Swift e-Bulletin

Swift e-Bulletin
Edition 15/21-22
Week – July 12th to July 16th

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

"Innovation distinguishes between a leader and a follower."

-Steve Jobs

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**"), the International Financial Services Centres Authority ("**IFSCA**") and the Insolvency and Bankruptcy Board of India ("**IBBI**"), and critical judgements and orders passed by the National Company Law Tribunal **("NCLT")**, SEBI, High Court and Supreme Court.

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

- **SEBI issues Circular on valuation of securities with multiple put options present ab-initio.**

- **International Financial Services Centres Authority ("IFSCA") provides a new framework for setting up of International Trade Financing Services Platform ("ITFS")**

- **IBBI amends IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of July 12, 2021 to July 16, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

SEBI UPDATES

1. **SEBI issues Circular on valuation of securities with multiple put options present ab-initio.**

- SEBI had earlier issued circulars relating to Provisions for valuation of securities with Put / Call options” on September 18, 2000 and September 24, 2019.

- In respect of valuation of securities with multiple put options present ab-initio wherein put option is factored into valuation of the security by the valuation agency, in relation to that, the following has been decided based on the recommendation of Mutual Fund Advisory Committee. If the put option is not exercised by a Mutual Fund (“**MF**”), while exercising the put option would be in favour of the scheme:

  - *A justification for not exercising the put option shall be provided by the Mutual Fund to the Valuation Agencies, Board of Asset Management Companies (“**AMC**”) and Trustees on or before the last date of the notice period.*
  - *The Valuation Agencies shall not take into account the remaining put options for the purpose of valuation of the security.*

- The put option shall be considered as ‘in favour of the scheme’ if the yield of the valuation price ignoring the put option under evaluation is more than the contractual yield/coupon rate by 30 basis points

- This Circular shall come into effect from October 01, 2021.

  To read the Circular in detail, please click here.

2. **SEBI issues clarifications with respect to Block Mechanism in demat account of clients undertaking sale transactions vide Circular dated July 16, 2021**

- SEBI, vide Circular dated September 15, 2020, issued clarification w.r.t. collection and reporting of margins by Trading Member (“**TM**”) / Clearing Member (“**CM**”) in Cash Segment. SEBI further clarified that if Early Pay-In (“**EPI**”) of securities has been made to the Clearing Corporation ("**CC**"), then all margins would have deemed to have been collected and penalty for short /non-collection of margin including other margins shall not arise.

- SEBI has received representations from the clients undertaking sale transactions, wherein the clients give EPI for sale trades which are yet to be executed. If the sale trade is executed, then the securities get adjusted against EPI, however, if securities remain unsold, then the securities are required to be returned back to client's Demat account, which took time and involved cost.

- SEBI after having extensive consultations with Depositories, Clearing Corporations and Stock Exchanges decided to provide a mechanism of block in the Demat account of clients undertaking sale transactions. When the client intends to make a sale transaction, shares will be blocked in the Demat account of the client in favour of Clearing Corporation. If sale transaction is not executed, shares shall continue to remain in the client's Demat account and will be unblocked at the end of the T day. Thus, this mechanism will do away with the movement of shares from client's Demat account for early pay-in and back to client's Demat account if trade is not executed.

- The Circular contains details pertaining to:

  - *Process flow for Block mechanism;*
  - *Matched orders*
  - *Unblocking of securities*
  - *Margining of Trades*

  To read the Circular in detail, please click here.

3. SEBI introduces Expected Loss ("EL") based Rating Scale and Standardisation of Rating Scales Used by Credit Rating Agencies vide Circular dated July 16, 2021

- SEBI, vide Circular dated June 15, 2011, had devised certain standardised rating symbols and their definitions used by the Credit Rating Agencies ("**CRAs**"). Further, SEBI vide Circular dated June 13, 2019 had standardised symbols and definitions for ratings of instruments having explicit credit enhancement feature.

