Swift e-Bulletin

Swift e-Bulletin
Edition 24/21-22
Week – September 13th to September 17h

Quote for the week:

"Wheresoever you go, go with all your heart"

- Confucius

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 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:

- **IFSCA releases Code of Conduct and Code of Ethics for Directors and Key Management Personnel ("KMP") of recognized Market Infrastructure Institutions ("MIIs") in GIFT IFSC**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of September 13, 2021 to September 17, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

IFSCA UPDATES

1. **IFSCA releases Code of Conduct and Code of Ethics for Directors and Key Management Personnel ("KMP") of recognized Market Infrastructure Institutions ("MIIs") in GIFT IFSC vide Circular dated September 13, 2021.**

- This Circular has been issued pursuant to Regulation 25 (1) of the IFSCA (Market Infrastructure Institutions) Regulations, 2021 [MIIs Regulations] and Regulation 21 (1) of the IFSCA (Bullion Exchange) Regulations, 2020 [Bullion Exchange Regulations].

- The Circular has been divided into two parts.

  - *Part A: Code of Conduct for Directors which inter-alia include code on*

    - *Meetings and minutes;*
    - *Public Interest Directors;*
    - *Strategic planning; and*
    - *Regulatory compliances.*

  - *Part B: Code of Ethics for Directors and KMP which inter-alia include code on*

    - *Regulatory oversight committee;*
    - *General standards;*
    - *Disclosures in trading in securities by KMP and directors;*
    - *Conflict of interest; and*
    - *Access to information etc.*

To read the Circular in detail, please click here.

2. **IFSC permits Non - Bank Custodians operating in GIFT City to acquire clearing membership vide Circular dated September 15, 2021.**

- IFSCA had issued Circular dated December 11, 2020 by which foreign entities operating in GIFT- IFSC were permitted to operate as a clearing member in GIFT IFSC through a branch office. In order to level the playing field and to bring it in line with other global jurisdictions, IFSCA has permitted non-bank custodians which are operating in GIFT-IFSC through branch mode to acquire clearing membership in GIFT-IFSC henceforth.

- Any recognized non-bank custodians permitted to acquire clearing membership in GIFT-IFSC are required to comply with the following conditions, some of which are:

  - *The entity can clear and settle trades only of its custodial clients;*
  - *The entity should be ring fenced financially, technologically, and operationally from its parent company and its functions, as a clearing member, shall be limited only to clearing and settlement services of its custodial clients;*
  - *The total exposure which the entity shall take on behalf of its registered clients shall be determined by its Board; and*
  - *The entity shall ensure financial segregation by allocating funds to the tune of USD 1,500,000 (USD 1.5 mn) towards its clearing and settlement operations.*

To read the Circular in detail, please click here.

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JUDGEMENTS/ ORDERS

NCLT

1. **National Company Law Tribunal admits application for Pre-Packaged Insolvency Resolution Process of M/s. GCCL Infrastructure Projects Limited.**

National Company Law Tribunal, Ahmedabad **("Tribunal")** admits the application filed by the by M/s. GCCL Infrastructure Projects Limited **("Corporate Debtor")** under section 54A Insolvency and Bankruptcy Code, 2016 **("IBC Code")** to initiate Pre-Packaged Insolvency Resolution Process of the Corporate Debtor.

The Corporate Debtor had total debt amount payable worth INR 54,16,250/- (INR Fifty-Four Lakhs, Sixteen Thousand Two Hundred and Fifty) to its various creditors. Corporate Debtor was registered as Micro, Small and Medium Enterprises **("MSME")** under Micro, Small and Medium Enterprises Development Act, 2006, requisite certificate and proof of defaults were annexed to the application.

Members of Corporate Debtor had passed special resolution to initiate the Pre-Packaged Insolvency Resolution Process **("PPIRP")** under Section 54A (2)(g) of the IBC Code. A declaration under section 54 A (2) (f) of IBC Code was given by majority of the Directors of Corporate Debtor. The said application was also approved by the Financial Creditors of Corporate Debtor.

The Financial Creditors had approved the appointment of the Resolution Professional **("RP"),** Mr. Parag Sheth in accordance with the provisions of Section 54 A (2) (e) of IBC Code read with Regulation 14 (5) of IBBI (Pre-packaged IRP) Regulation, 2021. The said RP was also appointed to conduct PPRIP and to discharge duties before initiation of PPIRP. The Resolution Professional's Report under Section 54 B (1) (a) of IBC Code was produced before the Tribunal.

Corporate Debtor had produced various documents like audited financial statements of the company for the year 2019-20 and 2020-21, Affidavit regarding its eligibility under Section 29 A of IBC Code to submit Resolution Plan, declaration regarding existence of avoidance of transactions relating to the company and its directors, list of the assets and liabilities, names and amount of the debt of all Financial Creditors and Operational Creditors and names of all the Directors and Members of the Corporate Debtor in support of its application.

Based on facts presented, Tribunal admitted the said application filed by the Corporate Debtor and declared moratorium in accordance to section 14 of the IBC. Tribunal resolved to appoint Mr. Parag Sheth as RP to conduct PPIRP as per the Provisions of Chapter III A of the Insolvency Regulations. It further directed RP to make a public announcement of PPIRP of the Corporate Debtor as per Section 54A of IBC Code.

To read the order in detail, please click here.

