Swift e-Bulletin

Swift e-Bulletin
Edition 22/21-22
Week – August 30th to September 03rd

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

“Big companies have small moves, small companies have big moves.”

-Peter Lynch

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 critical judgements and orders passed by the SEBI, High Court and Supreme Court.

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

- **SEBI provides for extension of time for seeking membership of BSE Administration & Supervision.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of August 30, 2021 to September 03, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

SEBI UPDATES

1. **SEBI provides for extension of time for seeking membership of BSE Administration & Supervision Limited vide Circular dated August 31, 2021**

- SEBI in terms of Regulation 14 of the SEBI (Investment Advisers) Regulations, 2013 ("**IA Regulations**") granted recognition to BSE Administration & Supervision Limited ("**BASL**"), a wholly owned subsidiary of BSE Limited, for administration and supervision of Investment Advisers ("**IA**"), for a period of three years from June 01, 2021.

- In order to ensure compliance with Regulation 6(n) of the IA Regulations and to keep their registration in force, all existing IAs, in terms of para 6(i) of Circular dated June 18, 2021 were advised to seek membership of BASL within three months of the recognition of BASL i.e., by August 31, 2021,

- BASL has now received representations from some of the existing IAs requesting for extension of time for seeking membership of BASL and after due consideration, SEBI has decided to extend the timeline for seeking membership of BASL by existing IAs by a period of two months till October 31, 2021.

- Existing IAs who fail to seek membership of BASL within the aforesaid timeline shall be liable for appropriate action including suspension or cancellation of certificate of registration of such IAs, in terms of the Securities and Exchange Board of India Act, 1992 and the Regulations framed thereunder

  To read the Circular in detail, please click here.

2. **SEBI revises guidelines for Liquidity Enhancement Scheme in the Equity Cash and Equity Derivatives Segments vide Circular dated September 01, 2021**

- SEBI vide Circular dated April 23, 2014 permitted stock exchanges to introduce liquidity enhancement schemes in the equity cash and equity derivatives segments to enhance liquidity in illiquid securities.

- Based on the experience of stock exchanges, SEBI has decided to modify clause 3.1 and 4.1 of said Circular relating to liquidity in illiquid securities as under:

  "3.1 The Scheme shall have prior approval of the Governing Board of the Stock Exchange *which will be valid for one year. The Governing Board of the Stock Exchange may give yearly approval till the time the scheme is in operation. Further, its implementation and outcome shall be monitored by the Governing Board at quarterly intervals.*

  4.1. The Stock Exchange shall introduce liquidity enhancement schemes on any security. Once the scheme is discontinued, the scheme can be re-introduced on the same security".

- The above will also be applicable to existing schemes. Other conditions prescribed in aforesaid SEBI Circular dated April 23, 2014 shall remain unchanged.

  To read the Circular in detail, please click here.

3. **SEBI amends its Circular dated February 23, 2017 on Amendment pursuant to comprehensive review of Investor Grievance Redressal Mechanism vide Circular dated September 02, 2021**

- SEBI issued a Circular dated February 23, 2017 on Amendment pursuant to comprehensive review of Investor Grievance Redressal Mechanism.

- Pursuant to representation received from the stock exchanges, few paragraphs of the aforesaid Circular stand modified/replaced, some of which being:

  - Clause 1.H. is replaced as under:

    "***1.H. Place of arbitration / appellate arbitration***

    In case award amount is more than Rs. 50 lakhs (Rs. Fifty lakh), the next level of proceedings (arbitration or appellate arbitration) may take place at the nearest metro city, if desired by any of the party involved. The additional statutory cost for arbitration, if any, to be borne by party desirous of shifting the place of arbitration."

  - Clause 1.J. is modified as under:

"1.J. Speeding up grievance redressal mechanism

"(v) In all cases except the additional fees charged from the trading members, if the claim is filed beyond the timeline prescribed in column 3, (only for member), on issue of the arbitral award the stock exchange shall refund the deposit to the party in whose favour the award has been passed.
(vi) The additional fees charged from the trading members, if the claim is filed beyond the timeline prescribed in column 3, (only for member), if any, to be deposited in the IPF of the respective Stock Exchange."

To read the Circular in detail, please click here.

4. **SEBI introduces measures to align interest of Asset Management Companies ('AMCs') with the Unitholders of the Mutual Fund Schemes vide Circular dated September 02, 2021**

- Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2021 ("**MF Amendment Regulations**") was notified on August 05, 2021 and the provisions of the said Regulations were to come into force on the 270th day from the date of notification.

- As per the amended regulations i.e. sub-regulation 16(A) in Regulation 25 of SEBI (Mutual Funds) Regulations,1996 ('**MF Regulations**') relating to Asset management company and its obligations, asset management companies ("**AMCs**") are required to invest such amount in such scheme(s) of the mutual fund, based on the risk associated with the scheme, as may be specified by the Board from time to time.

