Swift India
CORPORATE SERVICES LLP

MUMBAI SILICON VALLEY BANGALORE MUMBAI BKC NEW DELHI

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com
CHANGE IN NAME FROM SWIFTINDIAINC CORPORATE SERVICES LLP AS ON 07.02.2017

Swift e-Bulletin
Edition 37/20-21
Week – March 29th to April 2nd

Quote for the week:

"You have to grow from the inside out. None can teach you, none can make you spiritual. There is no other teacher but your own soul."

- 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 Ministry of Corporate Affairs **("MCA"),** the Securities and Exchange Board of India **("SEBI")** and International Financial Services Centres Authority **("IFSCA")** and critical judgements and orders passed by the National Company Law Tribunal **("NCLT")**, 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 March 29, 2021 to April 02, 2021.

Thank you,
Swift Team

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REGULATORY UPDATES

MCA UPDATES

1. MCA further amends the Companies (Accounts) Rules, 2014 vide Gazette Notification dated April 01, 2021

- These rules shall be called Companies (Accounts) Second Amendment Rules, 2021 and shall come into force with effect from April 01, 2021.

- In proviso to sub rule (1) of rule 3 of the Companies (Accounts) Rules, 2014 relating to Manner of Books of Account to be Kept in Electronic Mode for the figures, letters and words "1st day of April, 2021", *the* figures, letters and words "1st day of April, 2022" shall be substituted and the proviso shall stand modified as under:

  "Provided that for the financial year commencing on or after the 1st day of April, 2022, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled"

  To read the Notification, please click here.

2. MCA further amends the Companies (Audit and Auditors) Rules, 2014 vide Gazette Notification dated April 01, 2021

- These rules shall be called Companies (Audit and Auditors) Second Amendment Rules, 2021 and shall come into force with effect from April 01, 2021.

- In rule 11 relating to Other Matters to be Included in Auditors Report, in clause (g) for the words "Whether the company", the words, figures and letters "Whether the company, in respect of financial years commencing on or after the 1st April, 2022" shall be substituted and the clause (g) shall stand modified as under:

  "Whether the company, in respect of financial years commencing on or after the 1st April, 2022 has used such accounting software for maintaining its books of account

which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention."

To read the Notification in detail, please click here.

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SEBI UPDATES

1. SEBI issues guidelines pertaining to surrender of Foreign Portfolio Investors (FPI) registration vide Circular dated March 30, 2021

- Any Foreign Portfolio Investors ("FPI") ('applicant') desirous of surrendering the certificate of registration may request for such surrender to the Designated Depository Participants ("DDPs") in terms of SEBI (Foreign Portfolio Investors) Regulations, 2019.

- Operational Guidelines for FPIs and DDPs issued vide SEBI circular dated November 05, 2019 prescribes the procedural requirements to be followed by the DDP for processing such requests.

- To have a uniform market practice for processing of such surrender requests, DDPs shall adhere to the following additional guidelines:

  - *While making an application to SEBI for seeking "No Objection Certificate" ("NOC") for surrender, the DDP shall confirm the following with respect to the FPI:*
    - *Accounts held by the applicant in the capacity of FPI have NIL balance and are blocked for further transactions. Further, the Custodial Participant ("CP") code of the FPI is also blocked.*
    - *There are no dues/ fees pending towards SEBI.*
    - *There are no actions/ proceedings pending against the said applicant.*

  - *DDP shall ensure that:*
    - *all the accounts (including bank account and securities account) held by the applicant in the capacity of FPI are closed; and*
    - *the CP code is deactivated*

    within 10 working days from the date of receipt of NOC from SEBI.

- Custodians and DDPs are advised to bring the provisions of this circular to the notice of their clients. This circular shall come into force with immediate effect

To read the Circular in detail, please click here.

2. SEBI repeals the Securities and Exchange Board of India (Underwriters) Regulations, 1993 vide Gazette Notification dated March 30, 2021

- On and from the commencement of these regulations, the Securities and Exchange Board of India (Underwriters) Regulations, 1993 shall stand repealed and the certificate of registration granted to any person under the Securities and Exchange Board of India (Underwriters) Regulations, 1993 shall deemed to be surrendered.

