Swift e-Bulletin

Swift e-Bulletin
Edition 16/21-22
Week – July 19th to July 23rd

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

“Why shouldn’t I live every moment to the fullest? Why shouldn’t I admire the beauty in every fragment?”

-Atal Bihari Vajpayee

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**"), 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:

- **MCA issues new norms for name change pursuant to order of Government**

- **SEBI provides relaxation to Debenture Trustees in complying with timelines under various regulatory requirements.**

- **International Financial Services Centres Authority ("IFSCA") issues guidelines for issuance of Certificate of Deposits ("CDs")**

- **Insolvency and Bankruptcy Board of India ("IBBI") amends Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of July 19, 2021 to July 23, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

MCA UPDATES

1. **MCA issues new norms for name change pursuant to order of Government vide Gazette Notification dated July 22, 2021**

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

- In case a company fails to change its name within the time lines pursuant to order of Government under Section 16 (1) of the Companies Act, 2013 either due to the fact that the name of the company resembles any other companies name which is in existence or it resembles any registered trademark of any other proprietor and such proprietor has made an application for the same. Then the letters "ORDNC" ("**Order of Regional Director Not Complied**"), the year of passing of the direction, the serial number and the existing Corporate Identity Number ("**CIN**") of the company shall become the new name of the company and accordingly a new certificate of incorporation in Form No.INC-11C shall be issued.

- Provided that the name of the company won't change as above in case e-form INC-24(Name change Application) has already been filed by the company and is pending for disposal.

- A Company whose name has been changed as above shall make sure that the word ORDNC shall be mentioned in brackets below the name of company, wherever its name is printed, affixed or engraved unless the company subsequently changes its name.

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

2. **MCA Notifies Section 4 of the Companies Amendment Act, 2020 vide Gazette Notification dated July 22, 2021**

- MCA hereby notifies Section 4 of the Companies Amendment Act, 2020 (Rectification of Name of the Company) whereby Under Section 16 (1) (b) a company shall change its name pursuant to an order of the Government within 3 months from the said order rather than the earlier 6 months.

- This notification shall come in to effect from September 01, 2021.

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

To read the Companies (Amendment) Act, 2020, please click here.

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SEBI UPDATES

1. **SEBI provides relaxation to Debenture Trustees in complying with timelines under various regulatory requirements vide Circular dated July 20, 2021**

- SEBI had earlier provided relaxations in timelines for compliance with certain regulatory provisions of SEBI Circular dated November 12, 2020 vide Circular dated May 03, 2021.

- As a result of the present pandemic and upon representations received from debenture trustees, SEBI has provided for the following relaxations in timelines for compliance under respective regulations as below:

<table>
<tr><th>Sr. No</th><th colspan="2">Regulatory requirements of SEBI circular dated November 12, 2020</th><th>Current timeline</th><th>Extended timeline</th></tr>
<tr><td rowspan="6">1</td><td colspan="2">Submission of reports/ certifications to Stock Exchanges</td><td rowspan="6">July 15, 2021</td><td></td></tr>
<tr><td>a.</td><td>Asset Cover Certificate</td><td>August 31, 2021</td></tr>
<tr><td>b.</td><td>A statement of value of pledged securities</td><td>August 31, 2021</td></tr>
<tr><td>c.</td><td>A statement of value for Debt Service Reserve Account (DSRA) or any other form of security offered</td><td>August 31, 2021</td></tr>
<tr><td>d.</td><td>Net worth certificate of guarantor (secured by way of personal guarantee)</td><td>October 31, 2021</td></tr>
<tr><td>e.</td><td>Financials/ value of guarantor prepared on basis of audited financial statement etc. of the guarantor (secured by way of corporate guarantee)</td><td>October 31, 2021</td></tr>
</table>

	f.	Valuation report and title search report for the immovable/ movable assets, as applicable.		October 31, 2021
2	Following disclosures on the website: i. Monitoring of asset cover certificate and quarterly compliance report of the listed entity. ii. Monitoring of utilization certificate iii. Status of information regarding breach of covenants/ terms of the issue, if any action taken by debenture trustee iv. Status regarding maintenance of accounts maintained under supervision of debenture trustee		July 15, 2021	August 31, 2021

To read the Circular, please click here.

2. **SEBI issues Circular on segregation and monitoring of Collateral at Client Level vide Circular dated July 20, 2021.**

- In order to further strengthen the mechanism of protection of client collateral from misappropriation or misuse by Trading Member ("**TM**") / Clearing Member ("**CM**") or default of TM/CM, SEBI issued the following framework for segregation and monitoring of collateral at client level.

