Swift e-Bulletin

Swift e-Bulletin
Edition 11/21-22
Week – June 14th to June 18th

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

“Be yourself; everyone else is already taken.”

-Oscar Wilde

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 Department for Promotion of Industry and Internal Trade ("**DPIIT**") 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:

- **MCA amends Companies (Meetings of Board and its powers) Rules, 2014 to allow companies to transact agenda items mentioned in Rule 4 via Video Conferencing meetings.**

- **SEBI provides relaxation from requirement of minimum vesting period under SEBI (Share Based Employee Benefit) Regulations, 2014**

- **Government of India increases Foreign Direct Investment ("FDI") limit in Insurance Companies from 49% to 74%**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of June 14, 2021 to June 18, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

MCA UPDATES

1. **MCA amends Companies (Meetings of Board and its powers) Rules, 2014 vide Gazette Notification dated June 15, 2021**

- These rules may be called the Companies (Meetings of Board and its Powers) Amendment Rules, 2021.

- The Ministry of Corporate Affairs ("**MCA**") with a view to enhance ease of doing business and to work towards its endeavor for complete virtualization of Board approval process has <u>omitted</u> Rule 4 of the Companies (Meetings of Board and Its Powers) Rules, 2014 which restricted the Board to deliberate the below mentioned agendas through a Video Conferencing Meeting ("**VC Meeting**") which meant below agenda could only be discussed at a physically convened meeting:

  - *Approval of the annual financial statements;*
  - *Approval of the Board's report;*
  - *Approval of the prospectus;*
  - *Audit Committee meetings for consideration of financial statements including consolidated financial statement if any, to be approved by the Board under sub-section (1) of Section 134 of the Companies Act, 2013; and*
  - *Approval of the matters relating to amalgamation, merger, demerger, acquisition and takeover.*

- In view of the COVID 19 situation from April 2020, MCA had relaxed the above norm and allowed the companies to deliberate the above agenda through VC Meeting until June 30, 2021. While the relaxation provided by MCA ends on June 30, 2021, the persistence of the COVID-19 situation and VC Meeting means have now become new normal for conducting meeting and day to day business may have caused MCA to permanently omit the above rule and allow the companies to deliberate the above matters even through VC Meeting as well. It is thoughtful on part of the MCA to allow these matters to be dealt via VC Meeting as well.

- Thus, from June 15, 2021 onwards, companies can conduct their Board Meetings through VC Meeting to deliberate any kind of agenda without any restrictions on type of agenda.

  To read the Notification in detail, please click here.

2. **MCA amends Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019 vide Gazette Notification dated June 18, 2021**.

- These rules may be called the Companies (Creation and Maintenance of databank of Independent Directors) Amendment Rules, 2021.

- In the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, in rule 3 relating to Creation and maintenance of data bank in sub-rule (7) relating to charging of fees from individuals, in clause (a), after the words “for inclusion”, the words “or renewal” shall be inserted and accordingly the updated Rule 3 (7)(a) shall be read as under:

  “(a) individuals for inclusion or renewal of their names in the data bank of independent directors;”

- In rule 3 relating to Creation and maintenance of data bank after sub-rule (7) relating to charging of fees from individuals following sub rule shall be inserted:

  “(8) In case of delay on the part of an individual in applying to the institute under sub-rule (7) for inclusion of his name in the data bank or in case of delay in filing an application for renewal thereof, the institute shall allow such inclusion or renewal, as the case may be, under rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 after charging a further fees of one thousand rupees on account of such delay.”.

  To read the Notification in detail, please click here.

