Swift e-Bulletin

Swift e-Bulletin
Edition 19/21-22
Week – August 09th to August 13th

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

"A fundamental concern for others in our individual and community lives would go a long way in making the world the better place we so passionately dreamt of"

-Nelson Mandela

Introduction

We welcome you to our weekly newsletter!

The 'Swift e-Bulletin' - weekly newsletter, covers all regulatory updates and critical judgements passed during the week. We hope that you liked our previous editions and found it to be of great value in its content. We want this newsletter to be valuable for you so, please share your feedback and suggestions to help us improve.

Further, various regulatory authorities have been proactive in bringing significant regulatory changes in recent challenging times. This week's newsletter covers various Circulars/notifications issued by certain regulatory authorities such as the Ministry of Corporate Affairs ("**MCA**"), the Securities and Exchange Board of India ("**SEBI**") and the International Financial Services Centres Authority ("**IFSCA**") and critical judgements and orders passed by the National Company Law Tribunal **("NCLT")**, SEBI, High Court and Supreme Court.

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

- **MCA amends Schedule III of Companies Act on disclosure norms in financial statements**

- **SEBI issues Operational Circular for issue and listing of Non-Convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper**

- **IFSCA issues clarifications regarding International Financial Services Centres Authority (Finance Company) Regulations, 2021**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of August 09, 2021 to August 13, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

MCA UPDATES

1. **MCA amends Schedule III of Companies Act on disclosure norms in financial statements vide Press release dated August 10, 2021**

- To bring in greater transparency in reporting of financial statements, the Ministry of Corporate Affairs (MCA) vide notification dated March 24, 2021 has amended the Schedule III to the Companies Act, 2013 effective from April 01, 2021 to mandate various disclosures by companies in their financial statements.

- The following new disclosures with respect to the virtual currency/crypto currency transactions and CSR spending undertaken by companies during a financial year are:

  - ***Details of Crypto Currency or Virtual Currency:*** *Where the Company has traded or invested in Crypto currency or Virtual Currency during the financial year, the following shall be disclosed:*
    - *Profit or loss on transactions involving Crypto currency or Virtual Currency;*
    - *Amount of currency held as at the reporting date; and*
    - *Deposits or advances from any person for the purpose of trading or investing in Crypto Currency/virtual currency.*

  - ***Details of Corporate Social Responsibility ("CSR"):*** *Where the company covered under Section 135 of the Companies Act, 2013, the following shall be disclosed with regard to CSR activities*
    - *amount required to be spent by the company during the year,*
    - *amount of expenditure incurred,*
    - *shortfall at the end of the year,*
    - *total of previous years' shortfall,*
    - *reason for shortfall,*
    - *nature of CSR activities,*
    - *details of related party transactions, e., contribution to a trust controlled by the company in relation to CSR expenditure as per relevant Accounting Standard and*

- *where a provision is made with respect to a liability incurred by entering into a contractual obligation, the movements in the provision during the year should be shown separately.*

To read the Press release, please click here.

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SEBI UPDATES

1. **SEBI extends calendar spread margin benefit in commodity futures contracts vide Circular dated August 09, 2021**

- SEBI had earlier prescribed norms, for providing margin benefit on calendar spread positions in commodity futures contracts vide Circular dated March 20, 2018.

- The calendar spread margin benefit is presently applicable for the first three expiries only. The market participants have submitted requests that the extension of this benefit beyond the first three expiries is expected to increase liquidity in far month contracts, facilitate hedging by value chain participants and reduce cost of trading and considering the possible benefits likely to accrue to the investors, in consultation with clearing corporations, SEBI has decided to extend the spread margin benefit beyond the first three expiries to first six expiries.

  To read the Circular in detail, please click here.

2. **SEBI issues Operational Circular for issue and listing of Non-Convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated August 10, 2021**

- SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (hereinafter referred to as the SEBI NCS Regulations, 2021) were notified Vide notification dated August 09, 2021, pursuant to merger and repeal of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as the SEBI ILDS Regulations, 2008) and SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 (hereinafter referred to as the SEBI NCRPS Regulations, 2013).

- Since the notification of the SEBI ILDS Regulations, 2008 and the SEBI NCRPS Regulations, 2013, SEBI has issued multiple Circulars covering procedural and operational aspects thereof. The process of merging these regulations into the SEBI NCS Regulations, 2021 also entails consolidation of related existing Circulars (**Annex - 1**) into a single operational Circular, with consequent changes. The stipulations contained in such circulars have been detailed chapter-wise by SEBI in this operational circular. Accordingly, the circulars listed at **Annex – 1** to the Circular stand superseded by this operational Circular.

- This operational Circular provides a chapter-wise framework for the issuance, listing and trading of Non-Convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities or Commercial Paper.

- While this Circular covers instruments under the NCS Regulations, certain chapters contain provisions applicable to issue of securities under the SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 (hereinafter referred to as the SEBI SDI Regulations, 2008) and SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015 (hereinafter referred to as the SEBI ILDM Regulations, 2015). This has been accordingly indicated in the chapters.

