 21, 2020, had permitted FPIs who wish to surrender their registration to write-off all shares in their beneficiary account which they were unable to sell for any reason.

- SEBI based on representation received has further permitted FPIs who wish to surrender their registration to also write-off all debt securities in their beneficiary account which they were unable to sell for any reason.

To read the Circular in detail, please click here.

2. **SEBI amends Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 vide Gazette Notification Dated November 09, 2021.**

- This amendment shall be called Securities and Exchange Board of India (Alternative Investment Funds) (Fifth Amendment) Regulations, 2021, vide this SEBI has made the following changes:

  - *Introduction of the term co- investment – meaning investment made by a Manager or Sponsor or investor of Category I and II AIFs in investee companies where such Category I or Category II AIF make investment*
  - *In Regulation 15 (**General Investment Conditions**) terms of Co-investment in an investee company by a Manager or Sponsor or co-investor, shall not be more favourable than the terms of investment of the AIF, further terms of exit from the Co-investment in an investee company including the timing of exit shall be identical to the terms applicable to that of exit of the AIF.*
  - *Category III AIFs shall not invest more than 10 % of the net asset value in listed equity of an Investee Company and shall invest not more than 10% of the investable funds in securities other than listed equity of an Investee Company, directly or through investment in units of other AIFs, however accredited investors of Category III AIFs are permitted upto 20%*
  - *The manager shall not provide advisory services to any investor other than the clients of co investment Portfolio Manager for investment in securities of investee companies where the AIF managed by it makes investment*

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

3. **SEBI amends provisions of Related Party Transactions ("RPT") under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 vide Gazette Notification dated November 09, 2021.**

- SEBI has amended the definition of 'related party' and now the definition shall be read as any person or entity forming a part of the promoter or promoter group of the listed entity, or any person or any entity, holding equity shares of 20% or more or of 10% or more, w.e.f. April 01, 2023, in the listed entity either directly or on a beneficial interest, at any time, during the immediate preceding FY.

- Further a RPT transaction shall be material if the transaction to be entered into individually or taken together with previous transactions during a FY, exceeds Rs. 1,000 Cr. or 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements, whichever is lower.

- Audit committee of a listed entity to define "***material modifications***" and disclose it as part of the policy on materiality of RPTs, and lays down that an RPT to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee, if the value of such transaction whether entered into individually or taken together with previous transactions during an FY, exceeds 10% of the annual consolidated turnover.

- listed entity shall submit to the stock exchanges, disclosures of related party transactions in the specified format and publish the same on its website every six months on the date of publication of its standalone and consolidated financial results w.e.f. April 1, 2023.

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

4. **SEBI amends provisions of Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020 vide Gazette Notification dated November 09, 2021.**

- A new definition for Co-investment Portfolio Manager has been inserted whereby a Portfolio Manager shall be any person who is a Manager of a Category I or Category II AIF and provides services only to the investors of such Category I or Category II AIF and makes investment only in unlisted securities of investee companies Category I or Category II AIFs.

- Further the Co-investment Portfolio Manager may designate a member of the Key Investment Team of the Manager as the principal officer who fulfils eligibility conditions as maybe mentioned.

- Further in case of Co-investment Portfolio Manager, terms of co-investment in an investee company by a co-investor, shall not be more favourable than the terms of investment of the AIF, further the terms of exit from the Co-investment in an investee company including the timing of exit shall be identical to the terms applicable to that of exit of the Alternative Investment Fund. Any early withdrawal of funds by the co-investors with respect to Co-investment in investee companies shall be allowed to the extent that the Alternative Investment Fund has also made an exit from respective investment in such investee companies.

- Going forward Co-investment Portfolio Manager shall invest 100 % of the assets under management in unlisted securities of investee companies where Category I and Category II AIF which are also managed by it as Manager, makes investment.

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

5. SEBI amends provisions of Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 vide Gazette Notification dated November 09, 2021.

- This Regulations shall be called SEBI (Mutual Funds) (Third Amendment) Regulations, 2021, Some of the amendments brought on are:

  - *Definition of mutual fund has been amended, whereas it shall henceforth include silver or silver related instruments.*
  - *A new scheme has been introduced know as silver exchange traded fund scheme which shall mean a mutual fund scheme that invests primarily in silver or silver related instruments. Further, money collected under any silver exchange traded fund scheme shall be invested only in silver or silver related instruments, except to the extent necessary to meet the liquidity requirements for honouring repurchases or redemptions, as disclosed in the offer document. Pending deployment of funds mutual fund may invest such funds in short-term deposits of scheduled commercial banks*
  - *Valuation of silver held by silver exchange traded fund scheme be valued at the AM fixing price of London Bullion Market Association ("**LBMA**") in US dollars per troy ounce for silver having a fineness of 999.0 parts per thousand subject to such adjustments*

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

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IFSCA UPDATES

1. IFSCA issues clarity on minimum holding period on sale/transfer of loan assets vide Circular dated November 11, 2021

- Reserve Bank of India ("**RBI**") had issued its Master Direction on a **(Transfer of Loan Exposures)** Directions, 2021 which inter alia replaced the existing instructions on the matter of sale / transfer of loan exposures.