- Accordingly, SEBI has decided that based on the risk value assigned to the scheme(s), in terms of SEBI Circular dated October 5, 2020, AMCs shall invest minimum amount as a percentage of assets under management ("**AUM**") in their scheme(s) as provided in the ***Annexure*** to the Circular.

- For the purpose of complying with the risk value and minimum amount mentioned above in SEBI Circular dated October 5, 2020, some of the instructions provided by SEBI are:

  - *The risk value of the scheme as per the risk-o-meter of the immediately preceding month shall be considered;*
  - *The investment shall be maintained at all points of time till the completion of tenure of the scheme or till the scheme is wound up;*

- *AMCs shall not be required to invest in Exchange Traded Funds ("**ETFs**"), Index Funds, Overnight Funds, Funds of Funds scheme(s) and in case of close ended funds wherein the subscription period has closed as on date of coming into force of MF Amendment Regulations;*

- The mandatory contribution already made by the AMCs in compliance with the applicable MF Regulations shall not be withdrawn. However, such contribution can be adjusted against the investment required by the AMC as per this Circular.

- The compliance of the provisions of this circular shall be ensured by the AMCs and monitored by the Trustees. Any non-compliance in this regard, shall be reported in the Quarterly Compliance Test Reports ("**CTR**") and half-yearly Trustee Report and Details of investment by AMCs in each of their mutual fund scheme(s) shall be disclosed on the website of AMCs and Association of Mutual Funds in India ("**AMFI**").

- The provisions of this Circular shall come into force on the date of applicability of the MF Amendment Regulations as referred under para 1 of this Circular. SEBI Circular dated June 12, 2020 shall stand rescinded from such date.

To read the Circular in detail, please click here.

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JUDGEMENTS/ ORDERS

SEBI

1. SEBI imposed penalty on for violating LODR regulations

In respect of Simplex Infrastructures Limited (Noticee) SEBI observed that Noticee had failed to make the necessary disclosures to the stock exchanges in terms of SEBI LODR regulations.

During the examination by SEBI, it was observed that disinvestment by the Noticee in Simplex LLC is a material event pertaining to 'sale or disposal of a subsidiary or any other restructuring', as mentioned under SEBI LODR regulations. Hence, noticee was required to make reporting to stock exchange within twenty-four hours. However, Noticee failed to comply with the same and SEBI imposed penalty of INR 500,000 (INR Five Lakh)

To read the order in detail, please click here.

2. SEBI restrain the M/s Achal Investments Ltd from accessing securities market for Mis-utilization of funds raised through preferential issue.

In the matter of Mis-utilization of funds raised through preferential issue, Securities and Exchange Board of India **("SEBI")** has conducted an investigation in dealing in securities by raising of funds through preferential issue of equity shares and utilization thereof.

On conclusion of the investigation, it was alleged that M/s. Achal Investments Ltd Noticee has mis-utilized and diverted the proceeds received through the preferential issue of equity shares and therefore violated the provision of Section 12 A of the SEBI Act, Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations, SCRA, clause 43 of Listing Agreement and LODR Regulations.

After considering the fact and circumstances of the case, SEBI noted that noticee has defrauded its shareholders. Not only has the Noticee diverted and mis-utilized the proceeds received from the preferential issue of shares, it also did not provide the relevant and adequate information to the shareholders when it sought ratification of the diversion and misutilization that it had carried out. The Noticee has misled and influenced its shareholders by putting in place a device to manipulate them. Further, such a device was already in place even before the approval of shareholders was sought for making preferential issue.

SEBI further noted that Noticee has not adhered to the high standards of ethics and corporate governance that it is required to meet in order to protect share holder interest and has instead, put its own interest before the shareholder interest.

In view of the above, SEBI retrained the noticee from accessing the securities market from buying, selling or dealing in security either directly or indirectly for a period of 5 (Five) years.

SEBI further order to bring back a sum of INR 13,829,600/- to the entity and imposed penalty in total of INR 2,000,000/- on the Noticee.

To read the order in detail please click here.

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HIGH COURT

1. **Controversies arise due to 'Depth Penalty' levied by BSNL, in a contract with Sterlite Technologies Limited.**

Sterlite Techologies Limited	**Petitioner**
Bharat Sanchar Nigam Limited	**Respondent**

Date of Judgement: August 31, 2021

Sterlite Techologies Limited filed the present petition under Section 11 (6) of the Arbitration & Conciliation Act, 1996, praying for the appointment of an Arbitrator to adjudicate the disputes between the petitioner and the respondent under the Tender issued by Bharat Sanchar Nigam Limited **("BSNL")** for the 'procurement, supply, trenching, laying, installation, testing and maintenance of Optical Fiber Cables, P.L.B., duct and accessories for construction of exclusive Optical NLD backbone and optical access routes on turnkey basis for Defence Network'.

In this respect the petitioner had submitted its bid for execution of works and was declared the lowest bidder for in the State of Jammu & Kashmir and thereafter the petitioner had even offered certain discounts and BSNL issued an Advance Purchase Order (APO).

