Swift e-Bulletin

Swift e-Bulletin
Edition 21/21-22
Week – August 23rd to August 27h

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

"All that we are is the result of what we have thought"

-Buddha

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")**, National Company Law Appellate Tribunal **("NCLAT")** SEBI, High Court and Supreme Court.

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

- **MCA issues Frequently Asked Questions (FAQ's) on Corporate Social Responsibility (CSR)**

- **SEBI provides for modalities for implementation of the framework for Accredited Investors**

- **IFSCA rolls out invitation for applications to set up International Trade Financing Services Platform ('ITFS') at International Financial Services Centre ('IFSC'), GIFT SEZ, GIFT City, Gujarat**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of August 23, 2021 to August 27, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

MCA UPDATES

1. **MCA issues Frequently Asked Questions ("FAQ's") on Corporate Social Responsibility ("CSR") vide General Circular No 14/2021 dated August 25, 2021**

- The general framework of CSR has been provided in Section 135 of the Companies Act, 2013 (herein after referred as 'the Act'), Schedule VII of the Act and Companies (CSR Policy) Rules, 2014 (herein after referred as 'the CSR Rules'). Further, Ministry had also issued various clarifications including FAQs from time to time on various issues concerning CSR.

- A number of important developments have taken place since then. The Ministry has notified the amendments in Section 135 of the Act as well in the CSR Rules on January 22, 2021 with an aim to strengthen the CSR ecosystem, by improving disclosures and by simplifying compliances. In response to such amendments, Ministry has received several references and representations from stakeholders seeking clarifications on the various issues related to CSR.

- Accordingly, in supersession of clarifications and FAQs issued vide General Circular no. 21/2014, 36/2014, 01/2016 ,05/2016, (clarification issued vide letter dated January 25, 2018 and General Circular no. 06/2018, a set of FAQs along with response of the Ministry has been provided on the ***Annexure*** to the Circular for better understanding and facilitating effective implementation of CSR.

To read the Circular in detail, please click here.

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SEBI UPDATES

1. **SEBI provides for modalities for implementation of the framework for Accredited Investors vide Circular dated August 26, 2021**

- Pursuant to public consultation and approval of the SEBI Board, the framework for "Accredited Investors" ("**AIs**") has been introduced in the securities market. In this regard, the SEBI (Alternative Investment Funds) Regulations, 2012, SEBI (Portfolio Managers) Regulations, 2020 and SEBI (Investment Advisers) Regulations, 2013 have been amended and notified on August 03, 2021.

- Under the aforesaid framework, AIs have been allowed to avail flexibility in minimum investment amount ("Lower ticket size") or concessions from specific regulatory requirements applicable to investment products, subject to conditions applicable for specific products/ services under the aforesaid Regulations. The modalities of accreditation are provided in ***Annexure A*** to the Circular

- The Circular contains a brief regarding responsibilities of Accreditation Agencies and criteria for eligibility for entities which are eligible to carry out the accreditation process.

To read the Circular in detail, please click here.

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IFSCA UPDATES

1. **IFSCA rolls out invitation for applications to set up International Trade Financing Services Platform ('ITFS') at International Financial Services Centre ('IFSC'), GIFT SEZ, GIFT City, Gujarat vide Circular dated August 23, 2021.**

- IFSCA had issued Circular dated July 09, 2021 issuing a framework for setting up of International Trade Financing Services Platform ('**ITFS**") for providing Trade Finance Services at International Financial Services Centre('**IFSC**').

- The general guidelines and application format to seek approval under the framework for operating and setting up an ITFS platform are available at IFSCA website and provided in the link below.

- Entities meeting the eligibility criteria as outlined in the framework and are desirous of setting up the ITFS may apply in the prescribed format along with the supporting documents to the authority (IFSCA) by September 15, 2021.

- IFSCA upon satisfaction in the first instance grant in principle approval to operate in IFSCA regulatory sandbox environment for such period as it may consider appropriate, before allowing regular operations.