- The repeal of the Securities and Exchange Board of India (Underwriters) Regulations, 1993 shall not affect:

  - *the previous operation of the said regulations or anything done or omitted to be done or suffered therein;*
  - *any right, privilege, obligation or liability acquired or accrued or incurred under the said regulations;*
  - *any penalty or punishment incurred in respect of any contravention or offence committed under the said regulations;*
  - *any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty or punishment as aforesaid.*

- Any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty or punishment may be imposed as if the Securities and Exchange Board of India (Underwriters) Regulations, 1993 had not been repealed.

To read the Notification in detail, please click here.

3. SEBI amends the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 vide Gazette Notification dated March 30, 2021

- These regulations may be called the Securities and Exchange Board of India (Merchant Bankers) (Amendment) Regulations, 2021 and shall come into force on the date of their publication in the Official Gazette.

- Highlights for some of the changes brought forth by this Notification among many others are as follows:

  - *Changes have been made in the definitions mentioned in Regulation 2 with respect to addition of definitions for "Underwriter", "Underwriting".*

- In regulation 14 relating to Maintenance of books of account, records etc. by a Merchant Banker, after sub-regulation 3, the following new sub-regulation shall be inserted, namely:

  "(4) Every merchant banker acting as an underwriter shall also maintain the following records with respect to—
  (i) *details of all agreements entered with a body corporate on whose behalf it is acting as an underwriter;*
  (ii) *total amount of securities of each body corporate subscribed to in pursuance of an agreement;*
  (iii) *statement of capital adequacy requirements;*
  (iv) *such other records as may be specified by the Board from time to time."*

- After regulation 22 relating to underwriting regulations, the following new regulations shall be inserted, namely

  "Agreement with clients.

  22A. Every merchant banker acting as an underwriter shall enter into an agreement with each body corporate on whose behalf it is acting as an underwriter and the said agreement shall, amongst other things, provide for the following, namely—
  (i) the period for which the agreement shall be in force;
  (ii) the allocation of duties and responsibilities between the underwriter and the client
  (iii) the amount of underwriting obligations;
  (iv) the period, within which the underwriter has to subscribe to the issue after being intimated by or on behalf of such body corporate;
  (v) the amount of commission or brokerage payable to the underwriter;
  (vi) details of arrangements, if any, made by the underwriter for fulfilling the underwriting obligations.

  General responsibilities of a merchant banker as an underwriter.
  22B.
  (i) A merchant banker acting as an underwriter shall not derive any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable under the agreement for underwriting entered with client.

(ii) At any point of time, the total underwriting obligations under all the agreements shall not exceed twenty times of the net worth of the merchant banker.

(iii) Every merchant banker acting as an underwriter, in the event of being called upon to subscribe for securities of a body corporate pursuant to an agreement for underwriting, shall subscribe to such securities within 45 days of the receipt of such intimation from such body corporate."

- *In schedule III relating to Code of Conduct for Merchant Bankers, after clause 32 clauses 33, 34 and 35 have been added detailing the obligations of a Merchant Banker in relation to insider trading, misstatement and unfair competition.*

To read the Notification in detail, please click here.

4. SEBI amends the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 vide Gazette Notification dated March 30, 2021

- These regulations may be called the Securities and Exchange Board of India (Stock Brokers) (Amendment) Regulations, 2021 and shall come into force on the date of their publication in the Official Gazette.

- Highlights for some of the changes brought forth by this Notification among many others are as follows:

  - *Changes have been made in the definitions mentioned in Regulation 2 with respect to addition of definitions for "Underwriter", "Underwriting" and "issue".*
  - *In regulation 3 relating to Application for registration of stock broker after sub-regulation (3), the following shall be inserted, namely:*

    "(4) Every stock broker holding a valid certificate of registration shall be entitled to act as an underwriter"

  - *In regulation 9 relating to Effect of refusal of certificate of registration to Stock Brokers after Clause (g), the following shall be inserted, namely:*

    "(h). Every stock broker who act as an underwriter shall enter into a valid agreement with the body corporate on whose behalf it is acting as underwriter and shall abide by the regulations made under the Act in respect of the activities carried on by it as underwriter.

