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<u>Swift e-Bulletin</u>
Edition 31/20-21
Week – February 15th to February 19th

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

"Arise, awake and do not stop until the goal is reached"

- Swami Vivekananda

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.

In the wake of COVID-19, the various regulatory authorities have been granting many relaxations, exemptions and amendments to the various legislations by regulatory authorities to ease out the operations during this time of crisis.

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 Reserve Bank of India ("**RBI**") and it also contains Overview of Budget 2021 and critical judgements and orders passed by SEBI, Supreme Court and High Court.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of February 15, 2021 to February 19, 2021.

Thank you,
Swift Team

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REGULATORY UPDATES

SEBI UPDATES

1. **SEBI takes decisions on various Regulations vide Press Release dated February 17, 2021**

- The SEBI Board met in New Delhi on February 17, 2021 and certain amendments and repealing of certain acts were discussed. The outcome of this meeting is mentioned below.

- Minimum Public Offer (MPO) requirements for large issuers relaxed**:**

  *As per Securities Contracts (Regulation) Rules, 1957 ("**SCRR**") presently issuers with post issue market capital of at least INR. 4,000 crores or more, are required to offer to public at least 10% of its post issue market capital ('**Minimum Public Offer' – MPO**'). Further, such issuers are also required to achieve a minimum public shareholding (**MPS**) of at least **25%** within three years from the date of listing. However, the board has decided to recommend for issuers with post issue market capital exceeding INR.1,00,000 crores, the requirement of MPO be reduced from 10% of post issue market capital (existing provision) to **INR. 10,000 crores + 5%** of the incremental amount beyond INR.1,00,000 crores. These issuers shall be required to achieve at least 10% public shareholding in two years and at least 25% Public Shareholding within five years from the date of listing.*

- Amendment to SEBI (Portfolio Managers) Regulations, 2020, SEBI (Investment Advisers) Regulations, 2013 and SEBI (Research Analysts) Regulations, 2014:

  *The Board approved amendment to SEBI (Portfolio Managers) Regulations, 2020 (PMS Regulations), SEBI (Investment Advisers) Regulations, 2013 and SEBI (Research Analysts) Regulations, 2014 and shall henceforth recognize the Post Graduate Program in Securities Market of not less than one year offered by National Institute of Securities Markets ("**NISM**") as eligible qualification for Portfolio Managers, Investment Advisers and Research Analysts. The Board also approved amendment to PMS Regulations with respect to NISM certification requirements.*

- Repeal of SEBI (Underwriters) Regulations, 1993 and amendments to the SEBI (Merchant Bankers) Regulations, 1992 and the SEBI (Stock Brokers) Regulations, 1992:

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SEBI (Underwriters) regulations 1993 shall stand to be repealed henceforth and SEBI incorporates provisions related to net-worth, maintenance of records and other regulatory compliances for the underwriting activities in SEBI (Merchant Bankers) Regulations, 1992 and the SEBI (Stock Brokers) Regulations, 1992. The respective regulations shall also henceforth permit Merchant Bankers and Stock Brokers to carry out Underwriting activities.

- *SEBI (Regulatory Fee on Stock Exchanges) Regulations, 2006 stands to be* ***merged*** *with Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018*.

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

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RBI UPDATES

1. **RBI permits resident individuals to make remittances under Liberalised Remittance Scheme (LRS) to International Financial Services Centres (IFSCs) set up in India under the Special Economic Zone Act, 2005 vide Circular dated February 16, 2021**

- With a goal to deepen the financial markets in International Financial Services Centres ("**IFSCs**") and provide an opportunity to resident individuals to diversify their portfolio, the extant guidelines on Liberalised Remittance Scheme ("**LRS**") have been reviewed and RBI has decided to permit resident individuals to make remittances under LRS to IFSCs set up in India under the Special Economic Zone Act, 2005, as amended from time to time. Accordingly, Authorized Dealer (**"AD"**) Category - I Banks may allow resident individuals to make remittances under LRS to IFSCs in India, subject to the following conditions:

  - *The remittance shall be made only for making investments in IFSCs in securities, other than those issued by entities/companies resident (outside IFSC) in India.*
  - *Resident Individuals may also open a non interest bearing Foreign Currency Account ("**FCA**") in IFSCs, for making the above permissible investments under LRS. Any funds lying idle in the account for a period up to 15 days from the date of its receipt into the account shall be immediately repatriated to domestic INR account of the investor in India.*
  - *Resident Individuals shall not settle any domestic transactions with other residents through these FCAs held in IFSC.*