3. **MCA amends Companies (Indian Accounting Standards) Rules, 2015 vide Gazette Notification dated June 18, 2021**

- These rules may be called the Companies (Indian Accounting Standards) Amendment Rules, 2021.
- Amomg other amendments some of the important Indian Accounting Standards ("**Ind AS**") that have been amdended are as follows:

  - ***Ind AS 101*** *- First-time Adoption of Indian Accounting Standards;*
  - ***Ind AS -102*** *- Share-based Payment*
  - ***Ind AS 103*** *- Business Combinations*
  - ***Ind AS 104*** *- Insurance Contracts*
  - ***Ind AS 105*** *- Non-Current Assets Held for Sale and Discontinued Operations*
  - ***Ind AS 107*** *- Financial Instruments: Disclosures*
  - ***Ind AS 108*** *- Operating Segments*
  - ***Ind AS 109*** *- Financial Instruments*
  - ***Ind AS 111*** *- Joint Arrangements*
  - ***Ind AS 12*** *- Income Taxes*
  - ***Ind AS 38*** *- Intangible Assets*
  - ***Ind AS 40*** *- Investment Property*

To read the Notification in detail, please click here.

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SEBI UPDATES

1. **SEBI revises the framework for Regulatory Sandbox vide Circular dated June 14, 2021**

- SEBI with an intent to promote innovation in the securities market, had issued a framework for Regulatory Sandbox vide Circular dated June 05, 2020.The main objective of such sandbox is to provide certain facilities and flexibilities to the entitites regulated by SEBI so that they can expirement with FinTech solutions in a live envirnoment and on a limited set of real users for a limited time frame.

- In order to enhance the reach and achieve the desired aim, the eligibility criteria of the Regulatory Sandbox has been revised, the updated guidelines pertainig to functioning of the Regulatory Sandbox are provided under ***Annexure -1*** to the circular which among other things include the following:

  - *Eligibility Criteria's to apply for Sandbox testing;*
  - *Application and approval process in order to obtain approval from SEBI;*
  - *Different evaluation criteria's depending on the stage;*
  - *Exemptions;*
  - *Compliance requirements of such entities who register themselves under this framework.*

  To read the Circular in detail, please click here.

2. **SEBI provides relaxation from requirement of minimum vesting period under SEBI (Share Based Employee Benefit) Regulations, 2014 vide Circular dated June 15, 2021.**

- Regulation 18(1) and 24(1) of the SEBI (Share Based Employee Benefit) Regulations, 2014 provides that there shall be a minimum vesting period of one year in case of employee stock options ("**options**") and Stock Appreciation Rights ("**SAR**"), further Regulation 9(4) states that in the event of death of the employee while in employment, all the options, SAR or any other benefit granted to him/her under a scheme till such date shall vest in the legal heirs or nominees of the deceased employee.

- However considering the prevailing COVID conditions and in order to provide relief to the families of the deceased employees of listed companies, SEBI has done away with the minimum vesting period of one year in case of death (**for any reason**) of an employee and in such instances all the options, SAR or any other benefit granted to such employee(s) shall vest with his / her legal heir or nominee on the date of death of the employee

- This relexation shall be applicable to all such employees who have deceased on or after ***April 01, 2020***.

To read the Circular in detail, please click here.

3. **SEBI includes listed debt securities within system driven disclosure under Insider Trading Regulations vide Circular dated June 16, 2021.**

- SEBI, vide circular dated September 09, 20201 , implemented the System Driven Disclosures in phases, under SEBI (Prohibition of Insider Trading) Regulations, 2015.

- SEBI has now decided to include the listed debt securities of equity listed companies under the purview of the said System Driven Disclosures for the entities mentioned above. Further, the procedure for implementation of System Driven Disclosures as provided in SEBI Circular dated September 09, 2020, shall also be applicable for the listed Debt Securities.

- The Depositories and Stock Exchanges are required to make necessary arrangements such that the disclosures pertaining to listed Debt Securities along with equity shares and equity derivative instruments are disseminated on the websites of respective stock exchanges with effect from ***July 01, 2021***.

To read the Circular in detail, please click here.