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
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i. Every Stock Broker shall be entitled to act as an underwriter only out of its own net worth/funds as may be prescribed from time to time."

- *Changes have also been made in regulation 17 relating to maintaining of proper books of accounts, records etc. by Stock Brokers by specifying manner and list of documents to be maintained in case of an underwriter being and body corporate and in case where an underwriter is not a body corporate.*
- *The notification also specifies contents and details to be mentioned in the Agreement entered between the Stock Broker and the client as well as General responsibilities of a Stock Broker as an underwriter.*
- *In Schedule II relating to Code of Conduct with the Stock Brokers/ Code of Conduct with the Sub-Brokers, after clause D a new clause E has been inserted specifying Duties of and Underwriter.*

To read the Notification in detail, please click here.

5. SEBI reduces timelines for refund of the monies to the investors in case of non-receipt of minimum subscription vide Circular dated March 31, 2021

- In the current scenario, in terms of the SEBI (ICDR) Regulations, 2018, in case of non-receipt of minimum subscription, the issuer is mandated to refund all the application monies within a period of "fifteen days" from the closure of the issue. Timelines are stipulated in Regulation 45(2), 86(2), 141(2), 202(2)(b) and 202(3)(a) and (b) relating to Minimum Subscription.

- In the same way, the present provisions of Regulation 53(2), 94(2), 149(2), 208(2), 272(2) relating to release of subscription monies in various cases stipulate that, in case the issuer fails to obtain listing or trading permission from the stock exchanges where the specified securities were to be listed, it shall refund the entire monies received within "seven days" of receipt of intimation from stock exchanges rejecting the application for listing of specified securities.

- Considering that Application Supported by Blocked Amount ("ASBA") has been mandated for all applicants in public issues, the application money is not transferred but only blocked in the account of the investor and is debited only upon allotment and unblocked if there is no/part allotment. Further, post introduction of Unified Payments Interface ("UPI") mechanism in public issues, intermediaries are responsible to compensate the investors for any delay in unblocking of amounts in the ASBA Accounts exceeding four working days from the bid/issue closing date.

- Based on various consultations with the market participants SEBI has decided to reduce the timelines for refund of the moneys to the investors in the above mentioned events to "four days".

- Thus, in Regulation 45(2), 86(2), 141(2), 202(2)(b) and 202(3)(a) and (b) the words 'fifteen days' shall be read as 'four days' and in Regulation 53(2), 94(2), 149(2), 208(2), 272(2) the word 'seven days' and 'eighth day' shall be read as 'four days'.

  To read the Circular in detail, please click here.

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IFSCA UPDATES

1. IFSCA issues International Financial Services Centres Authority (Finance Company) Regulations, 2021

- These regulations are applicable to Finance Companies in the International Financial Services Centres.

- The regulations are divided in several chapters covering various aspects as mentioned below:

  - *CHAPTER I Preliminary outlining various definitions in relation to the proposed regulations.*
  - *CHAPTER II which relates to setting up of a Finance Company that outlines registration requirements for commencing business as a Finance Company or Finance Unit*
  - *CHAPTER III which relates to Prudential Regulatory Requirements outlining details relating to maintaining Capital Ratio ("CR"), Liquidity Coverage Ratio ("LCR"), Exposure Ceiling ("EC") by a Finance Company or Finance Unit.*
  - *CHAPTER IV relating to Permissible Activities outlining details relating to Permitted Specialized Activities, Permitted Core Activities and Permitted Non-Core Activities that can be undertaken by a Finance Company or Finance Unit*
  - *CHAPTER V Miscellaneous outlining guidelines on:*
    - *Currency of Operations*
    - *Know Your Customer and Anti-Money Laundering*
    - *Corporate Governance and Disclosure Requirements*
    - *Reporting Requirements*
    - *Power to Specify Procedures and Issue Clarifications*
    - *Action in Case of Default*

To read the Notification in detail, please click here.