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SEBI

1. **SEBI imposes penalty on the Noticee for failure to make relevant disclosure under PIT regulations.**

Securities and Exchange Board of India ("**SEBI**") carried out an investigation in the scrip of Supreme Tex Mart Limited to ascertain any violation of SEBI Act 1993, Prohibition of Insider Trading Regulations, 2015 **("PIT regulations")** and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 **("SAST regulations")**. SEBI in its investigation observed that the Noticee have failed to make relevant disclosure under the aforesaid regulations.

In this regard, the Adjudicating officer **("AO")** sent Show Cause Notice **("SCN")** to the Noticee stating that why an inquiry should not be held against under the PIT Regulations and SAST regulations, to which the Notice provided their response and basis on principle of natural justice personal hearing via video conference was held. The AO post hearing analyzed the facts of the case concluded that the basis the submission made by Noticee. The alleged violation under SAST regulations are not tenable. However, the Noticee have failed to make relevant disclosure under PIT regulation and shall be penalized for the same.

The AO further with respect to PIT stated that PIT regulations have put in place a framework for prohibition of insider trading in securities and the prohibitions provided in the PIT regulations ensure a level-playing field in the securities market. The main purpose of these disclosures is to bring about transparency in the transactions of Directors/Promoters/Acquirers/ employees and assist the Regulator to effectively monitor the transactions in the market.

To read the order in detail, please click here

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HIGH COURT

1. **Petition filed by M/s. Auto Movers under Article 227 of the Constitution of India was dismissed by the Delhi High Court.**

M/s. Auto Movers	**Petitioner**
Luminous Power Technologies Private Limited	**Respondents**

Date of Judgement: September 16, 2021

M/s. Auto Movers, being the petitioner is the defendant before the Trial Court, had filed the petition under Article 227 of the Constitution of India challenging the order passed by the learned Additional District Judge. The respondent/plaintiff being the Luminous Technologies Private Limited had filed the suit against the Auto Movers for the recovery of sum, where the respondent/plaintiff claimed that it was a well-known manufacturer providing portfolio of solutions for packaged power, diversified generation, electrical control and safety and energy optimization. The petitioner/defendant was one of its several regional stockists and distributors, who were appointed to procure/buy goods being traded by the respondent/plaintiff and supply them to wholesalers and retailers of the respondent/plaintiff in the market, who, in turn, would sell the same to the consumers.

The respondent/plaintiff had raised a preliminary objection to the maintainability of the petition under Article 227 of the Constitution of India, as no palpable error of jurisdiction has been disclosed, where the petitioner/defendant has only expressed a disagreement with the view taken by the learned Trial Court, which was an insufficient ground to challenge the same.

The Court dismissed the present petition for want of merit basis the observations made by the Court. The place of payment was not fixed, hence the part cause of action has arisen also on account of the payments made by the petitioner/defendant directly into the bank account of the respondent/plaintiff, even if these were not on regular basis, since there is nothing to show that the place of payment had been fixed, even without following the principle that the 'debtor must seek out the creditor', it is clear that the Delhi Courts have jurisdiction to try the suit and the invoice does not vest jurisdiction in a court which had no jurisdiction at all.

To read the Judgement in detail, please click here.

SUPREME COURT

1. Appeal filed by 'Ebix' and 'Seroco' were dismissed and directions were issued by the Supreme Court to 'Kundan Care' in exercise of its Article 142 powers as a one-time relief.

Ebix Singapore Private Limited	Appellant (s)
Committee of Creditors of Educomp Solutions Limited & Anr.	Respondent (s)

With

Kundan Care Products Limited	Appellant (s)
Mr Amit Gupta and Ors.	Respondent (s)

With

Seroco Lighting Industries Private Limited	Appellant (s)
Ravi Kapoor RP for Arya Filaments Private Limtied & Ors.	Respondent (s)

<u>Date of Judgement</u>: September 13, 2021

Judgment has been divided into sections to facilitate analysis. Judgment arises out of an appeal from a judgment of the NCLAT, which allowed the Withdrawal Appeal1 instituted by the first respondent, E-CoC, under Section 61 of the IBC against a judgment the NCLT at its Principal Bench in New Delhi.

The NCLT allowed the Third Withdrawal Application2 filed by Ebix under Section 60(5) of the IBC to withdraw its Resolution Plan submitted for Educomp. While reversing that order, the NCLAT held that the application to withdraw from the Resolution Plan could not have been allowed since: *(i)* it was barred by *res judicata*; and *(ii)* the NCLT does not have jurisdiction to permit such a withdrawal.

The Supreme Court in its observations stated that, the Report noted that a delay in the resolution process with more than seventy-one per cent cases pending for more than 180 days is in deviation of the original objective and timeline for CIRP that was envisaged by the IBC.

The delays were attributable to: (i) the NCLT taking considerable time in admitting CIRPs; (ii) late and unsolicited bids by Resolution Applicants after the original bidder becomes public upon passage of the deadline for submission of the Plan; and (iii) multiplicity of litigation and the appellate process to the NCLAT and the Supreme Court. Such inordinate delays cause commercial uncertainty, degradation in the value of the Corporate Debtor and makes the insolvency process inefficient and expensive.

Further, the Supreme Court urged the NCLT and NCLAT to be sensitive to the effect of such delays on the insolvency resolution process and be cognizant that adjournments hamper the efficacy of the judicial process. The NCLT and the NCLAT should endeavor, on a best effort basis, to strictly adhere to the timelines stipulated under the IBC and clear pending resolution plans forthwith. Judicial delay was one of the major reasons for the failure of the insolvency regime that was in effect prior to the IBC held the we cannot let the present insolvency regime meet the same fate.

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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