- Framework pertaining to reporting mechanism and collateral deposit as well as allocation will come into effect from October 01, 2021 while other provisions will become effective from December 01, 2021. Some of the important aspects covered by the said framework is as under:

  - **Reporting Mechanism:**
    Reporting shall cover both cash as well as non-cash segments, proper disclosure of disaggregated information and also web portal shall be provided

by Clearing Corporation ("**CC**")/ SE to allow clients to view aforesaid disaggregated collateral reporting by TM/CM.

- **Collateral deposit and allocation**
  In case of securities collateral provided to CC through margin pledge or re-pledge in the depository system, then CC has visibility of the client to whom such securities belong to, and accordingly is able to assign the value of the securities

- **Collateral Valuation**

  CMs are required to maintain at least 50% of the total collateral in the form of cash or cash equivalents.

- **Some of the other guidelines mentioned in the Circular are:**

  - *Withdrawal of collateral*
  - *Client Margin Reporting*
  - *Default Management Process*

To read the Circular in detail, please click here.

3. **SEBI amends continuous disclosures in compliances by Infrastructure Investment Trusts ("InvITs") vide circular dated July 22, 2021**

- SEBI had earlier issued Circular dated November 29, 2016 which prescribed guidelines for Grievance Redressal Mechanism for InvITs.

- In order to further enhance investor protection and to increase transparency in grievance Redressal, Para 5.3 of Annexure B of SEBI Circular dated November 29, 2016 relating to Grievance Redressal Mechanism stands modified by SEBI as under:

  "5.3 All complaints including SCORES complaints received by the InvIT shall be disclosed in the format mentioned in ***Annexure – A*** *to the Circular on the website of the InvIT and also filed with the recognized stock exchange(s), where its units are listed within 21 days from the end of financial year or end of quarter, as the case may be."*

To read the Circular in detail, please click here.

4. **SEBI amends continuous disclosures in compliances by Real Estate Investment Trusts ("REITs") vide circular dated July 22, 2021**

- SEBI had earlier issued Circular dated December 29, 2016 which prescribed guidelines for Grievance Redressal Mechanism for REITs.

- In order to further enhance investor protection and to increase transparency in grievance Redressal, Para 5.3 of Annexure B of SEBI Circular dated December 29, 2016 relating to Grievance Redressal Mechanism stands modified by SEBI as under:

  "5.3 All complaints including SCORES complaints received by the REIT shall be disclosed in the format mentioned in ***Annexure – A*** *to the Circular on the website of the REIT and also filed with the recognized stock exchange(s), where its units are listed within 21 days from the end of financial year or end of quarter, as the case may be."*

  To read the Circular in detail, please click here.

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IFSCA UPDATES

1. **IFSCA issues guidelines for issuance of Certificate of Deposits ("CDs") vide Circular dated July 20, 2021.**

- CDs are negotiable instruments issued in dematerialized form or as a Usance Promissory Note against funds deposited at a Banking Unit ("**BU**") for a specified time period, in relation to it the following guidelines shall be applicable some of which are:

  - *CD can be denominated in any freely convertible foreign currency;*
  - *Minimum amount shall be USD 2500 or equivalent in any freely convertible foreign currency;*
  - *The maturity period of CDs issued by BUs should not be less than 7 days and not more than one year, from the date of issue;*
  - *CDs may be issued in physical form or in Demat form; and*
  - *IBUs shall not grant loans against CDs;*

  To read the Circular in detail, please click here.

2. **IFSCA issues International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021 vide Gazette Notification**

- These listing regulations are applicable to Initial Public Offer ("**IPO**") issued of specified securities by an unlisted issuer, listing of specified securities by a start-up or a Small and Medium Enterprises ("**SME**") company and an IPO of specified securities by a Special Purpose Acquisition Company ("**SPAC**"), among others.

- The entire regulation has been broken down into various chapters covering different areas. Some of the important chapters of this regulations are:

  - **Chapter III – IPO**

    - This chapter covers eligibility criteria for issuance of IPO which are:

a) Issuer shall have operating revenue of at least USD 20 million in the preceding financial year
b) Issuer shall have average pretax profit of at least 1 million in the preceding 3 financial years and such other conditions has maybe mentioned
c) This chapter also includes regulation on offer size, underwriting pricing and issue size etc.

➢ **Chapter IV – Listing norms for Startup and SME**

- Start- up can also list its securities on the recognized stock exchange with or without making a public offer however it should:

  a) Offer document shall be filed within 10 years from the date of incorporation and shall have annual turnover not exceeding USD 20 million in any of the financial years since incorporation
  b) This chapter also includes regulation on offer size, underwriting pricing and issue size etc.