2. IFSCA amends International Financial Services Centres Authority (Banking) Regulations, 2020

- These regulations may be called the International Financial Services Centres Authority (Banking) (Amendment) Regulations, 2021 and they shall be applicable

91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
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for banking and investment activities in the International Financial Services Centres ("IFSC").

- In the International Financial Services Centres Authority (Banking) Regulations, 2020 (hereinafter referred to as the principal regulations), in regulation 13 relating to Permitted activities that can be undertaken by a Banking unit in IFSC, after sub-regulation (8), the following sub regulation shall be inserted, namely:

  "(9) offering Portfolio Management services to person resident in India and persons resident outside India.
  (10) Offering Investment Advisory services to person resident in India and persons resident outside India"

  To read the Notification in detail, please click here.

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91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
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JUDGEMENTS/ ORDERS

NCLT

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

National Company Law Tribunal, New Delhi Bench ("Tribunal") accepts the appeal filed by the Income tax officer, New Delhi under section 252 of the Companies Act, 2013 ("the Act") and allows the restoration of the M/s. Pritonics Auto Private Limited ("Respondent Company").

The Respondent Company had been struck off from the Register of Companies by Registrar of Companies ("RoC"), NCT of Delhi and Haryana vide its notification dated January 29, 2011, striking off the name of Respondent Company under the East Exist Scheme **("EES")** 2011 from the Register of Companies by the ROC, NCT of Delhi and Haryana.

The Respondent Company had received contractual receipts of INR 10,50,886/- and inspite of that the Respondent Company had not filed its income tax return for assessment year 2012-13. Hence in absence of the said income tax return, income to the extent of INR 1,05,089/- was treated as escaped from assessment in terms of section 147 of the Income-tax Act, 1961 for assessment year 2012-13.

The Income tax officer submitted that the income received by the respondent-company is required to be verified and assessed in the hands of the Appellant under the Income-tax Act, 1961 and to undertake assessment proceedings, name of the respondent-company has to be restored in the Register of RoC. The copy of assessment order, Demand notice and penalty notices issued by Appellant-Income Tax was placed before the Tribunal. The officer further argued that the respondent-company is trying to escape the assessment proceedings and the liability that may arise out of the said proceedings and the name of respondent company had been struck off by the ROC without any enquiry and the same was not intimated to the Appellant, Assessing officer or the concerned Commissioner of Income Tax.

Based on facts presented, the Tribunal was satisfied that the respondent company and its directors are trying to escape the assessment proceedings and the liability that will arise out of the said proceedings. Hence, Tribunal passed the restoration order and also directed the RoC to proceed to take such other and further penal action against the respondent in accordance with the statutory provisions.

To read the order in detail, please click here.

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SEBI

1. **Adjudication Order in respect of Ozone Projects Pvt. Ltd. in the matter of delayed submission/non-submission of financial results for financial year ended March 31, 2019**

Securities and Exchange Board of India ('**SEBI**'), initiated adjudication against Ozone Projects Private Limited ('**Noticee**") for not submitting financial results for the year ended March 31, 2019 and thereby violations of provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('**LODR Regulations'**).

SEBI appointed Adjudicating Officer (AO) to inquire into aforesaid alleged violations against the Noticee and issued Show Cause Notice **("SCN")** to the Noticee. In response to the SCN, Noticee submitted that due to various operational issues faced by the Company and its management including corruption/ loss of financial data from the Accounting tool/ software from Tally ERP.

SEBI noted that delayed preparation of results on account of operational issues cannot be accepted as a justifiable reason for non-compliance, particularly in the absence of supportive evidence. The Board of Directors of the Noticee bears responsibility to ensure compliance with statutory obligations and disagreement between shareholders and nominee directors cannot be an acceptable reason for non-finalization of results.

After taking into consideration all the facts and circumstances of the case, SEBI further note that, the Noticee not only delayed in finalizing its results, it did not file the results with the stock exchange thereby violating the provisions of Regulation 52(1) of LODR Regulations and impose penalty of INR 200,000/- (INR Two Lakh) on the noticeee.