- AD Category - I Banks, while allowing such remittances, shall ensure compliance with all other terms and conditions, including reporting requirements prescribed under the Scheme. It may be noted that any person resident in India (outside IFSC) entering into any transaction with a person/entity in IFSC shall only be governed by regulations/directions and rules issued/notified by the Reserve Bank of India and the Government of India respectively under Foreign Exchange Management Act (FEMA), 1999. Further, compounding of any contravention of FEMA provision by such person resident in India shall be dealt by the Reserve Bank of India in accordance with the extant instructions/provisions on compounding of contraventions under FEMA. Master Direction No. 7 (Master Direction – Liberalised Remittance Scheme) is also being updated by the RBI to reflect the above changes.

AD Category - I Banks have also been instructed to bring the contents of this circular to the notice of their constituents and customers.

To read the Circular in detail, please click here.

2. **RBI issues Master Direction on Non-Banking Financial Company – Housing Finance Company on February 17, 2021**

- This Master Direction shall be called Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021.

- RBI has issued this Master Direction in public interest and to enable the banks to regulate the financial system to the advantage of the country and to prevent the affairs of any Housing Finance Company (HFCs) from being conducted in a manner detrimental to the interest of investors and depositors or in any manner prejudicial to the interest of such HFCs.

- Some of the important gist of compliances prescribed in this master direction are:

  - Registration of Housing Finance Company (“**HFCs”**)

    *Any Company to commence housing finance as its principal business shall have at least **INR. 20 Crore** as minimum net owned funds however there are certain exemptions provided and shall also have such amount of capital as prescribed*.

  - Asset Classification and Provisioning

    HFCs are required to prepare their financial statements either as per Indian Accounting Standards (IndAS) or notified Accounting Standards (AS) as maybe applicable and the HFC shall also classify its assets either as standard, sub-standard, doubtful or loss asset.

  - Regulatory restrictions and Limits

    No HFC shall lend against its own shares to
    - *Single borrower – not exceeding 15% of its owned funds*
    - *Single group of borrowers- not exceeding 25% of its owned funds*

    No HFC shall invest in

- *shares of another company – not exceeding 15% of its owned funds*
- *shares of a single group of companies - not exceeding 25% of its owned funds*

No HFC shall invest in Lend and Invest together

- *Single Party- not exceeding 25% of its owned funds*
- *single group of parties - 40% of its owned funds*

There are also restrictions placed on investing in land or building which are not for its own use and limit of exposure of such HFCs to the capital market.

- Acceptance of Public Deposit

An HFC shall not accept or renew public deposit unless it has obtained minimum investment grade rating for fixed deposits from any one of the approved credit rating agencies at least once a year.

- Acquisition/ Transfer of Control

Prior approval of RBI shall be required in the following cases:

- *Takeover or acquisition of control of an HFC which may or may not result in change in management.*
- *Change in shareholding of an HFC accepting/holding public deposit whereby acquisition/ transfer of shareholding of 10 per cent or more of the paid-up equity capital of the HFC by/to a foreign investor.*
- *Change in the management of the HFC which would result in change in more than 30 % of the directors, excluding independent directors*.

- Corporate Governance

All HFCs are required to constitute an Audit Committee consisting of not less than three directors and are also required to undertake Information system audit and also constitute a risk management committee and appoint a Chief risk officer and All HFCs are required to constitute Nomination and remuneration committee and have a policy to ensure fit and proper framework is maintained for all directors, Key Managerial Personnel and senior management personnel

- Reporting requirements

*Financial Statement including Consolidated financial statement, Auditors report and Directors report shall be submitted to the National Housing finance board (**"NHB"**) within 15 days of the date of the annual general meeting. Also, a separate certificate shall be required from auditors in case an HFC holding/ accepting public deposits.*

To read the Master Direction in detail, please click here.

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JUDGEMENTS/ ORDERS

SEBI

1. **Settlement orders in respect of Dish TV India Limited**

Dish TV India Limited (**Noticee**) informed Securities and Exchange Board of India ('**SEBI'**) through its letter about the non-compliance under SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**SEBI PIT Regulations**") and Code of Conduct for Prevention of Insider Trading by two of its promoters.