- The Circular contains 18 chapters ranging from Application process in case of public issues of securities and timelines for listing to Reporting of Trades, Listing of commercial paper etc.

  To read the Circular in detail, please click here.

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IFSCA UPDATES

1. **IFSCA issues clarifications regarding International Financial Services Centres Authority (Finance Company) Regulations, 2021 vide Circular dated August 09, 2021.**

- IFSCA had notified International Financial Services Centres Authority (Finance Company) Regulations, 2021 (hereinafter referred to as 'Finance Company Regulations') on March 25, 2021.

- In order to facilitate financial services under Finance Company Regulations, IFSCA has clarified that an entity which has obtained a certificate of registration or authorisation for a specific activity either under a framework or a regulation administered by IFSCA, shall not be required to seek a fresh registration under the Finance Company Regulations for carrying out the same activity, which is a permissible activity under Regulation 5 related to Permissible activities of the said Regulations.

- However, a certificate of registration under Finance Company Regulations shall be required to be obtained by an entity intending to carry out such permissible activities which are not covered under the regulations/framework under which it has already been granted registration/authorisation, if any.

To read the Circular in detail, please click here.

2. **IFSCA issues guidelines on Corporate Governance and Disclosure Requirements for a Finance Company vide Circular dated August 09, 2021**

- Guidelines on Corporate Governance and Disclosure Requirements specified in this Circular aim to ensure accountability, transparency and sustainability for the Finance Company in order to foster investor confidence and achieve long term sustainable business goals.

- Every Finance Company have been directed to formulate a framework on the Corporate Governance and Disclosure Requirements which shall be consistent with the letter and spirit of the guidelines set out in this Circular. These guidelines shall be in addition to the Corporate Governance and Disclosure Requirements mandated under the Companies Act, 2013.

- The generic guidelines as contained in Part I of this Circular shall be applicable to every Finance Company registered with the International Financial Services Centres Authority (hereinafter referred to as 'Authority') under regulation 3 relating to Registration requirements of the Regulations.

- The detailed guidelines as contained in Part II of this Circular shall be applicable to a Finance Company registered with the Authority under regulation 3 of the Regulations and intending to undertake activities as mentioned at Sr. No. 5 and 6 of the Schedule therein, namely:

  - *Undertaking one or more core activities with or without non-core activities, and;*
  - *Undertaking specialized activities with or without core or non-core activities.*

- Part I contains the following generic guidelines on:

  - *Corporate governance framework and disclosure; and*
  - *Fit and Proper Criteria.*

- Part II contains the following detailed guidelines on:

  - *Board of Directors;*
  - *Compliance Officer;*
  - *Committees of the Board;*
  - *Related Party Transactions; and*
  - *Disclosure and Transparency.*

  To read the Circular 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. Schema Enterprises Private Limited.**

NCLT, Mumbai Bench **("Tribunal")** admits the application filed by M/s. Utratech Cement 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. Schema Enterprises Private Limited **("Corporate Debtor")**.

The Operational Creditor had supplied various construction materials as per the orders and requests of Corporate Debtor. The Operational Creditor had also raised various invoices in respect of the materials provided by it at periodic intervals, however Corporate Debtor failed to make any payments against such invoices, amounting to a default of INR 6,20,622 /- (INR Six Lakhs Twenty Thousand Six Hundred and Twenty-two) including the interest component towards the goods supplied 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 failed to appear before the Tribunal. Further, Tribunal declared that the application is not time barred and filed within the period of limitation.

Based on the facts presented, Tribunal was satisfied that the Corporate Debtor had made a default in payment for materials provided 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. Balaji Shrirang Sagar to act as the IRP. Tribunal further directed the Operation Creditor to deposit an amount of INR 2,00,000 to the IRP towards initial CIRP cost 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 imposes penalty on employee of Infosys Ltd ("Company") under insider trading regulations.**

Securities and Exchange Board of India ("**SEBI**") carried out an investigation in the matter of circulation of Unpublished Price Sensitive Information **("UPSI")** in the scrip of the Company to ascertain any possible violation of the provisions of the SEBI Act and SEBI Prohibition of Insider Trading Regulations, 2015 ("**PIT Regulations**") It was observed that the Company had announced financial results for the quarter ended December 31, 2016 and the Associate Manager-Business Finance ("**Noticee**") of the Company during the investigation period and being an "insider" as stated under PIT regulation bought and sold scrips of the Company. It was alleged that the Noticee had in possession of UPSI while trading in the scrips of the Company.

The Adjudicating officer **("AO")** sent Show Cause Notice **("SCN")** to the Noticee stating that why an inquiry should not be held against him. However, the Noticee never responded to the SCN delivered to him and considering the principle of natural justice Noticee was given opportunity for personal hearing. Still Notice never came and the AO quoting previous precedents came to conclusion that Noticee has accepted alleged violation.

The AO analyzed the provisions and after considering the facts of the case was satisfied that Notice was an insider and has violated the regulations of PIT regulation. Further also the Noticee failed to comply with the Code of Conduct under PIT Regulation. The AO was also convinced that Noticee was in possession of UPSI and used it for his advantage. Accordingly, AO imposed appropriate penalty was imposed on Noticee.