To read the order in detail, please click here.

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HIGH COURT

1. **Reserve Bank of India's contentions in its appeal to the Delhi High Court were not agreed in its case against Jindal Steel and Power Limited**

Reserve Bank of India	Appellant
Jindal Steel And Power Limited	Respondent

<u>Date of Judgement</u>: March 26, 2021

Reserve Bank of India had filed an appeal with the Delhi High Court being aggrieved by the order and judgement against the respondent – Jindal Steel and Power Limited, company with business interest in steel manufacturing, power generation, mining of iron ore, lime stone and coal, who had filed a Writ Petition seeking relief, in the nature of Mandamus. The respondent has been making overseas direct investment and has also undertaken other financial commitments in respect of aforesaid subsidiaries after getting approval from RBI, through State Bank of India (SBI).

The Delhi High Court, after considering the entire documents on record and the submissions made, were unable to agree with the contentions made by the appellant for the following reasons:

A. The Court was of the view that, there was no reason for rejecting the application of the respondent – Jindal Steel and Power Limited
B. The Court was of the view that Regulation 9(3) the word *"inter alia"* of FEMA ODI Regulations must take its colour from the scheme, drift and tenor of the Act as well as Regulations.
C. The Court was of the view, that the preliminary objections raised in the counter affidavit are not relevant/ germane to issue in controversy and hence have not been referred to by the learned Single Judge, due to:
   i. Lack of territorial jurisdiction
   ii. ED is a proper & necessary party
   iii. Delays and laches
   iv. Concealment of material facts
D. The Court was unable to agree with this contention of the appellant as there is no finding given against the ED by the learned Single Judge.
E. The appellant has rejected the application of the respondent at the behest of ED.

F. The appellant taking u-turn by taking permission
G. No amount of unencumbered asset can be ordered as a condition for granting permission

The appeal was concluded by stating that the application is totally silent on the said ground. In this view of the matter we find no merit in the application and the same is dismissed.

To read the Judgement in detail, please click here.

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91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
tel +91 22 6669 5000 fax +91 22 6669 5001
www.swiftindiallp.com

SUPREME COURT

1. **Tata Sons Private Limited challenged the final order passed by the National Company Law Appellate Tribunal (NCLAT)**

Tata Consultancy Services Limited Appellant (s)

Cyrus Investments Private Limited Respondent (s) and ORS.

<u>Date of Judgement</u>: March 26, 2021

The final order passed by the National Company Law Appellate Tribunal (NCLAT) was challenged by filing two independent appeals by Tata Sons Private Limited, where a few companies of the Tata Group, which were referred to in the course of arguments, as the operating companies or downstream companies, such as the Tata Consultancy Services Limited, the Tata Teleservices Limited and Tata Industries Limited, as below:

i. holding as illegal, the proceedings of the sixth meeting of the Board of Directors of TATA Sons Limited held on October 24, 2016 in so far as it relates to the removal of Shri Cyrus Pallonji Mistry ("CPM");
ii. restoring the position of CPM as the Executive Chairman of Tata Sons Limited and consequently as a Director of the Tata Companies for the rest of the tenure;
iii. declaring as illegal the appointment of someone else in the place of CPM as Executive Chairman;
iv. restraining Shri Ratan N. Tata and the nominees of Tata Trust from taking any decision in advance;
v. restraining the Company, its Board of Directors and Shareholders from exercising the power under Article 75 of the Articles of Association against the minority members except in exceptional circumstances and in the interest of the Company; and
vi. declaring as illegal, the decision of the Registrar of Companies for changing the status of Tata Sons Limited from being a public company into a private company.

As a matter of facts, all the appeals were allowed except the order of NCLAT was set aside. The Company Petition filed before NCLT by the two companies belonging to the S.P. Group were dismissed. The appeal filed by Cyrus Investments Private Limited and Sterling Investments Corporation Private Limited is dismissed.

To read the Judgement in detail, please click here.

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CORPORATE SERVICES LLP

MUMBAI SILICON VALLEY BANGALORE MUMBAI BKC NEW DELHI

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