Swift e-Bulletin

Swift e-Bulletin
Edition 09/21-22
Week – May 31st to June 04th

Quote for the week:

"You're only given a little spark of madness. You mustn't lose it."

-Robin Williams

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**") and the Securities and Exchange Board of India ("**SEBI**"), and critical judgements and orders passed by the National Company Law Tribunal ("NCLT"), SEBI and High Court.

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

- **MCA updates list of E-forms for providing waiver of additional fees vide an updated list**

- **SEBI mandates half yearly disclosures regarding loans, guarantees provided to promoters under the Compliance Report on Corporate Governance by listed entities**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of May 31, 2021 to June 04, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

MCA UPDATES

1. **MCA updates list of e-forms for providing waiver of additional fees vide an updated list dated June 03, 2021**

- MCA vide Circular 06/2021 relating to relaxation of time for filing certain forms under the Companies Act, 2013 due for filing during April 01, 2021 to May 31, 2021 and Circular 07/2021 relating to Relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 falling on any date between during April 01, 2021 to May 31, 2021, had provided relaxation from additional fees for any forms to be filed during this period.

  In continuation to the above-mentioned Circulars the Ministry had come out with a list of e-forms for which the above two Circulars shall be applicable and had further updated the list of forms on May 25, 2021. The aforementioned list has now been further updated as on June 03, 2021.

  To read the updated list of e-forms, please click here.

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SEBI UPDATES

1. **SEBI mandates half yearly disclosures regarding loans, guarantees provided to promoters under the Compliance Report on Corporate Governance vide Circular dated May 31, 2021.**

- As per Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR**"), it mandates listed companies to submit a compliance report on corporate governance as per the formats and timelines mentioned below:

  - ***Annex - I*** *- on quarterly basis;*
  - ***Annex - II*** *- at the end of a financial year; and*
  - ***Annex - III*** *- at the end of 6 months from the close of financial year.*

- In order to keep pace with the incessantly changing legal mandates and in order to bring about transparency and to strengthen the disclosures around loans/ guarantees/comfort letters/ security provided by the listed entity, directly or indirectly to promoter/ promoter group entities or any other entity controlled by them, SEBI has decided to include such disclosures on a mandatory basis henceforth on a half yearly basis in the Compliance Report on Corporate Governance as per **Annex – IV** (on a half yearly basis (w.e.f. first half year of the FY 21-22) to the Circular which shall be effective from FY 2021-2022.

- This Circular shall supersede the aforementioned SEBI Circulars dated September 24, 2015 and July 16, 2019

  To read the Circular in detail, please click here.

2. **SEBI defers applicability of certain disclosures with respect to certain schemes vide Circular dated May 31, 2021.**

- SEBI vide its Circular dated April 29, 2021 had specified that schemes should disclose its:

  - *Risk -o- meter as well as benchmark while disclosing the performance of the scheme;*

- ➢ *Details of the scheme portfolio*

to the investors only for the schemes in which the unitholders are invested.

- The above disclosures were to come into effect from June 01, 2021. However, based on the prevailing circumstances and based on the representation received from Association of Mutual Funds in India ("**AMFI**"), SEBI has deferred the applicability of the said Circular to September 01, 2021.

  To read the Circular in detail, please click here.

3. SEBI provides relaxation in compliances pertaining to Alternative Investment Funds ("AIFs") and Venture Capital Funds ("VCFs") vide Circular dated May 31, 2021.

- Based on representation received from the Alternative Investment Fund ("**AIF**") industry regarding extension of timelines for various regulatory filings and compliances for all AIFs and Venture Capital Funds ("**VCFs**"), SEBI has provided a one - time relaxation by extending the due dates for regulatory filings by AIFs and VCFs, during the period ending March 2021 to July 2021 as prescribed under SEBI (Alternative Investment Funds) Regulations, 2012 and circulars issued thereunder, to September 30, 2021.

  To read the Circular in detail, please click here.

