Swift e-Bulletin

Swift e-Bulletin
Edition 29/21-22
Week – October 18^{th} to October 22^{ND}

Quote for the week:

“When something is important enough, you do it even if the odds are not in your favor”

- Elon Musk

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 the International Financial Services Centre 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 issues advisory to Registrar to an Issue and Share Transfer Agents ("RTA") in relation to Transmission of Securities to joint Holder(s);

- IFSCA issues new regulations to govern insurance intermediaries in IFSC know as International Financial Services Centres Authority (Insurance Intermediary) Regulations, 2021

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of October 18, 2021 to October 22, 2021.

Thank you,
Swift team

REGULATORY UPDATES

SEBI UPDATES

1. **SEBI issues advisory to Registrar to an Issue and Share Transfer Agents ("RTA") in relation to Transmission of Securities to joint Holder(s) vide circular dated October 18, 2021**

- SEBI has observed that in recent times, in various cases due to counterclaim / dispute from the legal representative of one of the deceased holder, the RTAs have not effected transmission of shares to the surviving joint holder as per section 56(2) & 56(4)(c) of the Companies Act 2013 leading to unnecessary long delays.

- Changes on the prevailing circumstances and due to long delays in transmission of shares due to various reasons, SEBI has advised RTA's vide this Circular that they should comply with the aforesaid provisions of the Companies Act 2013 and transmit securities in favour of surviving Joint holder(s), in the event of demise of one or more joint holder(s), provided that there is nothing contrary to the same in the Article of Association of the company:

  To read the Circular in detail, please click here.

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IFSCA UPDATES

1. **IFSCA issues new regulations to govern insurance intermediaries in IFSC know as International Financial Services Centres Authority (Insurance Intermediary) Regulations, 2021 vide Gazette Notification dated October 18, 2021**

- These regulations may be called the International Financial Services Centres Authority (Insurance Intermediary) Regulations, 2021.

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

- These regulations aim to put in place the process of registration and operations of insurance intermediaries in an International Financial Services Centre under the regulatory purview of The International Financial Services Centres Authority Act, 2019.

- The broad areas that the new Regulation cover are:

  - *Chapter I - Preliminary*
  - *Chapter II - Registration of Insurance Intermediary*
  - *Chapter III - Requirements for Insurance Intermediary*
  - *Chapter IV - Operations and Management*
  - *Chapter V - Miscellaneous Provisions*

  To read the Gazette Notification in detail, please click here.

2. **IFSCA issues new regulations to govern Capital Market Intermediaries in IFSC know as International Financial Services Centres Authority (Capital Market Intermediaries) Regulations, 2021 vide Gazette Notification dated October 18, 2021**

- These regulations may be called the International Financial Services Centres Authority (Capital Market Intermediaries) Regulations, 2021.

- This regulation shall govern the following Capital market intermediaries commencing operation in IFSC:

  - *Broker dealers, Clearing members, Depository participants, Investment bankers, Portfolio managers and Investment advisers*

- The broad areas that the new Regulation cover are:

  - *Chapter I - Preliminary*
  - *Chapter II - Registration*
  - *Chapter III – General obligations and responsibilities*
  - *Chapter IV - Specific obligations and responsibilities*
  - *Chapter V – Cross Border Business*
  - *Chapter VI – Inspection*
  - *Chapter VII - Miscellaneous*

  To read the Gazette Notification in detail, please click here.

3. IFSCA issues new regulations to govern Registration of Insurance Businesses in IFSC known as the International Financial Services Centres Authority (Registration of Insurance Business) Regulations, 2021vide Gazette Notification dated October 18, 2021

- These Regulations may be called the International Financial Services Centres Authority (Registration of Insurance Business) Regulations, 2021.

- These regulations shall aim to put in place the process of registration and operations of insurer and Reinsurer in an International Financial Services Centre under regulatory purview of The International Financial Services Centres Authority Act, 2019 (50 of 2019)

- The broad areas that the new Regulation cover are:

  - *Chapter I - Preliminary*
  - *Chapter II - Setting up of an IFSC Insurance Office*
  - *Chapter III - Procedure for Registration*
  - *Chapter IV - Permissible Activities*
  - *Chapter V - Basic Regulatory and Governance Requirements*
  - *Chapter VI - Miscellaneous*

  To read the Gazette Notification in detail, please click here.

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JUDGEMENTS/ ORDERS

NCLT

1. **National Company Law Tribunal rejects Corporate Insolvency Resolution Process ("CIRP") against M/s. Stahl Tecniks Private Limited**

NCLT, New Delhi Bench **("Tribunal")** rejects the application filed by M/s. Transit Geo System Integrators Private Limited **("Operational Creditor")** under section 9 of the Insolvency and Bankruptcy Code, 2016 **("IBC")** and Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against the M/s. Stahl Tecniks Private Limited **("Corporate Debtor").**

The Operational Creditor had made payment against demand raised by the Sales Tax Department of INR 9,87,823 on behalf of the Corporate Debtor. The learned council of Operational creditor submitted that the aforesaid debt claimed is an "Operational Debt" defined under Section 5 (21) of IBC 2016, since the same was arising out of the dues payable to the Sales Tax Department of the State Government. 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.

Tribunal deliberated on issue as to whether the sales tax demand paid by the Operational Creditor can be claimed as reimbursement from a Corporate Debtor as an Operational Debt and after hearing submissions of the Operational Creditor and perusing the application and documents placed on record, it observe that in order to adjudicate the issue, it was necessary to visit the definition of "Operational Debt" as defined under Section 5(21) of IBC, 2016.