- The Circular covers the following major aspects:

- ***Introduction of Expected Loss (EL) based Rating Scale:***

  In addition to the standardized rating scales prescribed by aforementioned circulars, subsequent to discussions with various stakeholders, the rating scale viz. EL based Rating Scale may be used by CRAs for ratings of projects/ instruments associated with infrastructure sector to begin with details of which are mentioned in the Circular.
  For existing outstanding ratings, the CRAs shall be guided by the para 6 of SEBI circular relating to existing outstanding ratings dated June 15, 2011.

- ***Standardisation of Rating Scales Used by Credit Rating Agencies:***

  - *CRAs, in terms of Regulation 9(f) of SEBI (Credit Rating Agencies) Regulations, 1999 ("CRA Regulations") relating to Conditions of certificate to CRAs, undertake ratings of various financial instruments under the guidelines of different financial sector regulators or authorities.*
  - *In order to standardise the usage of rating scales, CRAs are advised to align their rating scales with the rating scales prescribed under the guidelines of respective financial sector regulator or authority in terms of Regulation 9(f) of CRA Regulations, or in absence of the same, follow rating scales prescribed by the Board vide circular dated June 15, 2011, June 13, 2019, or any other circular issued by the Board from time to time.*
  - *CRAs are also advised to note Regulation 24(6) read with Regulation 24(9) relating to Rating process, of CRA Regulations and in cases where a rating scale has not been prescribed by a financial sector regulator or authority, CRAs shall only use rating scales prescribed by the Board from time to time.*

- *The CRAs have been directed to ensure compliance with the requirements of this circular, latest by March 31, 2022 and also place the compliance status of this circular before their Board of Directors. Further, the CRAs are advised to confirm compliance of this circular to SEBI latest by April 15, 2022. All the provisions of this circular are applicable with immediate effect except Section B relating to Standardisation of Rating Scales Used by Credit Rating Agencies which comes into effect from April 01, 2022.*

To read the Circular in detail, please click here.

IFSCA UPDATES

1. **IFSCA provides a new framework for setting up of ITFS**

- This framework which has been set up at International Financial Services Centres ("**IFSCs**"), is to enable exporters and importers to avail various types of trade finance facilities at competitive terms as exporters and importers face constraints in obtaining adequate finance, particularly in terms of their ability to convert their trade receivables into liquid funds or to obtain short term funding for their payments for import of goods / services.

- Among other areas, some of the few subjects covered by this framework, are as follows:

  - *Permissible activities;*
  - *The process for setting up an ITFS;*
  - *Criteria for setting up an ITFS which include Financial, technological and other eligibility criteria's;*
  - *Execution of necessary agreements; and*
  - *Other compliance requirements of such players;*

To read the Circular in detail, please click here.

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IBBI UPDATES

1. **IBBI amends IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 vide Gazette Notification dated July 14, 2021.**

- These regulations shall be called Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2021, which shall come into immediate effect and shall be applicable on every corporate insolvency resolution process ongoing or commencing on or after the date of coming into force of these regulations.

- Vide this amendment where there were any references to a resolution professional, shall henceforth also include an interim resolution professional.

- A new disclosure provision has been inserted vide regulation **4B** (**Disclosure of changes in name and address of corporate debtor**) whereby, any changes that has occurred during the past 2 years in respect of the name or registered office of the corporate debtor then the interim resolution professional or resolution professional, as the case may be, shall disclose all the former name(s) and registered office address(es) so changed along with the current name and registered office address in every communication, record, proceeding or any other document.

