Swift e-Bulletin

Swift e-Bulletin
Edition 14/21-22
Week – July 05th to July 09th

Quote for the week:

"Don't count the days, make the days count."

-Muhammad Ali

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 the International Financial Services Centres Authority ("IFSCA") and critical judgements and orders passed by the National Company Law Tribunal ("NCLT") National Company Law Appellate Tribunal ("NCLAT"), SEBI, High Court and Supreme Court.

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

- ❖ SEBI issues Circular on Standard Operating Procedures ("SOP") for Market Infrastructure Institutions ("MIIs") in order to handle technical glitches and payment of "Financial Disincentives".

- ❖ International Financial Services Centres Authority ("IFSCA") amends International Financial Services Centres Authority (Banking) Regulations, 2020

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of July 05, 2021 to July 09, 2021.

Thank you,
Swift team

Table of Contents

REGULATORY UPDATES

SEBI UPDATES

1. **SEBI issues Circular on Standard Operating Procedures ("SOP") for Market Infrastructure Institutions ("MIIs") in order to handle technical glitches and payment of "Financial Disincentives" vide Circular dated July 05, 2021.**

- MIIs are systemically important institutions as they provide infrastructure necessary for the smooth and uninterrupted functioning of the securities market, hence any technical disruption in their business would have a direct impact on the securities market. In order to prevent such major disruption and to ensure smooth functioning of the securities market, SEBI has released SOP for MIIs in order to handle such technical glitches and also has issued a Financial Disincentive structures which have to be complied by such MIIs in case of failure to comply with such directions issued by SEBI.

- The Circular has been divided into two annexures:

  - ***Annexure 1****- SOP for handling of technical glitches.*
  - ***Annexure- 2*** *– Financial Disincentive Structure.*

- **Annexure 1** includes gives a brief about Standard Operating Procedure ("**SOP**") for handling of technical glitches:

  - *SEBI in its Circular has defined '**Technical glitch**' as any malfunction in the systems of an MII and will include malfunction in its hardware, software or any products or services provided by the MII.*

  - *Any incident that leads to business disruption the following disclosure shall have to be made:*

    - *Information of technical glitch on immediate basis but not later than 2 hours from the time of occurrence of the glitch; provided that glitches of* *the nature of a disaster- as defined in SEBI Circular dated March 22, 2021 shall be reported immediately upon declaration of disaster;*

- *Preliminary report within 24 hours of the occurrence of the glitch;*
- *Report on Comprehensive Root Cause Analysis ("**RCA**") and corrective action taken to address the technical glitch within 21 days of the incident shall be reported to SEBI after placing it before the Standing Committee on Technology and the Governing Board of the MII and confirming compliance with their observations;*
- *The RCA report shall include disclosures such as exact cause, exact duration and chronology of events etc.*

- **Annexure 2 - "Financial Disincentive" structure with regard to handling of technical glitches** talks about penalties that the MIIs as well as their Managing Director and Chief Technological Officer shall be liable in case disclosures and reporting are not followed as provided in the SOP

  To read the Circular in detail, please click here.

2. **SEBI reduces time for filing application to obtain Non-Objection Certificate ("NOC") for release of 1% of issue amount vide Circular dated July 05, 2021**

- SEBI vide SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 mandates that the issuer company shall deposit 1 % of the issue amount of the securities offered to the public and/or to the holders of the existing securities of the company, as the case may be, with the designated stock exchanges and the said amount is released to the company after obtaining a NOC.

- In relation to this, currently, an issuer needs to submit an application on its letter head addressed to SEBI after lapse of 4 months from listing on the Exchange. However, this Circular has reduced the timeline from 4 months to 2 months.

- In addition, the merchant banker will have to submit a certificate confirming that all the Self Certified Syndicate Banks ("**SCSBs**") involved in Applications Supported by Blocked Amount ("**ASBA**") process have unblocked the ASBA accounts

  To read the Circular in detail, please click here.