Tribunal noted that final notice of assessment, the tax demand had been raised by Sales Tax department against the Operational Creditor and not against the Corporate Debtor and that though the definition of the operational debt includes the dues arising under any law in force and recoverable by the Central Government or State Government or any local authority, as per Tribunal's view, the dues payable to the Government can be claimed by the Government only in the capacity of the Operational Creditor and the payment of tax demand made and discharged by the Operational Creditor herein to the State Government will not result in automatic assignment or transfer of such payment/debt to the Corporate Debtor.

Based on the facts presented, Tribunal was satisfied that the amount claimed was neither arising out of provision of goods and services nor was a claim in respect of employment nor it represented the dues payable to the Government, was not an Operational Debt within the meaning of Section 5(21) of the IBC, 2016 and therefore, the Operational Creditor was not the operational creditor u/s 5 (20) of IBC 2016. Accordingly, Tribunal dismissed the said application filed by the Operational Creditor.

To read the order in detail, please click here.

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SEBI

1. **SEBI imposes penalty on employee of Mindtree Limited for violation under PIT Regulations.**

Securities and Exchange Board of India ("**SEBI**") received a letter dated October 26, 2018 from Mindtree Ltd. **("Company")** informing SEBI regarding instances of violation of the code of conduct framed by the Company under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") by two of its employees and action taken by the Company pursuant to the same. Accordingly, SEBI initiated an examination in the matter against the said two employees.

SEBI also initiated a separate investigation for ascertaining any violation of the provisions of regulation 7(2)(a) of the PIT Regulations with regards to the transaction activities of promoters, directors and employees of the Company, in the scrip of the Company.

The investigation revealed that Virat Kumar Yerramalla **("Noticee")** was an employee of the Company and had transacted in the scrip of the Company on multiple occasions, including during the Investigation Period. It was further observed that the Noticee had done transactions aggregating to traded value in excess of INR 10,00,000 during the Investigation Period. It was checked and confirm that the Company did not receive disclosure from Noticee under PIT Regulation.

The Adjudicating Officer (**"AO"**) issued Show Cause Notice (**"SCN"**) and to which Noticee responded with clarification as to why proceeding should not be initiated. The AO looked in the provisions of PIT regulation and considering the response provided and noted that the Noticee failed to make disclosure under the regulation due to lack of knowledge hence such excuse is untenable as it goes against the established legal principle of "ignorantia juris non excusat" which translates into ignorance of law is no excuse. The legal principle is justified on grounds of necessity because if there is relaxation in the application of this principle, every accused will take the plea that he did not know the law and it will be impossible for the adjudicating authority to establish the knowledge of law and it would in turn weaken the administration of justice. Similarly, AO also looked into other submission made by Noticee and determined that there is violation under PIT regulation. Accordingly, penalty was imposed.

To read the order in detail, please click here

HIGH COURT

1. **ISGEC Heavy Engineering Limited files petition contending that the Indian Oil Corporation Limited's invocation was unsustainable and premature**

ISGEC Heavy Engineering Limited **Petitioner**

Indian Oil Corporation Limited **Respondent**

<u>Date of Judgement</u>: October 21, 2021

Work Order was issued to the Petitioner for carrying out the works of "Residual Process Design, Engineering, Detailed Engineering (including HAZOP Study), Procurement, Supply, Fabrication, Inspection, Transportation, Storage, Construction, Installation, Testing, Pre-Commissioning, Commissioning, Performance Guarantee Test Run, Operation and Maintenance of 80 TPA (NET) Petcoke Fired CFBC Boiler. Pursuant to the Letter of Allotment, a formal agreement for work was executed at Guwahati.

The present petition was filed under Section 11 (4) and (6) of the Arbitration and Conciliation Act, 1996 seeks appointment of an Arbitrator in terms of General Conditions of Contract, incorporated by way of reference under a Letter of Award.

During the pendency of the Contract, Indian Oil Corporation Limited (IOCL), being the respondent, issued a suspension order dated 06th August 2018, which lead to Petitioner – i.e., ISGEC Heavy Electrical Ltd. (ISGEC) exercising its right to terminate the Contract. Later, ISGEC invoked arbitration and nominated its Arbitrator. IOCL replied vide letter contending that the invocation was unsustainable and premature. In these circumstances, ISGEC has filed the present petition.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **ONGC invites "Expressions of Interest" for demand assessment for natural gas produced from the two fields.**

Vaibhavi Enterprise	Appellant (s)
Nobel Cera Coat & Ors.	Respondent (s)

With

Tanish Cherachem Private Limited	Appellant (s)
Nobel Cera Coat & Ors.	Respondent (s)

Date of Judgement: October 21, 2021

ONGC invited "Expressions of Interest" for demand assessment for natural gas produced from the two fields. As per the EOI, the demand assessment for the natural gas in the area was to be undertaken by ONGC and the ultimate approval for allocation was to come from Ministry of Petroleum and Natural Gas, Government of India. If allotted, the gas supply would operate for a period of five years from the date of award.

Aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Gujarat passed in Special Civil Application preferred by the respondent no.1 herein-original writ petitioner by which, the High Court has disposed of the said writ petition by directing the respondent no.2- ONGC to finalize the contract with the original writ applicant on the condition that the writ applicant shall lift the gas within 65 days from the date of allotment instead of 75 days as offered by it earlier.

Three applicants were interested in sourcing the natural gas from two fields advertised by ONGC viz.
Nobel Cera Coat
Vaibhavi Enterprise
Tanish Cerachem Private Limited

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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