Based on the information received, SEBI carried out examination and observed certain violations of provisions of SEBI PIT Regulations and appointed the Adjudicating Officer (AO) to inquire the alleged violations by the Noticee.

A Show Cause Notice ("**SCN**") was served upon the noticee and the said SCN stated that there were certain transactions in the nature of invocation of pledge done by its promotors in the scrip of Dish TV India Limited (DTIL). It was observed that noticee were aware of the transactions, however, Noticee notified these disclosures to the exchanges in a delay of 66 days and 76 days, hence, violated the provisions of Regulation 7(2) (b) of SEBI (PIT) Regulations.

The Noticee proposed to settle the instant proceedings initiated against it, without admitting or denying the findings of fact and conclusions of law, through a settlement order and filed settlement application with SEBI. The High Powered Advisory Committee considered the settlement terms proposed and recommended that the case may be settled upon payment of INR 8,20,782/- (INR Eight Lakh Twenty Thousand Seven Hundred Eighty-Two only) by the applicant as settlement amount towards the settlement terms.

Upon acceptance of the settlement terms and the receipt of settlement amount by SEBI, the adjudication proceedings initiated against DTIL disposed of in terms of section 15JB of the SEBI Act.

To read the order in detail, please click here.

HIGH COURT

1. **Delhi High Court disposes of the petition filed by Career Launcher Infrastructure Private Limited by appointing an arbitrator to arbitrate the dispute**

Career Launcher Infrastructure Private Limited	Petitioner
Nalanda Foundation	Respondent

Date of Judgement: February 15, 2021

Present petition was disposed of by the Delhi High Court, which was filed by Career Launcher Infrastructure Private Limited, as an application under Section 17 of the Arbitration and Conciliation Act, 1996, where an arbitrator was appointed to arbitrate the dispute between the parties, who would take decision thereon in accordance with law after hearing the parties.

To read the Judgement in detail, please click here.

2. **The Delhi High Court directed the Trial Court to summon the Bank Manager and to record the evidence as to whether any authorization was given to sign the cheque on behalf of the accused**

M/s. DTDC Express Limited (*Formerly known as DTDC Courier and Cargo Limited*)	Petitioner
M/s. DAT Enterprises	Respondent 1
Mrs. Anitha Thyagarajan	Respondent 2

Date of Judgement: February 15, 2021

M/s. DTDC Express Limited (**"DTDC"**), had filed the complaint under Section 200 of Cr.P.C. for the offence punishable under Section 138 of the Negotiable Instruments Act. During the evidence, DTDC had submitted that, the accused is not the signatory to the cheque and hence an application was filed for summoning the Bank Manager, whether any authorization was given to sign the cheque and the same was rejected by the Trial Court, who found that there is no iota of evidence in order to plead in the complaint and the notice by the complainant with regard to the disputed cheque.

The Court held that, it is not a dispute that 138 proceedings has been initiated and witnesses are also being examined and held that on perusal of the application, it is for the limited purpose only as to know whether any authorization was given to the Bank permitting the authorized person to issue the cheque on behalf of the accused. Further, the Court held that the Trial Court ought to have given an opportunity to the complainant to examine the Bank Manager with regards to authorization to sign the cheque.

In the opinion of the Court, it held that, the Trial Court has committed an error in rejecting the application filed under Section 91 of the Cr.P.C. and passed the following order by allowing the said petition filed and consequently, the application filed under Section 91 of the Cr.P.C. and directed the Trial Court to summon the Bank Manager forthwith and to record the evidence.

To read the Judgement in detail, please click here.

3. Application filed challenging the arbitral award rendered by the Arbitral Tribunal was dismissed by the Delhi High Court, the application is unmerited

National Highways Authority of India	**Petitioner**
M/s. BSCPL Godhra Tollways Limited	**Respondent**

Date of Judgement: February 17, 2021

Due to the dispute arisen between the National Highways Authority of India **("NHAI")** and M/s. BSCPL Godhra Tollways Limited, who is termed as "Concessionaire" in respect of the Concession Agreement, NHAI had filed the present petition challenging the arbitral award rendered by the Arbitral Tribunal comprising of three members.