3. **SEBI issues Master Circular for Stock Exchange and Clearing Corporations vide Master Circular dated July 05, 2021**

- In order to enable users to have access to all applicable circulars and directions pertaining to stock exchanges and clearing corporations, SEBI has issued this Master Circular.

- This Master Circular is a compilation of the relevant circulars/communications issued by SEBI up to March 31, 2021 and shall come into force from the date of its issue. References in the Circular to the Statutes/Regulations which now stand repealed, have been suitably updated.

- The Master Circular has been divided into six chapters, each have its own compilation of circulars as mentioned below:

  - ***Chapter 1:*** *Trading;*
  - ***Chapter 2:*** *Trading software and technology;*
  - ***Chapter 3:*** *Settlement;*
  - ***Chapter 4:*** *Comprehensive risk management for cash market and debt segment;*
  - ***Chapter 5:*** *Exchange traded derivatives; and*
  - ***Chapter 6:*** *Administration of stock exchanges and clearing corporation.*

  To read the Master Circular in detail, please click here

4. **SEBI issues Circular on Standard Operating Procedures ("SOP") for listed subsidiary companies desirous of getting delisted through a Scheme of Arrangement vide Circular dated July 06, 2021**

- SEBI vide notification dated June 10, 2021, has notified the amendments made to the SEBI (Delisting of Equity Shares) Regulations, 2021 wherein special provisions for a listed subsidiary company getting delisted through a scheme of arrangement had been inter-alia inserted with respect to a listed holding company and the listed subsidiary company who are in the 'same line of business'.

- For the purpose of defining 'same line of business' the following criteria needs to be followed by the listed holding company and the listed subsidiary company:

- *The principal economic activities of both Holding company and Subsidiary Company should be under the same group under the National Industrial Classification code, 2008;*
- *At least 50% of revenue from the operations of the listed holding and listed subsidiary company must come from the same line of business;*
- *Not less than 50% of the net tangible assets of the listed holding and listed subsidiary must have been invested in the same line of business;*
- *In case of change of name of the listed entities, within the last one year, at least fifty percent of the revenue, calculated on a restated and consolidated basis, for the preceding one full year has to be earned by it from the activity indicated by its new name;*
- *The listed holding company and the listed subsidiary have to provide a self-certification with respect to both the companies being in the same line of business*

- All the above provisions have to also be certified by the Statutory Auditor and SEBI registered Merchant Banker.

To read the Circular in detail, please click here.

5. SEBI reduces number of days for advance intimation for modification in contract specifications of commodity derivatives vide Circular dated July 08, 2021

- SEBI vide its earlier Circular had dated November 14, 2019 had specified procedures for carrying out modifications in the contract specifications of commodity derivatives contracts. Based on the materiality of the said contracts, the contracts they were classified into Category A, Category B and Category C.

- In order to modify any of the said contracts, the stock exchanges had to take permission and inform SEBI and market participants along with reasons for the said modifications. The advance intimation timelines mentioned in the aforesaid circular are 10 days for Category A and 30 days for Category B and Category C contract modifications.

- In order to bring uniformity while giving effect to the contract modifications so that they have the desired impact and the modified contract represents a healthy replica of the physical market Vide this Circular SEBI has reduced the number of days of advance intimation for all the three categories i.e. Category A, Category B and Category C, to 10 days.

To read the Circular in detail, please click here.

[This space is intentionally left blank]

IFSCA UPDATES

1. **International Financial Services Centres Authority ("IFSCA") amends International Financial Services Centres Authority (Banking) Regulations, 2020 vide Gazette Notification dated July 05, 2021.**

- These regulations may be called the International Financial Services Centres Authority (Banking) (Second Amendment) Regulations, 2021.

- Among other changes, some of the few brought forth by this Notification are mentioned below:

  - *In Regulation 11 relating to Foreign Currency accounts following substitutions shall be made:*

    *"**11. Foreign Currency Accounts***

    (1) Banking Units may open accounts in a freely convertible foreign currency for individuals and corporate or institutional entities, resident in India or outside India, subject to such conditions as may be specified by the Authority.

