Swift e-Bulletin

Swift e-Bulletin
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Week – October 04th to October 08th

Quote for the week:

"I suspect the truth is that we are waiting, all of us, against insurmountable odds, for something extraordinary to happen to us!"

- Khaled Hosseini

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**"), the Department for Promotion of Industry and Internal Trade ("**DPIIT**"), and 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:

- **SEBI discontinues usage of pool accounts for transactions in units of Mutual Funds on the Stock Exchange Platforms;**

- **DPIIT reviews Foreign Direct Investment ("FDI") in the Telecom Sector vide Press Note 04 (2021)**

- **IFSCA amends OTC derivatives on Indian Government Bonds ("IGBs") and State Development Loans ("SDLs");**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of October 04, 2021 to October 08, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

SEBI UPDATES

1. **SEBI discontinues usage of pool accounts for transactions in units of Mutual Funds on the Stock Exchange Platforms vide Circular dated October 04, 2021.**

- SEBI vide its Circulars dated November 13, 2009 and November 9, 2010 had permitted units of mutual fund schemes to be transacted through registered stockbrokers and clearing members respectively, by using Stock Exchange infrastructure. Additionally, it also allowed Mutual Fund Distributors (‘**MFDs’**) and Investment Advisers (‘**IAs’**) to use the infrastructure of the Stock Exchanges to purchase and redeem mutual fund units on behalf of their clients vide Circulars dated October 04, 2013 and October 19, 2016.

- Based on the discussion with stakeholders and recommendations of the Mutual Fund Advisory Committee many changes were proposed for Mutual Fund Distributors (‘**MFDs’**) and Investment Advisers (‘**IAs’**) some of which are as below:

  - *Pooling of funds and/ or units by stockbrokers / clearing members in any form or manner shall be discontinued for mutual fund transactions; and*
  - *Similar to mechanisms for transactions in mutual fund units by MFDs and IAs, stock exchanges shall put necessary mechanisms in place for stock brokers / clearing members also, to ensure that funds pay-in is directly received by the clearing corporation from the investor account and funds pay-out is directly made to the investor account. Pay-in / pay-out of funds shall not be handled by the stockbrokers / clearing members. In the same manner, for both demat and non-demat mode transactions, the units shall be credited and debited directly to/ from the investors’ demat account/ folio account without routing it through the pool account of the stockbrokers / clearing members. However, for redemption of units held in dematerialised mode, the practice of issuance of Delivery Instruction Slip (‘DIS’) (physical or electronic) to the Depository Participant to debit the units for delivery to clearing corporation may continue.*

- The provisions of this Circular shall be applicable with effect from **April 01, 2022.**

To read the Circular in detail, please click here.

2. **SEBI introduces new disclosure mechanism for complaints against the Stock Exchanges and the Clearing Corporation vide Circular dated October 04, 2021**

- SEBI in order to bring about transparency in the Investor Grievance Redressal Mechanism, has decided that all the Stock Exchanges and Clearing Corporations shall disclose on their websites, the data on complaints received against them and redressal thereof, latest by 7th of succeeding month as per the format enclosed at ***Annexure - 'A'*** to the Circular.

- These disclosure requirements are in addition to those already mandated by SEBI.

- This Circular shall be applicable from <u>January 01, 2022</u> and shall be in addition to other disclosures already mandated.

  To read the Circular in detail, please click here.

3. **SEBI amends manner and mechanism of providing exit option to dissenting unit holders under SEBI (Real Estate Investment Trusts) Regulations, 2014 vide Circular dated October 05, 2021.**

- SEBI issued dated July 17, 2020 providing the manner and mechanism of providing exit option to dissenting unit holders pursuant to Regulation 22(6A) and Regulation 22(8) of SEBI (Real Estate Investment Trusts) Regulations, 2014.