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To read the order in detail, please click here

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HIGH COURT

1. **Bentwood Seating System Private Limited files an appeal under Section 37 of the Arbitration and Conciliation Act, 1996**

Bentwood Seating System Private Limited	Appellant
Airport Authority of India	Respondent

Date of Judgement: August 11, 2021

Bentwood Seating System Private Limited ("**BSSPL**"), filed the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996, challenging the judgement and order passed by the Delhi High Court, wherein it allowed the petition under Section 34 of the Act filed by the respondent – Airport Authority of India ("**AAI**").

The dispute between the parties has arisen due to the Purchase Order placed by the AAI on the appellant – BSSPL, for supply of 4000 Stainless Steel Type Passenger Baggage Trolleys ("**PBT**"). The AAI had issued a show cause notice and terminated the Purchase Order and had invoked the Bank Guarantee furnished by the appellant and debarred the BSSPL for a period of three years from participating in any tender of the AAI in the future.

This being the case, the aggrieved BSSPL referred the dispute to arbitration under the aegis of the Delhi International Arbitration Centre. However, the Delhi High Court dismissed the appeal due to no merit being found in the present appeal and held that it is afraid that in exercise of its powers under Section 37 of the Act, such an order cannot be passed. The appellant has to invoke appropriate legal remedies for obtaining the relief as now being prayed for before us.

To read the Judgement in detail, please click here.

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2. **Delhi High Court directed that that Arbitrator either has to be appointed with the consensus of the parties or by the Court.**

DLF Home Developers Limited	**Petitioner**
Shipra Estates Limited & ORS.	**Respondents**

<u>Date of Judgement</u>: August 12, 2021

DLF Homes Developers Limited, a company incorporated under the Companies Act, 1956 had preferred an appeal under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996, where the dispute amongst the parties pertains to a piece of land situated in Noida, Uttar Pradesh.

Due to the dispute between the parties, the petitioner – DLF Home Developers Limited had filed the present petition seeking appointment of sole arbitrator to adjudicate the disputes amongst the parties. Further the notice in this respect was issued and both the parties to the dispute have been heard and it was held that, existence of Agreement to Sell, and clause 11.1 & 11.2 of the arbitration and conflicts inter se parties are not disputed. In this respect reference was made of the Supreme Court's judgement where it was categorically stated that no single party can be permitted to unilaterally appoint the Arbitrator, as it would defeat the purpose of unbiased adjudication of dispute between the parties. Further, it was stated that the Arbitrator either has to be appointed with the consensus of the parties or by the Court.

Basis the aforesaid directions, the present petition was disposed and the Arbitrator was directed to ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **Pratap Technocrats Private Limited files an appeal under Section 62 of the Insolvency and Bankruptcy Code ("IBC")**

Pratap Technocrats Private Limited & Ors.	Appellants
Monitoring Committee of Reliance Infratel Limited & Anr.	Respondents

<u>Date of Judgement</u>: August 10, 2021

The appeal filed by Pratap Technocrats Private Limited was made under Section 62 of the Insolvency and Bankruptcy Code **("IBC")**, against a judgement of the National Company Law Appellate Tribunal **("NCLAT")**.

The appellants in the present appeal are the operational creditors and the respondents is the corporate debtor. The resolution plan formulated in the course of the insolvency resolution process of the corporate debtor was approved by the National Company Law Tribunal **("NCLT")**, Mumbai. However, the NCLAT had upheld the order.

Corporate Insolvency Resolution Process **("CIRP")** of the corporate debtor was initiated by the order of the NCLT and an interim resolution professional was appointed, who during the course of the process invited "Expressions of interests" **("EOI")** from prospective resolution applicants. About fifteen EOIs were receive and a provisional list was prepared and furnished to the Committee of Creditors **("CoC")**. The application was then submitted under Section 30 (6) of the IBC of the resolution professional, seeking the approval of the resolution plan by the NCLT. The NCLT then discussed the salient aspects of the resolution plan in the course of its order on the approval application.

The appellants challenged the decision of the NCLT approving the resolution plan in appeal before the NCLAT. The NCLAT by its judgement rejected the appeal and noted that there was no substance in the grievance that the operational creditors have been unfairly or inequitably treated in regard to the distribution of funds.

Basis the necessary submissions, analysis was carried out by clearing the ground on three factual aspects bearing the outcome of the appeal:

i. Valuation of Preference Shares;
ii. Liquidation Value;
iii. The impact of exclusion

The Supreme Court dismissed the appeal with reason as it found no merit in the appeal and concluded that the resolution plan has been duly approved by a requisite majority of the CoC in conformity with Section 30(4). Whether or not some of the financial creditors were required to be excluded from the CoC is of no consequence, once the plan is approved by a 100 per cent voting share of the CoC. The jurisdiction of the Adjudicating Authority was confined by the provisions of Section 31(1) to determining whether the requirements of Section 30(2) have been fulfilled in the plan as approved by the CoC. As such, once the requirements of the statute have been duly fulfilled, the decisions of the Adjudicating Authority and the Appellate Authority are in conformity with law.

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).

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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