Swift e-Bulletin

Swift e-Bulletin
Edition 10/21-22
Week – June 07th to June 11th

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

“Most people can't. Most people don't even know it's out there, but it is.”

-Ken Miles

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 Centres Authority ("IFSCA") and critical judgements and orders passed by the National Company Law Tribunal ("NCLT"), SEBI and High Court.

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

- **The facility of Shops and Establishment Registration introduced through the addition of Form AGILE – PRO – S. Thus, Shops and Establishment Registration needs to be obtained at the time of Incorporation only.**

- **SEBI mandates Mutual Funds to classify debt schemes on credit, interest rate risk basis to help investors to make an informed decision while investing in a mutual fund schemes**

- **IFSCA issues clarification on framework for enabling ancillary services at International Financial Services Centres**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of June 07, 2021 to June 11, 2021.

Thank you,
Swift team

Table of Contents

REGULATORY UPDATES

MCA UPDATES

1. **MCA amends Companies (Incorporation) Rules, 2014 vide Gazette Notification dated June 07, 2021**

- These rules shall be called Companies (Incorporation) Fourth Amendment Rules, 2021.

- Following are some of the key changes brought forth by this notification:

  - *Form AGILE – PRO has been substituted by a new Form AGILE – PRO – S.*
  - *Facility to apply for Shops and Establishment Registration has been introduced through the addition of Form AGILE – PRO – S while filing for incorporation of a company.*
  - *E-Form INC 35 has been substituted with a new form available in the Annexure to the Notification.*

To read the Notification in detail, please click here.

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SEBI UPDATES

1. **SEBI mandates Mutual Funds to classify debt schemes on credit, interest rate risk basis vide Circular dated June 07, 2021**

- SEBI vide its Circular dated October 05, 2020 on **"Product Labeling in Mutual Funds-Risk-o-Meter"**, has advised the Mutual Funds to indicate risk taken by the scheme as on the end of the month as there is a need to know the risk level while investing in a mutual fund schemes.

- Hence, based on recommendation from the Mutual Fund Advisory Committee ("**MFAC**"), SEBI has decided that all debt schemes should be classified on parameters based on maximum interest rate risk (measured by Macaulay Duration ("**MD**") of the scheme and maximum credit risk (measured by Credit Risk Value ("**CRV"**) of the scheme).

- In this regard a display table has been mandated from December 01, 2021, this 9-cell table or matrix will display the interest and credit risk associated with the scheme. This will provide relevant information to investors to make an informed decision while making decision low risk to moderate risk to high risk in combination of credit and interest rate rate risk, the format of the table has been provided In the Circular.

- Some of the disclosures mandated by SEBI are:

  - *Interest rate risk will be categorized into three buckets. The lowest risk bucket Class I, MD up to a maximum of 1 year, Class II--moderate risk bucket --will have MD up to 3 years and the class III can have MD above 3 years;*
  - *Class I schemes will have debt paper with a maximum residual maturity of 3 years and Class II schemes with a maximum residual maturity of seven years, while maximum residual maturity has not been fixed for Class III;*
  - *Credit risk will also be divided into three categories in the matrix. CRV greater than 12, CRV greater than 10 and CRV less than 10;*
  - *The mutual funds will have to also inform the unitholders about the classification in one of the 9 cells and subsequent changes, if any, through SMS and by providing a link on their website referring to the change;*

- *The matrix along with the mark for the cell in which the of scheme resides need to be disclosed on front page of initial offering application form, Scheme Information Documents ("SID") and Key Information Memorandum ("KIM"), common application form along with the information about the scheme.*

To read the Circular in detail, please click here.

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IFSCA UPDATES

1. International Financial Services Centres Authority ("IFSCA") issues clarification on framework for enabling ancillary services at International Financial Services Centres vide Circular dated June 10, 2021.

- IFSCA on February 10, 2021 had issued a framework for enabling Ancillary Services in International Financial Service Centres ("**IFSC**"). Pursuant to the above framework, the following clarifications are provided:

  - ***With Respect to Eligibility Conditions*** - *The entity may be set up in the IFSC in the form of a company or a limited liability partnership or a registered partnership firm, their branch thereof or any other form as may be approved by the IFSCA.*

  - ***With Respect to Service Recipients*** *–sub- clause (ii) has been amended whereby all entites from foreign jurisdiction are allowed to receive such ancillary services henceforth, earlier only financial services entities from foreign jurisdiction could receive such ancillary services.*

  - ***Under Annexure 1 which talks about permissible ancillary activites,*** *following new activities are also included* ***:***

    - ***Under Professional Services*** ***:***

      - *Advisory and Facilitation Services to entities in IFSC/outside India in relation to their capital raising activities outside India.*
      - *Advisory and Facilitation Services to entities in IFSC/outside India in relation to their merger & acquisition or capital restructuring activities outside India.*

    - ***Under Administration, Assets Management Support Services and Trusteeship Services the following will be substituted :***

      - *Services such as Trusteeship for AIFs, InvIT and REIT, Security Trustee and other related financial services such as escrow agent.*

- *The applicant under the framework shall not take client assets (including money), directly or indirectly in its custody and shall only provide permissible services within the prescribed framework. Further, the applicants shall seek IFSCA registration separately under the appropriate framework for undertaking regulated activities such as Debenture Trustee, Investment Advisor, AIF, Fund Management, etc.*

- ***Annexure II** which is Application form for setting up unit as an Ancillary Service Provider in the IFSC has also been amended and substituted with a new form which is provided as the updated **Annexure II** to this Circular.*

To read the Circular in detail, please click here.