4. SEBI provides one-time relaxation pertaining to 'Off-market' transfer of securities by Foreign Portfolio Investors ("FPI") vide Circular dated June 01, 2021

- The Finance Act, 2021 provides tax incentives to foreign funds in case they decided to relocate to Gift City. The main objective of this Circular is to give effect to the same and help foreign funds relocate to International Financial Services Centre ("**IFSC**") in order to make the IFSC in GIFT City a global financial hub.

- In order to facilitate such relocation, FPI (**'original fund' or its wholly owned special purpose vehicle**) will have to approach its Designated Depository Participant ("**DDP**") for approval of a one-time 'off-market' transfer of its securities to the 'resultant fund.

- The DDP may, after conducting its Due Diligence, grant such one- time approval.

- Any such relocation request shall imply that the FPI has deemed to have applied for surrender of its registration and the DDP may be guided by the guidelines pertaining to surrender of FPI registration.

- The 'off-market' transfer has been allowed without prejudice to any provisions of tax laws and FEMA

  To read the Circular in detail, please click here.

5. **SEBI streamlines the process of Initial Public Offering ("IPOs") with Unified Payment Interface ("UPI") in Application Supported by Blocked Amount ("ASBA") and redressal of investor grievances vide Circular dated June 02, 2021**

- SEBI vide its earlier Circular dated March 16, 2021 had put in place measures to have a uniform policy to further streamline the processing of ASBA applications through UPI process among intermediaries/ Self Certified Syndicate Banks ("**SCSBs**") and also provided a mechanism of compensation to investors.

- However, due to COVID -19 pandemic, SEBI has deferred implementation of the said earlier Circular as under:

  - ***SMS Alert:*** *The Circular had prescribed the details to be sent by SCSBs in SMS alerts. While SCSBs shall continue to send SMS alerts during the actual block/debit/unblock of UPI, however details of total number of shares applied/allotted/non-allotted etc. shall be included in SMS for Public Issues opening on/after* ***January 01, 2022.***
  - ***Web Portal for Closed User Groups ("CUG"):*** *The Circular had prescribed a web portal to be hosted by Sponsor Banks for CUG. With respect to the same:*
    - *The said automated web portal shall be live and operational for Public Issues opening only on or after October 01, 2021.*
    - *For Public issues opening before October 01, 2021, the Sponsor Banks shall send the details to the e-mail address of CUG entities periodically in intervals not exceeding three hours*
  - ***Completion of Unblocks by T+4:*** *The Circular had prescribed process and timeline for ensuring the completion of unblocks pertaining to UPI mandates on T+4 (T: Issue Closing Date). With respect to the same, the following shall be the revised timelines:*
    - *The Registrar to the Issue shall provide the allotment/ revoke files to the Sponsor Bank by 8:00 PM on T+3 i.e., the day when the Basis of Allotment (BOA) has to be finalized*

- *The Sponsor Bank shall execute the online mandate revoke file for Non-Allottees/ Partial Allottees and provide pending applications for unblock, if any, to the Registrar to the Issue, not later than 5:00 PM on BOA+1.*
- *Subsequent to the receipt of the pending applications for unblock from the Sponsor Bank, the Registrar to the Issue shall submit the bank-wise pending UPI applications for unblock to the SCSBs, not later than 6:30 PM on BOA+1.*
- *To ensure that the unblocking is completed on T+4, the Lead Managers, on a continuous basis and before the opening of the public issue shall take up the matter with the SCSB's at appropriate level.*

To read the Circular in detail, please click here.

6. SEBI enhances Overseas Investment Limits for Mutual Funds vide Circular dated June 03, 2021

- Para 1 of SEBI Circular dated November 05, 2020 specified the overseas investment limits per Mutual Fund.

- Based on the representations received from Mutual Fund industry to enhance the investment limits per Mutual Fund, SEBI revises the investment limits per mutual fund as under:

  - *Mutual Funds can make overseas investments up to maximum US $ 1 billion per Mutual Fund, subject to overall industry limit of US $ 7 billion;*
  - *Mutual Funds can invest in overseas Exchange Traded Fund subject to maximum US $ 300 million per Mutual Fund subject to overall industry limit of US $ 1 billion;*
  - *In respect of disclosure of investment limits in the scheme documents at the time of New Fund Offer ("**NFO**") and the investment limits on ongoing schemes, such limits would be soft limits for the purpose of reporting by Mutual Funds on a monthly basis in the format prescribed vide SEBI Circular dated November 05, 2020.*

To read the Circular in detail, please click here.