- In Regulation 27 (**Appointment of professionals**):

  - *An interim resolution professional or resolution professional can also appoint any other professional to assist them other than a Valuer.*
  - *Any fees payable to or expenses incurred by such professionals shall be raised in the name of the professional and be paid directly into the bank account of such professional.*
  - *A new form has been inserted **Form CIRP 8** which a resolution professional shall file intimating details of his opinion and determination on preferential transaction on or before the one hundred and fortieth day of the insolvency commencement date.*

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

JUDGEMENTS/ ORDERS

NCLT

1. **National Company Law Tribunal Initiates Corporate Insolvency Resolution Process ("CIRP") against M/s. Gammon Engineers and Contractors Private Limited**

NCLT, Mumbai Bench ("Tribunal") admits the application filed by M/s. Masstrans Technologiies Private Limited **("Operational Creditor")** under section 9 of the Insolvency and Bankruptcy Code, 2016 **("IBC")** and Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and initiates CIRP against the M/s. Gammon Engineers and Contractors Private Limited **("Corporate Debtor").**

The Corporate Debtor had entered into an agreement with Operational Creditor towards the supply of subcontract works for design, supply, installation, testing and commissioning of Highway Traffic Management System of Gorakhpur Bypass Project on NH-28 in the State of Uttar Pradesh. The Operational Creditor had raised various invoices in respect of said services, however the Corporate Debtor failed to make any payments against such invoices, amounting to a default of INR 2,25,40,000 /- including the interest component towards the services rendered during various intervals of time.

The Operational creditor had submitted various proofs evidencing that the said invoices were duly recorded in the Corporate Debtor's books of accounts. The Operational Creditor had also served a demand notice, demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

The Corporate Debtor failed to issue any reply / letter against the issue of the demand notice and against the application filed by the Operational Creditor under section 9 of IBC. On the date of hearing, the Corporate Debtor denied all the averments and allegations raised by the Operational Creditor before the Adjudicating Authority. Tribunal on careful examination of the averments made by the Corporate Debtor declared that contention raised by the Corporate Debtor are not legally sustainable and are liable to be rejected as it is an afterthought to avoid the liabilities of Operational Creditor.

Moreover, based on the facts presented, Tribunal was satisfied that the Corporate Debtor had made a default in payment for services rendered by the Operational Creditor and the Corporate Debtor didn't point out any dispute relating to it before or at the hearing of this case. Tribunal admitted the said application filed by the Operational Creditor and declared moratorium in accordance to section 14 of the IBC. Since no name was proposed by the Operational Creditor for Insolvency Resolution Professional **("IRP")**, Tribunal resolved to appoint Mr. Vasudev Ganesh Nayak Udupi to act as the IRP. Tribunal further directed the Operation Creditor to deposit an amount of INR 2,00,000 (INR Two Lakhs) to the IRP to meet the immediate expenses for CIRP which shall be fully accountable by the IRP and shall be reimbursed to the Operational Creditor as costs of the CIRP.

To read the order in detail, please click here.

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SEBI

1. **SEBI grant exemption to the acquirer from public announcement of an open offer for acquiring substantial and indirect acquisition of shares or control**

In the matter of proposed acquisition of shares and voting rights in Capri Global Capital Limited **("Target Company")**, an application was filed by JJR Family Trust **(Proposed Acquirer)** seeking exemption from public announcement of an open offer for acquiring shares of Target Company in accordance with the regulations 3 (1) and 5(1) read with regulation 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 **("Takeover Regulations, 2011")**.

SEBI considered the application and states that, there will not be any change in control of the Target Company pursuant to the proposed acquisition by the proposed acquirer, the pre-acquisition and post-acquisition shareholding of the promoters and promoter group in the Target Company will remain the same, there will also be no change in the public shareholding of the Target Company, the Target Company shall continue to be in compliance with the Minimum Public Shareholding requirements.

After considering the afore-mentioned view, SEBI granted exemption to the proposed acquirer subject to fulfillment of certain conditions.

To read the in detail, please click here.