    (2) Individuals who are person resident in India are permitted to open, hold and maintain accounts in a freely convertible foreign currency, with a Banking Unit, for undertaking transactions connected with or arising from any permissible current or capital account transaction or a combination of both as specified in the Liberalised Remittance Scheme (LRS) of the Reserve Bank."

  - *In Regulation 13 relating to Permitted Activities undertaken by Banking Units in IFSCA following substitutions shall be made:*

    *"**13. Permitted Activities***

    Banking Units may undertake any or all of the activities mentioned under clause (e) of sub-section (1) of Section 3 of the Act or Section 6 of the Banking Regulation Act, 1949, except those expressly prohibited by the Authority, *subject to compliance with such terms and conditions or guidelines as may be specified by the Authority, including matters relating to design, execution and risk management."*

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

[This space is intentionally left blank]

JUDGEMENTS/ ORDERS

NCLT

1. **National Company Law Tribunal allows the Restoration of M/s Satya Narayan Properties Private Limited**

National Company Law Tribunal, Mumbai Bench **("Tribunal")** accepts the appeal filed by the directors of M/s. Satya Narayan Properties Private Limited **("Appellant Company")** under section 252 of the Companies Act, 2013 ("the Act") and allows the restoration of the Appellant Company.

The Appellant submitted that the Registrar of Companies **("RoC")** Mumbai, struck off the Appellant Company from the register of companies due to default in statutory compliances and non-filing of financial statements and annual returns since 2010 and on account of the reasons that it was not carrying on any business operation for a period of last two financial years in accordance with section 248 of the Act and 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 lack of professional advice on the same. 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 the 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 2009-2010 to 2018-2019 onwards, 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 now has all the remaining documents ready and prepared and is willing to file the same before the RoC, if so permitted by the Tribunal. Appellant shall file any other 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 within 30 days from the date on which its name is restored in the Register of Companies and on payment INR 2,75,000 /- to be paid towards payment of costs.

To read the order in detail, please click here.

[This space is intentionally left blank]

NCLAT

1. **NCLAT New Delhi set aside order of Adjudicating Authority and closed insolvency proceedings against OYO**

The National Company Law Appellate Tribunal **(NCLAT)** set aside the order of Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench and closed the insolvency proceedings against OYO and one of its subsidiaries, and also disallowed the intervention of external parties.

NCLAT in various judgment cited the judgment of Hon'ble Supreme Court that the prime objective of the Court is not recovery, but revival. In a case to case basis Tribunal can exercise its inherent power under Rule 11 if parties are interested to settle the matter prior to Constitution of Committee of Creditors (CoC).

Therefore, Tribunal reiterates that in the interest of Justice, the inherent powers under Rule 11 can be exercised by both NCLT and NCLAT which may allow or disallow the Application of Withdrawal keeping in view the interest of the concerned parties and the facts of each case.

NCLAT noted that, all amounts due and payable by the Corporate Debtor to the Operational Creditor have been paid in full and final satisfaction, to the parties concerned in that Application, together with the IRP Costs and allow to withdraw the application.

To read the order in detail, please click here.

[This space is intentionally left blank]

SEBI

1. **SEBI imposed penalty on Company and Managing Director for providing incorrect and misleading statements in offer documents in respect of IPO.**

ICL Multi trading India Limited (**'ICL)** came out with an Initial Public Offer (**'IPO'**) for issue of 21,00,800 equity shares at INR 85 per share on the SME Platform of the National Stock Exchange of India Limited (**NSE**).

SEBI passed interim order against the underwriter for failure to honor the underwriting obligation and directed to carry out further investigation.

SEBI observed that incorrect and misleading disclosures were made by ICL and Mr. Roop Kishore Gola (Managing Director) in the Prospectus for the purpose of IPO and alleged that violated the provisions of Regulations57(1) of ICDR Regulations and Clause 2(XVI)(B)(2) of Part A of Schedule VIII read with Regulation 57 (2)(a) of ICDR Regulations.