To access the general guidelines and application format for operating and setting up an ITFS platform, please click here.

To read the Circular in detail, please click here.

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JUDGEMENTS/ ORDERS

SEBI

1. SEBI imposed penalty on Six individuals for violating Insider trading regulations

In the matter of Titan Company Limited **("Titan")**, Securities and Exchange Board of India **("SEBI")** conducted an investigation in the scrip of Titan and observed several non-compliances of SEBI (Prevention of Insider Trading) Regulations, 2015 **("PIT Regulations")** and Company's Code of Conduct for Prevention of Insider Trading by some of its designated persons/employees.

SEBI observed that designated persons/employees of the Company traded value of share by each individual exceeded INR 10,00,000 (INR Ten Lakhs) and same transaction were not reported to SEBI within prescribed time limit. Hence violated the provisions of PIT regulations and imposed penalty of INR 1,00,000 (INR One Lakh) each.

To read the order in detail, please click here.

2. SEBI grant exemption from making open offer obligations under Takeover Regulations

Jammu and Kashmir Bank Limited **("Target Company")** make an application on behalf of the Government of Jammu and Kashmir **("Proposed Acquirer")** to SEBI seeking exemption from the open offer obligation arising under Regulation 3(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 **("Takeover Regulations")** due to the proposed acquisition of INR 500 Crores (Five Hundred Crore) by proposed acquirer.

SEBI observed that, due to proposed acquisition, public shareholding shall reduce from 31.82% to 25.76% and the target company shall remain compliant in relation to the Minimum Public Shareholding of 25% in a listed company. Further, proposed acquisition will increase the holdings of the promoter and there will be no change in control of the Target Company.

Considering the above facts and powers conferred under SEBI Act, 1992 grant exemption to the Proposed Acquirer, from complying with the requirements of Regulation 3(2) of the Takeover Regulations subject to certain conditions.
To read the order in detail, please click here.

HIGH COURT

1. **Sole Arbitrator was appointed to resolve the dispute between the parties' over work of security/guarding services**

M/S G4S Secure Solutions (India) Private Limited	**Petitioner**
LI Consulting Private Limited	**Respondent**

Date of Judgement: August 23, 2021

M/s. G4S Secure Solutions (India) Private Limited, a company incorporated under the Companies Act, 1956 has filed a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, filed the present petition due to disputes that have arisen between the parties in relation to Contract for Guarding Services entered into between the parties. As per the terms of the contract, the petitioner had agreed to perform the work of security/guarding services as stipulated in Schedule I & II of the Contract.

The petitioner has diligently performed the services as mentioned in the contract, however, it was on the part of the respondent who had failed in its obligations to make the payment against the invoices raised for the services despite of several reminders over emails as well requesting the respondent to clear its outstanding dues. Aggrieved petitioner thereafter issued a notice invoking the agreement to refer the disputes to the arbitration in terms of Clause 42 of the Contract. There was an attempt to deliver the notice that was served in terms of the contract which was dispatched at the registered office of the respondent as per the contract.

The Court held that the contentions advanced on behalf of the respondent that the claims made by the petitioner are barred by limitation, is a contentious one and does not fall within the Standards of examination under Section 11 of the Arbitration and Conciliation Act, 1996.

In view of above, the Count considers it opposite to allow the present petition and it proposed to appoint a Sole Arbitrator to adjudicate the disputes between the parties falling within the scope of Arbitration Clause.

To read the Judgement in detail, please click here.

2. **Embassy of India, Washington DC provides BLS with VISA Services, which gives rise to controversy between BLS and Digicall**

BLS International Services Limited	**Petitioner**
M/s Digicall Global Private Limited	**Respondents**

Date of Judgement: August 25, 2021

BLS International Services Limited **("BLS")** had filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenging an arbitral award, which was rendered in the context of the disputes arisen between the parties to the agreement, whereby the respondent – Digicall Global Private Limited had agreed to provide Call Centre Operation Services to BLS and by the challenged award, the Arbitral Tribunal has awarded a sum in favour of Digicall on account of payments due for services rendered by it.