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HIGH COURT

1. Delhi High Court held that no party can be permitted to unilaterally appoint an Arbitrator, as the same would defeat the purpose of unbiased adjudication of dispute between the parties

Hashnine Systems Private Limited	Appellants
Eastern Air Command Head Quarters), Indian Air Force	Respondents

Date of Judgement: July 13, 2021

The Present petition was filed by M/s Hashnine Systems Private Limited seeking appointment of an arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for adjudication of disputes arisen between the petitioner and respondent, being the Eastern Air Command Head Quarters), Indian Air Force.

Due to dispute between the parties, where the petitioner had alleged that the respondent has arbitrarily invoked the Bank Guarantees and all the efforts put in by the respondent to resolve the dispute, went in vain. For which the petitioner had sent a legal notice to the respondent to refund the amount with interest followed by a subsequent notice to consider the notice to be a “Notice Invoking Arbitration under Clause 3 of the Part III – Standard Conditions and Supply Orders and later an Arbitrator was called upon to arbitrate the dispute.

The Court heard both the parties and recorded the case and held that no party can be permitted to unilaterally appoint an Arbitrator, as the same would defeat the purpose of unbiased adjudication of dispute between the parties. The Court then allowed the present petition by appointing a sole Arbitrator to adjudicate the dispute between the parties and further directed that the arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC)

To read the Judgement in detail, please click here.

2. **Delhi International Arbitration Centre (DIAC) was appointed to arbitrate dispute between Delhivery and SS Supply Chain Solutions.**

Delhivery Private Limited	**Petitioner**
SS Supply Chain Solutions Private Limited	**Respondent**

Date of Judgement: July 14, 2021

The petition filed by M/s Delhivery Private Limited seeks reference of disputes under two agreements and in order to avoid multiplicity of the proceedings, whereby the Court in this case had decided to entertain only single petition for both the agreements, which the respondent had not chosen to reply to the petition in which the petitioner had invoked arbitration under the said agreement, not disputed the referability of the controversy to the arbitration.

The Court here had identified that in the present petition, the dispute appears to be with respect to the identity of the arbitrator to arbitrate thereon where the task of appointing an arbitrator falls on this Court, as the parties to the dispute were not able to agree between themselves as to the arbitrator to arbitrate on the dispute.

The dispute was then referred to the Delhi International Arbitration Centre (DIAC) to conduct as per the rules and regulations of the DIAC and the arbitrator would be entitled to fees in accordance with the schedule of fees fixed by the DIAC. The petition was then disposed of on terms that, as the disputes had arisen under two agreements, there shall be two arbitral proceedings assigned to the same arbitrator due to interconnect between the parties.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **The constitutional validity of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, challenged.**

Franklin Templeton Trustee Services Private Limited and Another	Appellant(s)
Amruta Garg and Others etc	Respondent(s)

Date of Judgement: July 14, 2021

Securities and Exchange Board of India (Mutual Fund) Regulations, 1996 had directed winding up of six mutual fund schemes of Franklin Templeton Trustee Services Private Limited. The Regulations envisages a three-tier structure for mutual funds in the form of the sponsor, the board trustees or the trustee company and the asset management company (the AMC).

When a scheme is to be wound up, the trustees are required to issue a public notice in two daily newspapers having all India circulation and in vernacular paper having circulation where the mutual fund is located, which shall state the circumstances leading to winding up of the scheme. On and from the date of publication, the cease and freeze mandate, the trustees and the AMC shall cease to carry on the business in respect of the scheme to be wound up, create and cancel units of the scheme to be wound up and create and or cancel units of the scheme, and issue or redeem units of the scheme.

The constitutional validity of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 has been challenged

The case set up by some parties is at variance with the statement by the High Court, who have submitted that the mutual fund must honour the request for redemptions received on or before the date of publication of notice.

The Supreme Court stated that it would begin to refer to the provisions of the SEBI Act and by elucidating the powers of SEBI was of the view that it would have greater clarity on the factual matrix and once the facts are clear and ascertained it would be able to appreciate and understand the practical impact of the respective interpretations, as the legal interpretation of the Regulations to be extent indicated and are conclusive and binding.

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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