- Among other changes/modifications outlined in the Circular, some of the changes are mentioned below:

  - ***Clause 1.6 of Annexure – I of the Circular is modified as under.***
    1.6 "Relevant date" means the last day of voting for resolution under Regulation 22(6A) or Regulation 22(8) of the SEBI (REIT) Regulations. Provided that in case an acquisition described under Regulation 22(6A) or change in sponsor or inducted sponsor or change in control of sponsor or inducted sponsor under regulation 22(8) of SEBI (REIT) Regulations is triggered pursuant to an open offer under the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, the relevant date shall mean the date of public announcement made for the acquisition in terms of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011.
  - ***Clause 3.4 is added after Clause 3.3 of Annexure-I of the Circular to be modified as under.***
    In case an acquisition described under Regulation 22(6A) or change in sponsor or inducted sponsor or change in control of sponsor or inducted sponsor under regulation 22(8) of SEBI (REIT) Regulations is triggered pursuant to an open

offer under the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, the exit option price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the first notice date and second notice date.

To Read the Circular in detail, please click here.

4. SEBI amends manner and mechanism of providing exit option to dissenting unit holders under SEBI (Infrastructure Investment Trusts) Regulations, 2014 vide Circular dated October 05, 2021.

- SEBI issued Circular dated July 17, 2020 providing the manner and mechanism of providing exit option to dissenting unit holders pursuant to Regulation 22(5C) and Regulation 22(7) of SEBI (Infrastructure Investment Trusts) Regulations, 2014.

- Among other changes/modifications outlined in the Circular, some of the changes are mentioned below:

  - ***Clause 1.6 of Annexure – I of the Circular is modified as under:***
    1.6 "Relevant date" means the last day of voting for resolution under Regulation 22(5C) or Regulation 22(7) of the SEBI (InvIT) Regulations. Provided that in case an acquisition described under Regulation 22(5C) or change in sponsor or inducted sponsor or change in control of sponsor or inducted sponsor under regulation 22(7) of SEBI (InvIT) Regulations is triggered pursuant to an open offer under the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, the relevant date shall mean the date of public announcement made for the acquisition in terms of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011.
  - ***Clause 3.4 is added after Clause 3.3 of Annexure-I of the Circular to be modified as under:***
    In case an acquisition described under Regulation 22(5C) or change in sponsor or inducted sponsor or change in control of sponsor or inducted sponsor under regulation 22(7) of SEBI (InvIT) Regulations is triggered pursuant to an open offer under the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, the exit option price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the first notice date and second notice date.

To Read the Circular in detail, please click here.

5. **SEBI issues revised formats for filing financial information for issuers of non-convertible securities vide Circular dated October 05, 2021.**

- SEBI vide Notification dated September 07, 2021, Regulation 52 of the SEBI (Listing Obligations and Disclosure Requirements), Regulations 2015 ('Listing Regulations') were amended, inter-alia, mandating entities that have listed non-convertible securities to disclose financial results on a quarterly basis, including assets & liabilities and cash flows as well as requiring certain changes in the line items in the financial results. Accordingly, this Circular provides the revised formats for reporting of financial information and limited review report.

- Changes have been proposed to various formats as mentioned below:

  - *Formats for Standalone financial results on a quarterly basis and Standalone and consolidated financial results on an annual basis (to be submitted to Stock Exchanges and placed on listed entity's website - regulations 52(1) and (2) of the Listing Regulations;*
  - *Format for Statement of assets and liabilities on half yearly basis (to be submitted to Stock Exchanges and placed on listed entity's website - regulation 52(2)(f) of the Listing Regulations); and*
  - *Format for Statement of cash flows on half yearly basis (to be submitted to Stock Exchanges and placed on listed entity's website - regulation 52(2)(f) of the Listing Regulations);*

- Banking Companies and Insurance Companies shall disclose financial information as per the formats prescribed under the respective Acts/ Regulations as specified by their Regulators.

- Format for financial results in newspapers: The format of financial results to be published in newspapers, in terms of Regulation 52 (8) of the Listing Regulations, is prescribed in ***Annex – I*** to the Circular.

- Reasons for delay in disclosure of financial results (to be submitted to Stock Exchanges and placed on listed entity's website.