- Hence in context of the above Master Direction, The Authority has clarified that it does not mandate any Minimum Holding Period requirement pertaining to sale/transfer of loan assets (by any means) by/to IFSC Banking Units ("**IBUs**"). Further such UBUs may also insert necessary provisions in the agreement to protect its interest such as for retention of a part of the asset or portfolio by the seller and/or minimum period of retention of the asset or portfolio by the seller prior to transfer

To read the Circular in detail, please click here.

2. IFSCA amends and introduces various Handbooks on various topics vide Circulars Dated November 12, 2021

- In order to facilitate better compliance and ease of doing business within IFSC, the authority has introduced handbooks pertaining to compliances of various entities operating within the framework of the authority and has further amended certain existing handbooks as mentioned below:

  - *Amends IFSCA Banking Handbook;*
  - *Introduces Handbook on Prudent Directions for IBUs;*
  - *Introduces Handbook on General Directions for IBUs*
  - *Introduces Handbook on Conduct of Business Direction for IBUs*

To read these Circulars in detail, please click here.

HIGH COURT

1. **Delhi High Court held that as per the Agreement to Sell (ATS), the parties had agreed that the Sale Property is a 'special property' and damages would not be an adequate remedy.**

DLF Home Developers Limited	Petitioner
Shipra Estate Limited & Ors.	Respondents

Date of Judgement: November 08, 2021

DLF Home Developers Limited had filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 *inter alia,* praying that the respondents be restrained from selling, transferring, alienating or otherwise creating any third-party rights or interest, directly or indirectly, in the land admeasuring 73 acres [2,95,421 square meters] situated in Sector 128, Noida, District Gautambudh Nagar, Uttar Pradesh, which is the subject matter of the Agreement to Sell (ATS).

The Sale Property is owned by Kadam, a wholly owned subsidiary of Shipra Estates Limited, who owns approximately 98% of the issued and paid-up equity shares of Kadam and Mohit Singh and Bindu Singh are individuals and hold 1% each of Kadam's issued equity shares as nominees of SEL.

Kadam is also a part of Shipra group of companies. Kadam had mortgaged the Sale Property to Indiabulls, to secure financial loans Shipra Hotels Ltd. and Shipra Leasing Private Limited. Indiabulls has since terminated the ATS in favour of DLF and has withdrawn its letter of no objection (NOC) on the ground that it has not received the agreed amount of ₹900 Crores within the period stipulated therein. DLF claims that it is and was always ready and willing to perform its obligations under the ATS. DLF further claims that Indiabulls and Kadam have failed to perform their obligations and Indiabulls cannot terminate the ATS or withdraw its NOC. Essentially, DLF seeks specific performance of the ATS and, it seeks an order restraining the respondents from selling transferring or alienating the Sale Property as an interim measure of protection for preserving its rights and remedies.

The petition was disposed on terms that, as per the Clause 10 of the ATS, the parties had agreed that the Sale Property is a 'special property' and damages would not be an adequate remedy. Hence the Court considers it apposite to direct that status quo as to the title and possession be maintained in respect of the Sale Property till the conclusion of the arbitral proceedings. Further, the Court directs the parties are at liberty to approach the Arbitral Tribunal as and when the Arbitral Tribunal enters reference, to seek any variation, modification or vacation of the aforesaid order and/or seek any further relief as advised.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. National Company being aggrieved by the judgment and order passed by the Division Bench of the High Court of Judicature at Madras, approaches the Supreme Court

National Company, Represented By Its Managing Partner The Territory Manager,	Appellant(S)
Bharat Petroleum Corporation Limited. & Anr.	Respondents

Date of Judgement: November 11, 2021

National Company, being represented by its Managing Partner had approached the Supreme Court, being aggrieved by the judgment and order passed by the Division Bench of the High Court of Judicature at Madras, in Writ Petition, thereby denying the prayer made by the appellant for a direction to the respondents to vacate the property.

The property in question, being the property consisting of vacant land situated at Old No.320, New No.469, Anna Salai, Nandanam, Chennai 600035, admeasuring 6107 sq. ft. was leased to the predecessor of Bharat Petroleum Corporation Limited, viz., Burmah Shell Oil Storage and Distributing Company of India by the predecessor of the appellant, initially for a period of 20 years in the year 1960. Thereafter, the lease was renewed for another 20 years and finally for another period of 11 years vide a registered lease deed. In the meantime, it appeared that, there were some attempts to settle the matter, as the respondent No.1 BPCL had shown interest in purchasing the property outright. However, the same did not fructify.

The matter originally was placed before the single judge of the Madras High Court. Pursuant to the aforesaid order, as per the directions of the learned Chief Justice, the matter was placed before the Division Bench of the High Court. A preliminary objection was taken regarding the maintainability of the writ petition on the ground that the writ petition involved disputed questions of fact and as such, was not maintainable. It was, however, contended on behalf of the appellant that no disputed questions of law or fact arose for consideration and as such, in view of the law laid down by this Court, the writ petition was maintainable.

The appeal was allowed on the following terms that, (i) Bharat Petroleum Corporation Limited is directed to vacate and handover peaceful and vacant possession of the said premises to the appellant within a period of three months from today. and (ii) Bharat Petroleum Corporation Limited is directed to pay arrears of market rent to the appellant from 31st December 2009 till the date of handing over of possession.

To read the Judgement in detail, please click here.

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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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