The Arbitral Tribunal further held that withholding of the said amount by BLS was unjustified and had caused wrongful loss to Digicall. The controversy in the present case arise when BLS was awarded a contract by the Embassy of India, Washington DC for providing certain services for processing of visas, other consular and allied services (hereinafter 'VISA Services'). In this respect BLS had approached Digicall for providing Call Centre Operation Services for telephone calls originating from United States of America (USA) and Canada by applicants/prospective applicants for visas.

Indian Embassy had imposed penalty on BLS on account of deficiency of the VISA Services that were outsourced to BLS which includes services like issuance of Visa/OCI/PIO Cards and Surrender of Renunciation of Indian Citizenship certificates, application support services etc.

The present petition was held to be unmerited in view that BLS had disputed that there was deficiency in rendering VISA Services but had subsequently, without prejudice to its contention, offered to settle the disputes by paying an amount to the Government of India and the said offer was accepted by the Government of India and both the parties (BLS and the Government of India) secured a consent arbitral award. This brought the Court to bring to its conclusion that the BLS had failed to establish its counter claim and held that Court is unable to accept that the impugned award is liable to be set aside under Section 34(2A) and/or Section 34(2)(b)(ii) of the A&C Act on the grounds as urged on behalf of BLS.

To read the Judgement in detail, please click here.

SUPREME COURT

1. **Division Bench of Delhi High Court's right to refuse to accept a legally valid irrevocable Bank Guarantee, issued by Industrial and Commercial Bank of China (ICBC) was questioned.**

Sepco Electric Power
Construction Corporation — Appellant (s)

Power Mech Projects Limited — Respondent (s)

Date of Judgement: August 24, 2021

Appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996 which were dismissed by the judgement and order passed by the Division Bench of Delhi High Court, against which the present appeals are been filed. In the judgement of the Court, it had directed the Appellant to substitute an irrevocable Bank Guarantee, issued by the Industrial and Commercial Bank of China Limited (ICBC), Mumbai Branch, where the judgement was challenged by the Appellant.

The question that aroused in these Appeals was to whether the High Court was right in refusing to accept a legally valid irrevocable Bank Guarantee of INR 30/- Crore, issued by ICBC, and insisted the Appellant to furnish a fresh Bank Guarantee of the same amount, with identical terms, issued by a 'Scheduled Indian Bank', scheduled in in the Second Schedule of the Reserve Bank of India Act.

There being some confusion in the language and tenor of the order, as also the fact that the respondent did not make any attempt to have the direction to furnish a Bank Guarantee of a Scheduled Bank located in India rectified and/or altered, it showed that the use of the expression 'Scheduled Indian Bank' may have been understood by all concerned parties to include an Indian branch of a Scheduled Bank. One can say that there is a typographical error when there is an inadvertent mistake in a figure or the spelling of a word by reason of pressing a wrong key of the keyboard or the omission or duplication of a word or phrase or even a sentence/sentences. A typographical error is obvious. This is clearly brought to notice and that was not the case here and it was directed that it is perfectly legal to furnish a Bank Guarantee of a Scheduled Indian Bank located in India.

In view of the Court, the question that exists statutorily is, whether a distinction between "a Scheduled Indian Bank" and "a Scheduled Bank located in India" does not arise for consideration in this case, as the dispute primarily revolves around what was offered in Court by one of the parties, what was accepted in Court, and what was recorded in the Order and clarified later. If without any offer from the petitioner, an adjudication had been made by the Court directing the petitioner to furnish bank guarantee of a particular type of bank and a dispute had been raised thereafter, it is only then that a question of law as to the status of such a bank with reference to the statutory provisions, would have arisen.

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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