JUDGEMENTS/ ORDERS

National Company Law Tribunal

1. **National Company Law Tribunal allows the Restoration of M/s Armour Solutions Private Limited**

National Company Law Tribunal, New Delhi Bench ("Tribunal") accepts the appeal filed by the directors of Armour Solutions Private Limited ("Appellant Company") under section 252 of the Companies Act, 2013 ("the Act") and allows the restoration of the Appellant Company.

The Appellant submitted that the Registrar of Companies ("RoC") New Delhi and Haryana, struck off the Appellant Company from the Register of Companies due to default in statutory compliances and non-filing of financial statements and annual returns since the inception of the Appellant Company, in accordance with section 248 of the Act and had not filed application under section 455 of the Act for obtaining status of Dormant Company.

The learned counsel of Appellant Company submitted that the default in statutory compliance and non-filing of statutory returns was due to lack of professional advice on the same and the Appellant Company has always been in operation since its date of incorporation. Further, the Appellant Company did not receive any show cause notice from the Respondent nor any opportunity of being heard was given to explain the reason of the said default in statutory compliance and non-filing of statutory returns. In support of the said plea, the learned counsel of Appellant Company had placed before the Tribunal the copies of audited financial statements from financial year 2013-2014 onwards, acknowledgement copies of Income Tax returns for the assessment years 2014-15 to 2017-18, and copies of bank statement as an evidence that the Appellant Company was acting as a going concern during the relevant period. He further affirmed that the Appellant Company shall complete all pending filings along with the requisite fees.

Based on facts presented, the Tribunal was satisfied that during the relevant period the Appellant Company was in fact in operation and passed the restoration order subject to their filing of all statutory returns for the defaulting years as required by law and completion of all formalities immediately from the date on which its name is restored in the Register of Companies and on payment INR 25,000/- to be paid to Prime Minister's Relief Fund.

To read the order in detail, please click here.

SEBI

1. SEBI banned two Infosys employees from trading in stock market.

In the case of Infosys limited, Securities and Exchange Board of India (SEBI) has banned Infosys's senior corporate counsel Pranshu Bhutra and Venkata Subramaniam V. V Senior Principal, Corporate Accounting Group along with six other related entities from accessing capital markets until further orders.

SEBI said that Capital One and Tesora had traded in the scrip of Infosys in the F & O segment while in the possession of unpublished price sensitive information (UPSI) just prior to announcement of financial results for the quarter ended June 30, 2020 and generated proceeds of INR 279.51 Lakhs and 26.82 lakhs respectively.

SEBI further said that, Call Data Records(CDRs) and KYC documents of Venkata and Pranshu and Amit were obtained from Telecom providers and found that Venkata had communicated the UPSI to Pranshu and Pranshu had also procured the UPSI from Venkata.

To read the order in detail please click here.

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HIGH COURT

1. **Dr. Reddys Laboratories Limited withdraws the present suit to re-file a non-commercial suit.**

Dr. Reddys Laboratories Limited	**Plaintiff**
The Advertising Standards Council Of India	**Defendant**

Date of Judgement: May 31, 2021

Dr. Reddys Laboratories Limited had filed a suit in the Delhi High Court, where the Court raised objections prophesied on the similar judgement in case of *Havells India Limited v. Advertising Standards Council of India*, which was later withdrawn by it, in view to re-file the suit as a non-commercial suit.

Delhi High Court permitted the leave to withdraw the present suit and granted liberty to re-file the suit and the Registry was requested to list the suit when filed.

To read the Judgement in detail, please click here.

2. **Petition filed by Steel Autnority of India against a Singapore based company was dismissed by the Delhi High**

Steel Authority of India Limited	**Petitioner**
M/s. Jaldhi Overseas Pte Ltd.	**Respondent**

Date of Judgement: May 31, 2021

Steel Authority of India Limited ("**SAIL**"), being a Public Sector Enterprise, engaged in the manufacturing of steel, filed petition under Section 34 of the Arbitration and Conciliation Act, 1996, challenging an arbitral award and the other party being the respondent – Jaldhi Overseas Pte Ltd ("**JOPL**"), a company incorporated in Singapore, engaged in the business of maritime logistics including vessel operations and chartering, who was the claimant before the Arbitral Tribunal.