  To read the Circular in detail, please click here

6. **SEBI mandated minimum percentage of trades carried out by Mutual Fund through RFQ platform vide Circular dated October 06, 2021.**

- SEBI had mandated mutual funds to undertake at least 10% of their total secondary market trades in Corporate Bonds through Request for Quote ("**RFQ**") platform of Stock Exchanges vide its earlier Circular

- Based on recommendation of Mutual Fund Advisory Committee ("**MFAC**") and in order to further increase the liquidity on exchange platforms the following has been decided:

  - *On monthly basis, Mutual Funds shall undertake minimum 25% of their total secondary market trades by value (excluding Inter Scheme Transfer trades) in Corporate Bonds by placing/seeking quotes through one-to-many mode on the RFQ platform of stock exchanges;*
  - *On monthly basis, Mutual Funds shall now undertake minimum 10% of their total secondary market trades by value (excluding Inter Scheme Transfer trades) in Commercial Papers by placing/seeking quotes through one-to-many mode on the RFQ platform of stock exchanges; and*
  - *This Circular shall come into effect from* ***December 01, 2021.***

  To read the Circular in detail, please click here.

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DPIIT UPDATES

1. **DPIIT reviews Foreign Direct Investment ("FDI") in the Telecom Sector vide Press Note 04 (2021) dated October 06, 2021.**

DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE
MINISTRY OF COMMERCE & INDUSTRY
GOVERNMENT OF INDIA

- The Government of India has reviewed the extant FDI policy on Telecom Sector and has made the following amendment under the Consolidated FDI Policy Circular of 2020, as amended from time to time (FDI Policy) and DPIIT vide this Press Note has allowed 100% FDI going forward in telecom services including telecom infrastructure provider's category – 1.

- The services include all telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, United Access Services, Unified license (Access services), Unified License, National/International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (**PMRTS**), Global Mobile Personal Communications Services (**GMPCS**), all types of ISP licenses, Voice Mail/Audiotex/UMS, Resale of IPLC, Mobile Number Portability services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower), Other Service Providers and such other services as may be permitted by the Department of Telecommunications ("**DoT**").

- Other conditions relating to the licensing, security and any other terms and conditions as specified by Department of Telecommunications from time to time, shall be observed by licensee/entities providing services as referred above, as well as investors.

- However, the foreign investment shall be subject to Press Note 03 of 2020 and accordingly, cases requiring prior Government approval under the provisions of Para 3.1.1 of the FDI Policy, will continue to be on the Government route.

To read the Press Note in detail, please click here.

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IFSCA UPDATES

1. **IFSCA amends OTC derivatives on Indian Government Bonds ("IGBs") and State Development Loans ("SDLs") vide Circular dated October 05, 2021**

- These amendments are made to the Authority's Circular dated December 4, 2020 for Banking Units ("**Bus**").

- The following amendments/modifications are carried out in the abovementioned Circular with immediate effect:

  - ***Annex to Circular – Para 5 – Eligibility criteria***
    Contents of sub para (i) entitled "Market makers" to be replaced with the following:
    "Offshore Derivative Instruments (ODIs) – Banking Units holding a Foreign Portfolio Investor (FPI) certificate under the provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations,2019 dated September 23,2019 (as amended).
    Other OTC derivatives – All Banking Units".

  - ***Annex to Circular – Para 7 – Permissible derivative instrument***
    Offshore Derivative Instruments (ODIs) on Indian Government Bonds (IGBs) and State Development Loans (SDLs) Offshore Derivative Instruments (ODIs) shall be issued in compliance with the provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations,2019 dated September 23,2019 (as amended) including reporting of data on ODIs to the Securities and Exchange Board of India.

To read the Circular, please click here.

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HIGH COURT

1. **Montecarlo Limited files petition under 11(6) of the Arbitration and Conciliation Act, 1996 against Regal Emporia Infratech Private Limited.**

Montecarlo Limited	Petitioner
Regal Emporia Infratech Private Limited	Respondent

Date of Judgement: October 6, 2021

Montecarlo Limited, being the petitioner in the present case has preferred the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator to adjudicate the dispute with Regal Emporia Infratech Pvt Ltd, being the respondent, a private limited company registered under the Companies Act, 1956, which had invited tender for erection, construction, execution and completion of works relating to Civil & Structural including but not limited to other services related to civil and structure works from start to completion for a mix use project known as "Regal Emporia".