SEBI observed that, as per Regulation 57(1) of ICDR Regulations, an offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision while making investment in the issuer companies. It is the duty of the issuer and its directors acting on behalf of the issuer company to ensure that this requirement is strictly complied. Further, managing director and signatory of the offer is obligated to certify that all disclosures made in the offer document are true and correct. However, he has failed to discharge his obligations by certifying incorrect and misleading disclosures with regard to independent status of the director Mr. Pankaj Jha and Auditors.

SEBI stated that the purpose of certification of offer document, is to bring in element of trust with respect to the facts and material information being disclosed in the offer document so as to enable investors to take informed decision with regard to investment in such companies. Since the disclosures with respect to Mr. Pankaj Kumar Jha and auditors, i.e. made in the offer document are incorrect, the certification given in the offer document also defeats its very purpose.

After taking into consideration all the facts and circumstances of the case SEBI imposed the penalty of INR 200,000 (INR Two Lakhs) on ICL and Managing Director under section 15 HB of the SEBI Act

To read the order in detail, please click here.

[This space is intentionally left blank]

HIGH COURT

1. **Delhi Chemical and Pharmaceutical Works Private Limited filed an appeal challenging the orders of the Commercial Division of the Delhi High Court**

Delhi Chemical and Pharmaceutical Works Private Limited & ANR.	**Appellants**
Himgiri Realtors Private Limited & ANR.	**Respondents**

<u>Date of Judgement</u>: July 05, 2021

Delhi Chemical and Pharmaceutical Works Private Limited, filed an appeal under Section 13(1A) of the Commercial Courts Act, 2015, challenging the orders of the Commercial Division of the Delhi High Court, which was accompanied with applications for condonation of delay of 365 days in filing of the appeal and for stay of the challenged orders.

As prescribed in the Code of Civil Procedure, 1908 (CPC), Execution Petition was filed, of which paragraph 10 required the decree holder to state "In what manner court's assistance is sought", the decree holder pleaded, "By issuance of attachment warrant the Hon'ble court may be pleased to attach the movable and immovable properties of the judgment debtors in view of Order XXI of the CPC". Further in paragraph 11 of the Execution Petition, requiring the decree holder to furnish "Any other information", the decree holder pleaded, that:

(i) the judgment debtors had failed to make payment of the awarded amount to the decree holder;
(ii) the decree was to be executed jointly and severally against the judgment debtors; and,
(iii) "To the best of the knowledge of the decree holder, the judgment debtors have assets and properties, movable and immovable".

The Delhi High Court disposed of the appeal and directed that the Commercial Division can now proceed with the execution of the decree in accordance with law.

To read the Judgement in detail, please click here.

2. **Delhi High Court in case of petition filed by GAIL (India) Limited held that, the question of delay in making allegation has to be considered not from the date when the Final Bill gets submitted, but when the admitted payments were received**

GAIL (India) Limited	**Petitioner**
Bansal Infratech Synergies Limited	**Respondent**

Date of Judgement: July 06, 2021

GAIL (India) Limited had filed the present petition challenging the arbitral award rendered by an Arbitral Tribunal, in respect of disputes that had arisen between the parties in connection with the Contract for 'Civil and Structural Works – II (OFFSITES)' at GAIL's Petrochemical Complex – II at Pata, Uttar Pradesh **("the Project").**

For the Project, GAIL had appointed Engineers India Limited (EIL) as the consultant for implementation of the Project, who invited bids on behalf of GAIL and Bansal Infratech Synergies Limited, being the respondent in the present petition had submitted its bid pursuant to the said invitation. The bid was accepted by a Fax of Acceptance **(FOA)** and subsequently a detailed letter of acceptance (DLOA) was issued by the respondent.

The respondent had invoked the Arbitration Clause after receiving the last payment and issued a notice, of which no steps were taken by GAIL to either resolving the disputes or constituting the Arbitral Tribunal pursuant to the aforesaid notice, as there was no dispute between the parties. According to GAIL, the contract was discharged by accord and satisfaction in view of the No Claim Certificate (NCC) issued by the respondent.

Due to no response on the part of GAIL for the arbitration notice, the respondent filed a petition under Section 11(6) of the Arbitration and Conciliation Act, seeking appointment of an Arbitrator.