NHAI, in terms of the Concession Agreement was obliged to secure the approval of the Railway Authorities for the General Arrangement Drawing (GAD) which was required to be provided to the Concessionaire. The NHAI got the said GAD prepared for the Road Over Bridges (ROBs), which provided for concrete structures and submitted the same for approval of the Railways. Disputes arose between the parties in connection with the construction of ROBs, where the contract provided for the construction of five ROBs. However, the Concession Agreement was modified for construction of only four ROBs, due to which the specifications of the ROBs as indicated in the Concession Agreement was changed. Later, the Concessionaire claimed that the same resulted in a Change of Scope (hereafter „COS") and in terms of the Concession Agreement, it was entitled to additional cost and the same to be paid by NHAI, which the NHAI agreed to pay.

However, NHAI, before the Arbitral Tribunal contended that it was not obliged to make any payment for construction of the ROBs to the Concessionaire as the Concession Agreement was an all-inclusive contract and the specifications regarding ROBs were disclosed to be tentative. Nonetheless, the Arbitral Tribunal considered the dispute and had held in favour of the Concessionaire by stating that, the Concessionaire's claims pertaining to change in the specifications of the ROBs constituted a 'Change of Scope' (COS), which would necessitate determining the additional cost payable to the Concessionaire, is hereby accepted and the counter claim made by NHAI for refund of the additional amount paid towards construction of ROBs was rejected.

To conclude, the Delhi High Court, disposed of the pending application on the ground that, the letters issued by the concessionaire in particular, letters that the concessionaire had accepted to proceed with the construction by receiving the amount as an interim measure and without prejudice to its claim. And the Court was also of the view that, it finds no reason to interfere with the impugned award and the present petition was dismissed as unmerited.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. A closer scrutiny on the role of banks and financial institutions was directed by the Supreme Court, as they were aware of the Award granted in favour of M/s. Daiichi Sankyo Company Limited

M/s. Daiichi Sankyo Company Limited	Petitioner
Oscar Investments Limited & ORS.	Respondents

Date of Judgement: February 18, 2021

The Court, in its order intended that, while issuing notice in Special Leave Petition had directed that the status quo as on the date of the said petition, with regards to the shareholding of Fortis Healthcare Holding Private Limited **("FHHPL")** in Fortis Healthcare Limited **("FHL")** be maintained in respect of 'both the encumbered and unencumbered shares of Fortis Healthcare Limited held by Fortis Healthcare Holding Private Limited'.

Various banks/financial institutions thereafter had filed applications seeking modification/clarification submitting inter alia that certain shares of FHL held by FHHPL were already pledged with said banks/financial institutions and that it be directed that the earlier orders would not apply to such encumbered shares.

As a matter of fact, the concerned figures showing shareholding patterns including the division between encumbered and unencumbered shares in various quarters were set out in a tabular chart and it was observed that the number of unencumbered shares held by FHHPL steadily declined and that 'the contemnors knowingly and willingly lost control of Fortis Healthcare Limited (FHL)'.

This being the case, the Supreme Court, stated that the banks/financial institutions had intervened in the matters pending before this Court, and directed a closer scrutiny to be made on the role of banks and financial institutions, because they were definitely aware of the Award granted in favour of M/s. Daiichi Sankyo Company Limited. Further, the Supreme Court directed all the noticee banks and financial institutions, (a) to place on record the basic documents pertaining to loans advanced or financial accommodations extended in respect of which the shares of FHL were pledged with them; (b) to place on record the nature of securities offered in connection with such loan arrangements; (c) to place on record the details of the encumbered and unencumbered shares of FHL standing in the name of FHHPL, held by them; (d) to place on record the details of encumbered and unencumbered shares of FHL standing in the name of FHHPL, held by them; (e) to give details of shares of FHL standing in the name of FHHPL, which were put by them under encumbrance; (f) to give details of shares of FHL standing in the name of FHHPL, sold by banks/financial institutions; (g) to disclose whether such encumbrance created after August 2017 was in pursuance of any fresh arrangement or agreement and, if so, the details of such agreement/arrangement; (h) to disclose whether under such agreement/arrangement any other security was given by the pledgers; and (i) to give the value of the encumbered shares as they stood in September, 2016, on August, 2017 and on subsequent dates.

The Supreme Court further directed that appropriate responses shall be filed by all the noticee banks and financial institutions.

To read the Judgement in detail, please click here.

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