Montecarlo Limited had suffered various losses due to the lapses on the part of respondent like delay in handing over of the drawings, delay in receipt of free issue of materials, delay in payments etc. and also due to situation beyond the control of the petitioner like Covid pandemic. The petitioner's stand in the petition was that, since respondent is an interested party, against which it has raised claims, therefore, respondent has no right to propose or appoint the Arbitrator.

The Court observed that the counsel representing both the sides have not disputed existence of Contract Agreement and also that there are disputes inter se parties, which could not since be resolved through conciliation, therefore, are required to be resolved through arbitration.

The petition was disposed of, basis the directions given to Arbitrator that he shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

To read the Judgement in detail, please click here.

2. **Delhi High Court held that Aqualite Industries Private Limited has prima facie copied the two designs of the Relaxo Footwears Limited and the said pleas prima facie cannot be accepted.**

Relaxo Footwears Limited	**Plaintiff**
Aqualite Industries Private Limited	**Defendent**

<u>Date of Judgement</u>: October 8, 2021

Relaxo Footwears Limited, started as a small enterprise in the year 1976 and later in the year 1984 it was incorporated. Beginning from manufacturing Hawaii slippers, the plaintiff through sheer commitment has grown into a large-scale enterprise and over the years it emerged as the largest footware producer in India, whose products are marketed under various distinctive trademarks/labels and with a unique get up and trade dress including the house mark RELAXO and various product specific brands like BAHAMAS, FLITE, SPARX, SCHOOLMATE, etc.

The present application was filed by the Relaxo Footwears Limited seeking an ex parte injunction to restrain the defendant - Aqualite Industries Private Limited, its directors, etc. from manufacturing, selling, advertising, etc. the impugned footwear products which are said to be an imitation of the plaintiff's products/design/trade dress/get up. Other connected reliefs are also sought. It was urged that; the present suit pertains to intellectual property rights of the plaintiff in the design and/or overall trade dress/getup of certain footwear products. The defendant is said to have unlawfully imitated and pirated the said design/trade dress of the plaintiff in the said products.

Basis the findings and facts in the present case, the High Court was of the view that, Aqualite Industries Private Limited has prima facie copied the two designs of the Relaxo Footwears Limited. The claims of the Aqualite Industries Private Limited that the designs of the Relaxo Footwears Limited lack originality or there being existence of prior art are issues which would require better examination and would be considered after evidence has been led and the said pleas of the Aqualite Industries Private Limited prima facie cannot be accepted.

To read the Judgement in detail, please click here.

SUPREME COURT

1. **Order passed by the National Consumer Disputes Redressal Commission was set aside and the appeal filed by SGS India Limited was allowed.**

SGS India Limited	Appellant (s)
Dolphin International Limited	Respondent (s)

Date of Judgement: October 6, 2021

National Consumer Disputes Redressal Commission had allowed the complaint filed by the Dolphin International Limited, directing the appellant to pay a sum of Rs. 65,74,000/- with interest @9% p.a. from the date of filing of complaint till realization. The appellant was also directed to pay Rs. 25,000/- as cost to the complainant.

SGS India Limited is engaged in testing, inspection and certification company that tests the quality and quantity of several products, who was engaged by the complainant for providing services for inspection of groundnut procured by the complainant for the purpose of exporting the same to Greece and Netherlands. It was also responsible for carrying out the inspection of samples and further certifying in respect of different parameters of the groundnut. In this respect, inspection certificate of quantity, quality, weight and packing certificates were issued by the appellant basis the inspection and analysis of hand-picked and selected peanuts, which are of two qualities – Bold and Java, which were to be exported to Greece.

Based upon the findings, the Supreme Court held that the order of the Commission holding the appellant as deficient in service is not sustainable in the absence of any clause in the work order that the specifications should remain the same even at the port of destination and consequently, the present appeal is allowed, keeping aside the order passed by the National Consumer Disputes Redressal Commission.

To read the Judgement in detail, please click here.

DISCLAIMER The contents of this newsletter should not be construed as legal opinion. View detailed disclaimer.

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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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