The arbitration between the parties was an international commercial arbitration conducted under the aegis of Delhi International Arbitration Centre (DIAC) and in accordance with its Rules. The dispute between the parties arose in connection with a Contract of Affreightment ("**CoA**"), however there was no any substantial dispute as to the freight and charges payable by SAIL to JOPL. There being a minor difference of USD between the amounts as claimed by JOPL and the aggregate of amounts acknowledged by SAIL as withheld from the freight/demurrages payable to JOPL.

The Delhi High Court held that, before it could conclude, it was necessary to note that during the course of arguments, if SAIL was willing to pay the awarded amount with a lesser interest (say 6% instead of 12%) and put a quietus to the disputes, JOPL would accept the same and waive its right for receiving the balance interest.

The petition was dismissed basis the observations of the Delhi High Court where it considered opposite to grant SAIL another opportunity to reflect on the offer mode on behalf of JOPL which will bind JOPL to the offer for a period of four weeks. It further held that SAIL will pay the amount with 6% interest per annum on a compounded basis with three monthly breaks on such amounts become due in terms of the CoA within 120 days of discharge of the cargo, till the date of payment and JOPL would accept the same as full and final settlement of its claims.

To read the Judgement in detail, please click here.

3. **Petition filed by Indiabulls Commercial Credit Limited was dismissed, as the challenged order was limited to the issue of Section 102 of Cr.P.C (Code of Criminal Procedure)**

Indiabulls Commercial Credit Limited	**Petitioner**
Economic Offences Wing & ORS.	**Respondents**

Date of Judgement: May 31, 2021

Indiabulls Commercial Credit Limited ("**ICCL**"), being a Non-Banking Financial Company, registered with the Reserve Bank of India and also as a Financial Institution under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**"). ICCL being the petitioner had filed a petition under Section 226 of the Constitution of India read with Section 482 Cr.P.C seeking directions by quashing of order/notice issued by the office of the Offences Wing, New Delhi to the Sub-Registrar-IIA under Section 102 of the Code of Criminal Procedure, 1973.

ICCL had granted two loans against the property of the respondent nos 4 to 10, whose loan accounts were declared as Non-Performing Assets (NPA) upon failure to pay EMI's on time and Statutory proceedings under the SARFAESI Act were conducted.

The statement as referred in the present case, the Court held that, the power to seizure in Section 102 of Cr.P.C. has to be limited to movable property, whereas here in this case the property in question is immovable and taking steps under the said Section 102 of Cr.P.C is illegal and held that upon considering the facts and circumstance of the case and upon hearing to both the parties and with reference being drawn from the judgement of Nevada Case, that the notice under Section 102 of Cr.P.C. is not sustainable.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. Supreme Court files Suo Motu Writ Petition for distribution of essential supplies and services during pandemic

Date of Order: May 31, 2021

Supreme Court took cognizance of the management of the COVID-19 pandemic during the second wave where the proceedings in the present Sou Motu Writ Petition was initiated on April 22, 2021.

Pursunat to the proceedings by this cour, a detaile order was issued in relation to vaccination policy, supply of essential drugs, supply of medical oxygen, medical infrastructure, augmentation of healthcare workforce and the issues faced by them, and issues of freedom of speech and expression during the COVID-19 pandemic.

The Order of the Supreme Court was divided into the following sections to facilitate analysis:

A. Introduction
B. Submission by Counsel
C. National Vaccination Policy
D. Separation of Powers
E. Issues with the Liberalized Vaccination Policy
   E 1. Vaccine Procurement and Distribution among Different Categories of the Population
   E.2 Effects of Vaccination by Private Hospitals under the Liberalized Vaccination Policy
   E.3 Basis and Impact of Differential Pricing
   E.4 Vaccine Logistics
   E.5 Digital Divide
F. Conclusion

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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