The Delhi High Court held that, the question of delay in making such allegation has to be considered not from the date when the Final Bill was submitted but when the admitted payments were received.

Further held that, the present petition is unmerited and is accordingly dismissed.

To read the Judgement in detail, please click here.

3. **Appeal filed by M/s. Mangalwar Filling Station was dismissed by the Delhi High Court for want of merits**

M/s. Mangalwar Filling Station	**Appellant**
Indian Oil Corporation Limited & ORS.	**Respondent**

Date of Judgement: July 07, 2021

M/s. Mangalwar Filling Station, a proprietary concern of Sh. Rajendra Kumar, is engaged in the business of running a petrol and diesel pump on the National Highway no.76, Udaipur Road, Chittorgarh, Rajasthan as granted by the respondent – Indian Oil Corporation Limited, had filed the present appeal, challenging the order passed by the Learned District Judge (Commercial Court – 02, Pataila House Court, New Delhi.

The Appellant was the owner of the land from where the petrol and diesel pump was being run, who as appointed by the respondent, as a dealer vide Letter of appointment and subsequently sold the land to the respondent and a fresh 'Dealership Agreement' was executed, whereby the appellant was appointed as the authorized dealer of the respondent to operate the petrol pump on the National Highway no.76, Udaipur Road, Chittorgarh, Rajasthan as a licensee of the respondent for a period of five years and thereafter for a period of one year until otherwise determined by either party.

There was a surprise inspection carried out by the respondent and an inspection and analysis report was prepared and during the inspection, the wire connecting the Mechanical Totaliser to the Computer Processing Unit [CPU] of one of the Dispensing Units was found broken, hence the respondent sought an explanation from the Appellant, as it was alleged that the Mechanical Totaliser was found to be non-functional and the readings in the totaliser remained static/stationery at 2833318. Subsequently, a Show Cause Notice was issued by the respondent for cancellation of the dealership with the appellant.

The Court held that, the appeal is devoid of merits, as the Appellant has failed to demonstrate that the findings of the learned Arbitrator as well as the learned District Judge are ex-facie perverse.

To read the Judgement in detail, please click here.

SUPREME COURT

1. **Supreme Court directs Dr. A.P.J. Abdul Kalam Technical University to grant affiliation to the petitioner Colleges for the Academic Year 2020-2021**

Sri Sai RR Institute of Pharmacy	Petitioner(s)
Dr. A.P.J. Abdul Kalam Technical University and Another	Respondent(s)

With

Sri Badrinath College of Pharmacy	Petitioner(s)
Dr. A.P.J. Abdul Kalam Technical University and Another	Respondent(s)

Date of Judgement: July 06, 2021

Petitions filed by the petitioner - colleges seeking various directions directing Dr. A.P.J. Abdul Kalam Technical University to comply with the Notification issued by the State Government and to grant conditional affiliation to the petitioner – colleges for the Academic Year 2020-2021 and to organize special examinations and to permit the students of the petitioner - colleges to participate in the special examinations. Since the contentions of the petitioner colleges were identical in the present writ petitions, the Court allowed it.

The writ petitions have been filed by the petitioner – colleges since the University has refused to grant affiliation to the petitioner – colleges and to permit their students to appear for First Year B. Pharma examination.

The present petition was allowed on terms that the University was directed to grant affiliation to the petitioner Colleges for the Academic Year 2020-2021 and also permit the students of the petitioner Colleges to participate in the special examinations to be organized by the University for the Academic Year 202021 in view of the Notification dated March 19, 2021.

To read the Judgement in detail, please click here.

DISCLAIMER The contents of this newsletter should not be construed as legal opinion. View detailed disclaimer.

This newsletter provides general information existing at the time of preparation. The newsletter is intended as a news update and Swift India Corporate Services LLP neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this newsletter. It is recommended that professional advice be taken based on the specific facts and circumstances. This newsletter does not substitute the need to refer to the original pronouncements.

+91 22 6669 5000

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.

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