➢ **Chapter VI – Listing norms for Special Purpose Acquisition Companies ("SPAC")**

- SPAC shall be eligible to raise capital through an IPO if

  a) the target business combination has not been identified prior to the IPO
  b) The SPAC has the provisions for redemption and liquidation in line with these Regulations

➢ **Keeping in mind Environment, Social and Governance ("ESG") issues, these regulations also have issued regulatory compliances for issuers issuing ESGDebt Securities**

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

IBBI UPDATES

1. **IBBI amends Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 vide Gazette Notification dated July 22, 2021.**

- These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2021.

- Among other changes some of the important changes made to the said regulation are as below:

  - *Qualification and experience criteria for registering as a resolution professional has been amended;*
  - *Regulation 9 (Registration for a limited period of time) has been omitted;*
  - *Regulation 13 (Recognition of Insolvency Professional Entities) has been slightly twerked whereby there has been changes in the timeframe within which the Board shall either approve or reject the application for registration as an insolvency professional agency*

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

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JUDGEMENTS/ ORDERS

NCLT

1. **National Company Law Tribunal Initiates Corporate Insolvency Resolution Process ("CIRP") against M/s. Rajesh Estates and Nirman Private Limited**

NCLT, Mumbai Bench ("Tribunal") admits the application filed by Steel Investments Private Limited **("Financial Creditor")** under section 7 of the Insolvency and Bankruptcy Code, 2016 **("IBC")** and Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and initiates CIRP against M/s Rajesh Estates and Nirman Private Limited **("Corporate Debtor").**

The Financial Creditor advanced a sum of INR 2,80,00,000/- to the Corporate Debtor in various tranches. The said credit facilities were enhanced, renewed and reviewed between the parties from time to time. The learned council of the Financial Creditor affirmed that all cheques issued by corporate debtor in the favor of applicant were returned dishonored and despite repeated reminders to repay the loan amount, the Corporate Debtor failed to repay the loan amount. However, due to non-payment of installments, interest and principal debt, the account of the Corporate Debtor had defaulted to repay the total sum of INR 2,80,00,000/- to the Financial Creditor.

In response to the averments made by the Financial Creditor, the learned council of the Corporate Debtor argued that the Financial Creditor permitted the Corporate Debtor to avail only a part of the entire credit facility. The remaining sanctioned sum was gradually denied to the Corporate Debtor and such deduction of promised funds culminated the series of adverse consequences.

Based on the facts presented, Tribunal was satisfied that the Corporate Debtor had made a default in its payment commitments to the Financial Creditor and the Corporate Debtor didn't point out any dispute relating to it before the hearing of this case.

Tribunal admitted the said application filed by the Financial Creditor and declared moratorium in accordance to section 14 of the IBC. Tribunal resolved to appoint Mr. Kaushik Chandrahas Khona to act as the Insolvency Resolution Professional **("IRP")**. Tribunal further directed the Financial Creditor to deposit an amount of INR 5,00,000 to the IRP to meet the immediate expenses for CIRP and to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 which shall be fully accountable by the IRP and shall be reimbursed to the Financial Creditor.

To read the order in detail, please click here.

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SEBI

1. **SEBI imposes penalty on the promoters of M/s Geodesic Limited ("Company") on account of failure to make event based disclosures under Takeover Code and Insider Trading Regulations**

Securities and Exchange Board of India **("SEBI")** conducted investigation and observed prima facie violations of by the Promoters under Regulations 31(1) and 31(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, Regulation 13(4) and1 3(4A) of SEBI (Prohibition of Insider Trading) Regulations, 1992, read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation 29(2) of SAST Regulations, 2011 ("**Regulations**"). This regulation requires the person to make disclosures on triggering of events as specified in the said regulations.

The Adjudicating officer ("**AO**") sent Show Cause Notice ("**SCN**") to Promoter and considering that no replies where filed by Promoters to SCN, Adjudicating officer ("**AO**") was of the view that Promoters have nothing to submit and have admitted to charges levelled against. The AO analysed the provisions of the Regulations and observed that Promoters where at default for not making relevant disclosures under said Regulations.

Further noted that the necessary disclosures mandated under the Regulations are to collect and provide vital information of the Company. If any person who is to make such disclosures doesn't make it and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of rights to them. As a result of the violation committed by the Promoter, the investors were deprived of valuable which would have enabled them to take informed decisions regarding their investments in the Company.

To read the order in detail, please click here

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HIGH COURT

1. Suit filed by Snapdeal against Futuretimes Techonologies was decreed in its favour.

Snapdeal Private Limited	Plaintiff
M/S Futuretimes Technologies Private Limited	Defendant

<u>Date of Judgement</u>: July 19, 2021

The present suit has been filed by M/s Snapdeal Private Limited, a company incorporated under the Companies Act, 1956 engaged in the business of online marketing through its online marketplace www.snapdeal.com which provides for an online platform for the third party sellers to connect with millions of customers to buy products from any part of the country. The defendant to the suit is an Indian Subsidiary of Jiayun Data Technology Company which runs and operates the E-Commerce website www.clubfactory.com for shopping apparel and accessories.