Due to controversies that have arisen between the parties in respect of the aforesaid contract was with respect to the 'depth penalty' levied by BSNL, where the petitioner claims that in case of rocky soil, the depth of the trench, to be dug for laying the cables, was stipulated to be lower as compared to the depth that was required to be dug in case of non-rocky soil.

The Court in this case, proposed to appoint Justice (Retd.) Badar Durrer Ahmed, former Chief Justice of Jammu & Kashmir High Court as the Sole Arbitrator to adjudicate the disputes between the parties.

To read the Judgement in detail, please click here.

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2. **Delhi High Court considers the two certificates issued by M/s Torrent Power Limited as liable to be included in the cumulative work experience**

V Tech Sunsystems Private Limited – Australian Premium Solar (India) Private Limited (Consortium)	Petitioner
Energy Efficiency Services Limited	Respondents

<u>Date of Judgement</u>: August 31, 2021

V Tech Sunsystems Private Limited – Australian Premium Solar (India) Private Limited (Consortium), being the petitioner is a Joint Venture (JV) engaged in the business as an EPC agency for executing sub-Station, EHV Line Projects, Civil / Mechanical Works of Generation Projects upto 765 kV class and Mega Watt, Rooftop Scale and On Grid / Off-Grid Projects in India. The petitioner had filed the petitioner seeking substantially relief against the respondent - Energy Efficiency Services Limited (EESL) and is a Super Energy Service Company (ESCO), which helps consumers, industries and governments to effectively manage their energy needs through energy efficient technologies.

The respondent had invited bids for design, manufacture, supply transport, installation, testing and commissioning of Grid Solar Photovoltaic Water Pumping Systems including complete set of warranty and its repair and maintenance for 5 years.

Online bids were submitted, and the technical qualification bids were opened by the respondent and the petitioner's bid was rejected. Aggrieved by the said communication, the petitioner on the same date addressed a communication to the respondent ESSL to seek clarification and an auto-generated response informing the petitioner that the petitioner's bid was found to be non-responsive upon technical evaluation.

A 'Note' as contained in the Annexure – II to the tender documents prescribing the qualification requirement which the respondent had relied on, was absolutely wrong in view of the Delhi High Court as the interpretation adopted by the respondent. Further, the Court made it clear that the 'Note' under Qualifying Requirements, as relied upon by the respondent will not be applicable to the two certificates as issued by the Torrent Power Limited., and the experience covered by the said two certificates issued by Torrent Power Ltd. cannot be excluded for calculating the cumulative work experience of the petitioner.

The Court further clarified that though, there is absolutely no doubt in our mind with regard to the interpretation of the "Note" in question, even if there was one, the Doctrine of *Verba*

Chartarum Fortius Accipiuntur Contra Proferentem, binds the respondent. The respondent in the present case was the author of the terms and conditions of the tender. If the respondent had the intention to require the suppliers/ contractors – who supply the product/ service in question to

DISCOMS, to also produce any other documents, then that should have been clearly stated. The wordings of "Note" should have been different, from the one as framed herein.

The Court allowed the petition basis its observations and held that the two certificates issued by M/s Torrent Power Ltd. was liable to be included in the cumulative work experience of the petitioner and consequently, the petitioner had the requisite work experience as claimed by it, and its disqualification on that ground is illegal and the said disqualification of the petitioner is hereby quashed and the respondent was directed to proceed to deal with the petitioner's bid in accordance with the procedure prescribed for tender processing.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **Appeal filed by Supertech Limited basis the Judgement of the High Court directing the demolition of Twin Towers T-16 & T-17**

Supertech Limited	Appellant
Emerald Court Owner Resident Welfare Association & Ors.	Respondents

<u>Date of Judgement</u>: August 31, 2021

The present appeal is filed by Supertech Limited, basis the Judgement of a Division Bench of the High Court of Judicature at Allahabad, upon a writ petition instituted by the Residents' Welfare Association of Emerald Court Group Housing Society'. The Judgement of the High Court had directed the demolition of Towers, constructed by Supertech Limited.

The appellant had filed a Special Leave Petition before the Supreme Court under Article 136 of the Constitution assailing the Judgement of the High Court and had made the following submissions:

1. The sanction and construction of T-16 and T-17 is not violative of the distance rule under NBR 2010;
2. The sanction to construct T-16 and T-17 is not violative of the UP Apartments Act 2010;
3. There has been no violation of fire safety norms;
4. The Uttar Pradesh Ownership of Flats Act 197522 is not applicable;
5. There is no green area violation in the sanctioning of T-16 and T-17;
6. The sanction of T-16 and T-17 is based on a valid certificate as regards the structural design of the towers;
7. The appellant has not collected the entire lease rent payable to NOIDA only from the flat owners of T-1 to T-15;
8. The order for demolition of T-16 and T-17 is liable to be set aside on ground of equity.

Basis the above submissions, it had urged that the order of demolition would be harsh and inequitable.

The Court concluded basis its findings, the documentary materials referred to and analyzed in its judgement and suggested the reliefs to each category based on the outcome of the proceedings.
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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