4. **SEBI modifies guidelines on Settlement of Running Account of Client's Funds lying with Trading Member ("TM") vide Circular dated June 16, 2021**

- SEBI, vide Circular dated December 03, 2009 and September 26, 2016, issued the guideline for settlement of running account of client's funds / securities. As specified by SEBI, the actual settlement of funds and securities shall be done by the member depending on the mandate of the client and there must be a gap of maximum 90 / 30 days (as per the choice of client viz. Quarterly / Monthly) between two settlements of running account.

- After extensive consultations with Stock Exchanges and industry representatives, to devise a framework to mitigate the risk of misuse of client's funds. The proposal was also discussed in the meeting of Secondary Market Advisory Committee and in partial modification of the aforementioned circulars dated December 03, 2009 and September 26, 2016 on settlement of running account, SEBI has issued guidelines regarding settlement of running account of funds, calculation of retention of funds, settling of Client's running account etc. which have been mentioned in detail in the Circular.

- Stock Exchanges shall develop online system for effective monitoring of timely settlement of running account for funds of client and to verify that excess clients' funds are not retained by the TM as on the date of settlement of running account. The intent of the online system shall be to discourage TM from retaining excess funds of clients after settlement of running account, by considering all the client obligations across exchanges. The responsibility of monitoring settlement of running account compliance of TM may be shared among Stock Exchanges.

- The provisions of this Circular shall be applicable with effect from ***August 01, 2021***. Stock Exchanges shall put in place an appropriate reporting requirement by TM to enforce the above system.

  To read the Circular in detail, please click here.

5. **SEBI modifies norms for investment and disclosure by Mutual Funds in Derivatives vide Circular dated June 15, 2021**

- SEBI vide circular dated August 18, 2010 had prescribed the guidelines for participation of mutual fund schemes in Interest Rate Swaps ("**IRS**"). In line with the feedback received from the industry, SEBI has decided to modify paragraph 8 relating to Interest Rate Swaps ("**IRS**") of the aforesaid circular as follows:

  "8. (a) Mutual Funds may enter into plain vanilla Interest Rate Swaps (IRS) for hedging purposes. The value of the notional principal in such cases must not exceed the value of respective existing assets being hedged by the scheme.

  *(b) In case of participation in IRS is through over the counter transactions, the counter party has to be an entity recognized as a market maker by RBI and exposure to a single counterparty in such transactions should not exceed 10% of the net assets of the scheme. However, if mutual funds are transacting in IRS through an electronic trading platform offered by the Clearing Corporation of ("**CCIL**") and CCIL is the central counterparty for such transactions guaranteeing settlement, the single counterparty limit of 10% shall not be applicable."*

  To read the Circular in detail, please click here.

6. SEBI issues Framework for administration and supervision of Investment Advisers under the SEBI (Investment Advisers) Regulations, 2013 vide Circular dated June 15, 2021

- According to Regulation 14 of the SEBI (Investment Advisers) Regulations 2013 ("**IA Regulations**"), SEBI may inter-alia recognize any body or body corporate for the purpose of regulating Investment Advisers ("**IA**") and delegate administration and supervision of the IAs on such terms and conditions as may be specified. Accordingly, an entity granted recognition under the aforesaid Regulation shall be designated as "Investment Adviser Administration and Supervisory Body" ("**IAASB**") and shall be entrusted with the administration and supervision of IAs.

- In this regard, BSE Administration & Supervision Limited ("**BASL**"), a wholly owned subsidiary of BSE Limited, has been granted recognition as IAASB for a period of three years from June 01, 2021. The details relating to grant of recognition, Standard Operating Procedure ("**SOP**") and the Frequently Asked Questions ("**FAQs**") issued by BASL are provided in the Press Release issued by SEBI on June 14, 2021.

- IAASB shall have following responsibilities:

  - *Supervision of IAs including both on-site and offsite*
  - *Grievance redressal of clients and IAs*
  - *Administrative action including issuing warning and referring to SEBI for enforcement action*
  - *Monitoring activities of IAs by obtaining periodical reports*
  - *Submission of periodical reports to SEBI*
  - *Maintenance of database of IAs*

- The Board of the IAASB shall, at all times, be chaired by a Public Interest Director and shall also have, at all times, a Director who will bring investor perspective and SEBI shall continue to concurrently administer and supervise all registered IAs and IAASB shall be subject to periodic inspection by SEBI.