The plaintiff had categorized the E-Commerce platforms into two types, mainly the "inventory based" and "marketplace based" as per the Guidelines for Foreign Direct Investment (FDI) in E-Commerce and review of the policy of the FDI. This was because plaintiff has come across several advertisements on Facebook by the e-commerce portal www.clubfactory.com , with the byline "Everything cheaper than Snapdeal".

The defendant had launched a targeted campaign, which was clearly a false advertising, claiming that everything on its portal was cheaper than on Snapdeal's portal, in view to divert the attention Snapdeal's customers on false promises to earn the revenues. This being the case, the present suit was filed by Snapdeal seeking a decree of permanent injunction restraining the defendant from tarnishing the Snapdeal trademarks and for causing malicious injury to the business, reputation and goodwill of Snapdeal trademarks. Further the plaintiff has also sought decree of damages against the defendants of an amount of INR 2,00,01,000/- towards loss of sales, reputation and goodwill of the trademark which was caused due to the activities of the defendant.

The present suit was decreed in favour of the plaintiff and against the defendant and further it was agreed by the plaintiff will not raise the claim of damages and the suit was accordingly disposed of.

To read the Judgement in detail, please click here.

2. The dispute between Indian Ocean Energy Pte Limited and Bumi Geo Engineering Limited was referred to Singapore International Arbitration Centre (SIAC) to arbitrate.

Indian Ocean Energy Pte. Limited & ANR	**Petitioners**
Bumi Geo Engineering Limited & ANR	**Respondents**

Date of Judgement: July 21, 2021

The petitioners were approached by the respondent in the year 2014 seeking investment in Bumi Geo Engineering Pte. Limited and in the years of 2014-15 and 2015-16 had invested Singapore Dollars 4 Million (approx.) in the said entity, relying on the faith of certain representations, assurances and warranties of the respondents. Subsequently, it was realized that the respondent had made fraudulent misrepresentations to secure such investments from the petitioner and had further misappropriated the and siphoned off the investments.

The said dispute was referred to Singapore International Arbitration Centre (**SIAC**) to arbitration and further the Delhi High Court had referred the matter to Delhi High Court Mediation and Conciliation Centre for petitioners and respondents to explore possibility of settlement.

Pursuant to the hearing of the case, it was submitted that the petitioners and respondents have amicably resolved their disputes before the Delhi High Court Mediation and Conciliation Centre in terms of Settlement Agreement and suit was decreed and all pending applications were accordingly disposed of.

To read the Judgement in detail, please click here.

SUPREME COURT

1. Supreme Court partly allows the appeal filed by the Builder - M/s. Laureate Buildwell Private Limited

M/s. Laureate Buildwell Private Limited	Appellant(s)
Charanjeet Singh	Respondent(s)

Date of Judgement: July 22, 2021

M/s. Laureate Buildwell Private Limited, was aggrieved by an order of the National Consumer Dispute Redressal Commission **("NCDRC")** and the respondent, Mr. Charanjeet Singh, being the purchaser of the flat and paid an amount of INR 100,000/- as advance towards the total sale consideration and who along with Ms. Madhabi Venkatraman (being the original allottee who had initially applied for the allotment of residential flat), agreed that the balance amount of sale consideration would be paid along with outstanding instalments, directly after the possession of the flat to him. The original allottee, had noticed the slow pace of construction, and then had decided to sell the flat to the purchaser.

The purchase alleged that possession was not delivered as promised in the allotment letter and decide to wait for the possession and not to make any payment towards the sale. However, the original allottee insisted upon the execution of an agreement to sell and demanded payment of instalments, which she had made to the builder, stating that she could not wait any further and she would forfeit the earnest money and cancel the deal. Further, the purchaser alleged that he made enquiries from the officials of the builder, who assured that the possession would be delivered by June 2016. Thereafter the purchaser entered into an agreement of sale with the original allottee, and paid an amount of INR 1,85,00,000/-.

The Supreme Court in the present case held that, there is material on the record suggestive of the circumstance that even as on the date of presentation of the present appeal, the occupancy certificate was not forthcoming. As the interests of justice demand that interest in favour of the respondent be granted from that date when the purchaser/respondent had stepped into the shoes of the original allottee, and intimated Laureate about the facts. The directions of the NCDRC are accordingly modified and the appeal is partly allowed.

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).

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