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JUDGEMENTS/ ORDERS

NCLT

1. **National Company Law Tribunal allows the petition and orders wind-up of Devas Multimedia Private Limited**

The National Company Law Tribunal, Bengaluru bench **("Tribunal")**, has ordered liquidation and winding up of M/s Devas Multimedia Private Limited **("Devas")** by allowing a petition filed by M/s Antrix Corporation Limited ("Petitioner"). Tribunal held that, investment of INR 579 Crores was brought into Devas and for which FIPB approval were sought. Further, investment received were used in different purpose instead the service mentioned in FIPB application.

The Tribunal further held that, the object of Devas was to harm public interest and monies for personal illegal gains for its shareholders or owners. Based on the facts and circumstances of the case, Tribunal also held that incorporation of Devas was made in a "fraudulent manner and unlawful purpose" and its management is continuing to resort to fraudulent activities and satisfied that petitioner fulfills the requisite conditions under section 271 (1) (e) of the Companies Act, 2013 to pass a winding-up order against Devas.

To read the order in detail, please click here.

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SEBI

1. SEBI imposed penalty on Noticees who acted as person acting in concert for not making disclosures under SAST regulations.

Securities and Exchange Board of India **("SEBI")** investigated in the scrip of M/s Gini Silk Mills Limited **("Company")** to ascertain violation of the provisions under SEBI Act 1992 and SAST regulations.

SEBI observed that notices transacted in the scrip of the Company on multiple times during the investigation period and noted that there were eleven occasions wherein disclosures to be filed for change in the shareholding as required under 29(2) read with 29(3) of Takeover Regulations, were not made. Hence notices violated the provisions of Takeover Regulations.

After considering all the facts and circumstance of the case and material available on record, SEBI imposed penalty of INR 5,00,000/- (INR Five Lakhs only) on the Noticees who acted as person acting in concert.

To read the order in detail please click here.

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HIGH COURT

1. **Delhi High Court allows the suit and refers the parties to the dispute for Arbitration as per the Arbitration Agreement**

M/s. Golden Tobie Private Limited (*Formerly known as Golden Tobie Limited*)	Plaintiff
M/s. Golden Tobacco Limited	Defendant

Date of Judgement: June 04, 2021

M/s. Golden Tobacco Limited had filed an application under Section 8 of the Arbitration and Conciliation Act, 1996, against which the Plaintiff – M/s. Golden Tobie Private Limited has filed the present suit seeking various reliefs.

Master Long Term Supply Agreement was entered into between the parties, under which the defendant on an exclusive basis had supplied to the plaintiff who was selling, supplying and distributing exclusively the said brands in domestic and international market, the exclusive brands of the defendant like "Golden's Gold Flake, Golden Classic, Taj Chhap, Panama and Chancellor".

The present suit is that the plaintiff is seeking to specifically enforce the trademark license agreement and the subsequent amendment agreement. It was further stated that both these agreements are determinable and could be legally terminated under Clause 8 and Clause 5 of the said agreement respectively. Further, it was stated that under Clause 12 of the trademark license agreement, there exists an arbitration clause between the parties, basis which Sole Arbitrator was appointed.

Considering the facts of the case, the Court held that the dispute did not pertain to infringement of a trademark on the grounds that the defendants are using a deceptively similar trademark. The ground was that the right to use the trademark was conferred by a particular agreement on a particular group of the family. Further it was held that, the facts of the present case are that, the dispute in question is primarily related to the interpretation of the terms of the Agreement and the amendment agreement.

The Delhi High Court allowed the application and referred the parties to the dispute to Arbitration as per the Arbitration Agreement on the ground that, assignment of trademark is by a contract and not by a statutory act. It does not involve any exercise of sovereign functions of the State. It cannot be said that the disputes are not arbitrable.

To read the Judgement in detail, please click here.

2. Thar Camps Private Limited urges the Delhi High Court to “lift the corporate veil” in its Petition

Thar Camps Private Limited	**Petitioner**
M/s. Indus River Cruises Private Limited & ORS	**Respondents**

Date of Judgement: June 07, 2021

Thar Camps Private Limited had filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996. The petitioner is engaged in the business of managing and operating hotels, resorts, wedding venues, destination management services, and other associated activities, under the name ‘Thar Camps’, who had entered into a Memorandum of Understanding **(“MOU”)** and a Vessel Operation and Management Agreement **(“VOMA”).**

In the present petition, ‘Thar Camps’ alleges that, as payments against services provided by the petitioner under the VOMA, were not being made in time, the petitioner wrote to IRCPL.

It was urged by the petitioner to “lift” or, at the least, “pierce” – the corporate veil, seeking to interlink the respondents, by submitting that all the respondents are but corporate avatars of Respondent 3, Mr. Paul Strachan under whose control and supervision, all the corporate entities are operating.

This being the case, the Court concluded and allowed with certain limitation by directed Indus River Cruises Private Limited to deposit the amount with the Registry of the Court by way of Demand Draft and stated that the money will be retained in interest bearing fixed deposit and shall abide by the outcome of the arbitral proceedings.

To read the Judgement in detail, please click here.

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+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