- Pursuant to grant of aforementioned recognition, SEBI registered IAs are required to ensure compliance with the guidelines issued in the following areas:

  - *Membership of IAASB*
  - *Payment of fees*
  - *Reporting*

  To read the Circular in detail, please click here

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DPIIT UPDATES

1. **Government of India increases Foreign Direct Investment ("FDI") limit in Insurance Companies from 49% to 74% vide Press Note dated June 14, 2021.**

- The Government of India has reviewed the extant FDI policy on Insurance sector and has made the following amendments under the Consolidated FDI Policy of 2020, as amended from time to time ("**FDI Policy**"):

Sector/Activity	% of Equity/ FDI Cap	Entry Route
5.2.22.1 **Insurance Company**	74%	Automatic
5.2.22.2 **Intermediaries or Insurance Intermediaries** including insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, Surveyors and Loss Assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India from time to time.	100%	Automatic

- Among other changes some of them are provided below:

    - *No Indian Insurance company shall allow the aggregate holdings by way of total foreign investment in its equity shares by foreign investors, including portfolio investors, to exceed seventy-four percent of the paid-up equity capital of such Indian Insurance company.*

- *Foreign investment in this sector shall be subject to compliance with the provisions of the Insurance Act, 1938 and the condition that Companies receiving FDI shall obtain necessary license /approval from the Insurance Regulatory & Development Authority of India for undertaking insurance and related activities.*
- *Any increase in foreign investment in an Indian Insurance company shall be in accordance with the pricing guidelines specified by Reserve Bank of India under the Foreign Exchange Management Act ("**FEMA**") Regulations.*
- *Any increase in foreign investment in an Indian Insurance company shall be in accordance with the pricing guidelines specified by Reserve Bank of India under the FEMA Regulations.*
- *The foreign equity investment cap of 100 percent shall apply on the same terms as above to insurance brokers, re-insurance brokers, insurance consultants,*
- *Corporate agents, third party administrator, Surveyors and Loss Assessors and such other entities, as may be notified by the Insurance Regulatory and Development Authority of India from time to time. The composition of the Board of Directors and key management persons of Intermediaries or Insurance Intermediaries shall be as specified by the concerned regulator from time to time*

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

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JUDGEMENTS/ ORDERS

NCLT

1. **National Company Law Tribunal rejects the application for dispensation of shareholders meeting under section 230 of the Companies Act, 2013 in the matter of M/s Quickcalls Private Limited and Others**

National Company Law Tribunal, Principal Bench **("Tribunal")** rejects application for dispensation of shareholders meeting under section 230 of the Companies Act, 2013 ("the Act") in the matter of M/s Quickcalls Private Limited and Others.

The matter was referred to the Tribunal owing to the dissent order passed by the judicial member to the order passed by the technical member which was of the view that National Company Law Tribunal **("NCLT")** cannot dispense the shareholders' meetings under section 230 (1) of the Act since it is a mandate given under the statute to hold shareholders meeting as and when a proposal for either arrangement or demerger or merger or amalgamation is placed by the applicant companies before NCLT.

Tribunal affirmed that NCLT has discretion to decide the manner of calling, holding and conducting meeting but the Act does not provide NCLT the power to dispense the shareholders meeting. The Tribunal was of the view that, the power to dispense the meeting of shareholders will nullify the provisions of section 230 (1) of the Act. The dispensation of shareholders' meeting would mean that the notice of such meeting will not be attained by regulating authorities because of which, authorities will not be able to raise their objections to the decisions taken by the shareholders of the company.

While pronouncing its view of the given scenario, it highlighted that tribunals are given discretion to dispense with calling of a creditors meeting or class of creditors meetings, however it cannot be presumed that such grant of dispensation can be extended to the shareholders meeting and affirmed that if the shareholder's meeting is not held as stated under section 230 (3) of the Act, then the whole process envisaged under section 230 (3)

(4) (5) (6) will become redundant and the proposal of dispensation of shareholders meeting is in violation of the procedure laid under Section 230 of the Act.

Lastly, Tribunal threw some light on concept of ratio decided stating that it is a common-law doctrine to be applied to the cases where statutory guidance is absent, but not in the cases where the statute itself has left no scope to cast doubt on its mandate. While concluding its judgement, the Tribunal agreed with the view of the Technical Member that the shareholders' meeting cannot be dispensed by NCLT, while giving liberty to the applicant company to take directions from the respective Bench over the application seeking a prayer for holding meetings.

To read the order in detail, please click here.

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SEBI

1. SEBI imposed monetary penalty for fraudulently diversion of IPO proceeds.

Securities and Exchange Board of India (‘**SEBI**') conducted investigation into the initial public offer **(‘IPO’)** of Birla Pacific Medspa Limited (‘**BPML’**), for the period from July 7, 2011 to July 15, 2011.

During the investigation period, it was observed that BPML had not invested the funds pending utilization as disclosed in the prospectus, but had transferred part of the funds to various other entities.

In view of the above, it was alleged that N. P Enterprises and Laxmi Trading have aided and abetted in the diversion of proceeds of IPO by BPML and have therefore, violated the provisions of the PFUTP Regulations read with Section 12A (a),(b)and (c) of the SEBI Act. After considering all the facts and circumstance of the case, SEBI imposed penalty of INR 5,00,000/- (INR Five Lakh) each on N. P Enterprises and Laxmi Trading for the above violations.

To read the order in detail, please click here.

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HIGH COURT

1. **Delhi High Court sets aside the challenged order and bail granted to the Promoter by trial court to unearth the conspiracy behind siphoning and diversion of funds**

M/s. Religare Finvest Limited.	**Petitioner**
State of NCT of Delhi & Anr.	**Defendant**

<u>Date of Judgement</u>: June 14, 2021

M/s. Religare Finvest Limited ("**Petitioner**") is registered with Reserve Bank of India as non-deposit taking/lending Non-Banking Financial Company **("NBFC")** and has been classified as systematically important NBFC and is subsidiary of M/s Religare Enterprises Limited ("**REL**"). The Petitioner had filed petition with the Honorable Delhi High Court to set aside the bail granted to respondent no: 2 Shivender Mohan Singh ("**Accused**") passed on March 03, 2021 against the FIR registered under section 409/420/120-B IPC, registered at Economic Offences Wing, New Delhi.

The accused was the Promoter along with the entities controlled by him and with persons acting in concert with him, owned the majority shareholding of REL. He also controlled the petitioner. In February 2018, accused along with his brother, who was also promoter lost complete control over REL and its subsidiaries, including the complainant-company, pursuant to invocation of the shares pledged by them and other promoter entities with various banks.

After their exit from Board, new Board members were appointed and in their investigation, it was noted that REL and its subsidiaries were in terrible financial condition and the poor financial condition of the complainant company was to a large extent on account of willful defaults on significant unsecured loans and majority of loan were granted to entities either related, controlled or associated with the Promoters. Further RBI also raised concern on corporate loan book of the complainant company and those concerns we never addressed by the promoters.

Based on above facts the petitioner and respondent argued and Honorable Delhi High Court keeping in the factual matrix of the case observed that impugned order suffers from serious infirmities, resulting in miscarriage of justice. Moreover, continued detention of respondent No.2 in this FIR case is necessary not only to unearth the conspiracy hatched by him, but also to derive out/ trace the siphoned money which he has credited for his personal benefit. Basis the aforesaid narration the challenged order and bail granted to the accused was set aside.

To read the Judgement in detail, please click here.

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Call us toll free to explore a topic or let us answer your questions

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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