Swift e-Bulletin

Swift e-Bulletin
Edition 37th 21-22
Week – December 20th to December 25th

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

Don't sit down and wait for the opportunities to come, get up and make them.
- Madam C.J. Walker

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 International Financial Service Center Authority

("**IFSCA**"), and critical judgements and orders passed by the National Company Law Tribunal **("NCLT")**, High Court and Supreme Court.

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

- SEBI permits Real Estate and Infrastructure Investment Trusts extension to conduct Annual Meetings of Unitholders through VC/OAVM till December 31, 2021, vide Circular dated December 22, 2021.
- SEBI issues Circular for restoration of relaxed timelines w.r.t. validity of observation letter pertaining to Mutual Funds, vide Circular dated December 22, 2021

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of December 20, 2021 to December 25, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

SEBI UPDATES.

1. SEBI introduces Portfolio Management Services for Accredited Investors, vide Circular dated December 21, 2021

SEBI introduces the concept/framework of “accredited investor” and “large value accredited investor” in PMS Regulations by amendment to SEBI (Portfolio Managers) Regulations, 2020 (“PMS Regulations”).

- In this regard, the following clarifications have been issued:

  - “accredited investor” shall have the same meaning as assigned to it under clause (ab) of sub-regulation (1) of regulation 2 of the SEBI (Alternative Investment Funds) Regulations, 2012

  - The quantum and manner of exit load applicable to the client is specified and it has been decided that in case of large value accredited investors, the quantum and manner of exit load applicable to the client of the Portfolio Manager shall be governed through bilaterally negotiated contractual terms and the provisions of para 3 (iv) of the Circular shall not be applicable.

This Circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 43 of the SEBI (Portfolio Managers) Regulations, 2020, to protect the interests of investors in securities market and to promote the development of, and to regulate the securities market.

To read the Circular in detail, please click here.

2. SEBI introduces Investment Advisory Services for Accredited Investors, vide Circular dated December 21, 2021

SEBI introduced the concept/framework of “accredited investor” in IA Regulations with amendment to SEBI (Investment Advisers) Regulations, 2013 (“IA Regulations”) notified on August 03, 2021.

- In this regard, the following clarifications have been issued:

- It specifies the modes and limits of fees that can be charged by an Investment Adviser (IA) from a client;

- It has been decided that, the limits and modes of fees payable to the IA shall be governed through bilaterally negotiated contractual terms and the provisions of para 2(iii) of the Circular shall not be applicable in case of accredited investors

To protect the interests of investors in securities and to promote the development of and to regulate the securities market, this Circular was issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 29 of the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.

To read the Circular in detail, please click here.

3. **SEBI permits Real Estate and Infrastructure Investment Trusts extension to conduct Annual Meetings of Unitholders through VC/OAVM till December 31, 2021, vide Circular date December 22, 2021.**

SEBI permits the extension of facility for conducting annual meeting and other meetings of unitholders of Real Estate Investment Trusts ("REITs") and Infrastructure Investment Trusts ("InvITs") through Video Conferencing (VC) or through Other Audio-Visual means (OAVM).

Representations were received from REITs/InvITs to further extend the aforesaid facility to conduct annual meetings and other meetings of unitholders through VC/OAVM. In this respect, SEBI observed that MCA, vide circular dated December 08, 2021 has extended the facility of holding AGMs and EGMs through VC/OAVM till June 30, 2022. Accordingly, it decided to extend the facility to conduct annual meetings of unitholders in terms of Regulation 22(3) of SEBI (REIT) Regulations, 2014 and Regulation 22(3)(a) of SEBI (InvIT) Regulations, 2014 and meetings other than annual meeting, through VC or OAVM till June 30, 2022.

Further, it was stated that, REITs/ InvITs shall comply with the procedure prescribed in Annexure-I of SEBI circular no. SEBI/HO/DDHS/DDHS/CIR/P/2020/102 dated June 22, 2020.

To read the Circular in detail, please click here.

4. **SEBI issues Circular for Restoration of relaxed timelines w.r.t. validity of observation letter pertaining to Mutual Funds, dated December 22, 2021**

In exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with the provision of Regulation 77 of SEBI (Mutual Funds) Regulation, 1996 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, SEBI issues Circular with immediate effect for restoration of relaxed timelines w.r.t. validity of observation letter pertaining to Mutual Funds.

Based on consultation with stakeholders, SEBI decided to restore the validity period of observation letter issued by SEBI to six months to launch NFOs. However, for all schemes (NFOs) where SEBI has already issued observation letter and NFOs are yet to be launched, the schemes shall be launched within one year from the date of SEBI observation letter.

To read the Circular in detail, please click here.

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IFSCA UPDATES

1. **IFSCA proposes regulatory fee structure for recognised stock exchanges in the IFSC**

This Circular is applicable to the recognized stock exchanges in the IFSC are required to pay regulatory fee in accordance with the applicable regulations and IFSCA circular on "Fee structure for Market Infrastructure Institutions (MIIs) and participants" dated April 13, 2021 and is issued in exercise of powers conferred under section 12 of the IFSCA Act, 2019 and regulation 183 of the IFSCA (Issuance and Listing of Securities) Regulations, 2021.

The fee should be accompanied with a statement of computation of fee certified by a chartered accountant to be submitted on an annual basis and the fee.

It has been represented by the stakeholders that considering the nascent stage of debt market at IFSC, the levy of fees for listing of privately placed debt securities may be deferred till development of the market at IFSC. Accordingly, in order to promote primary listing of debt securities on the recognised stock exchanges in the IFSC, it has been decided to defer the levy of regulatory fee of USD 1,000/ - in respect of listing of privately placed debt securities, till March 31, 2023.

To read the Circular in detail, please click here.

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JUDGEMENTS/ ORDERS

SEBI

1. **SEBI imposed penalty on Noticee on default for no making disclosure unde SEBI SAST Regulations pursuants to the acquisition.**

Securities and Exchange Board of India ('SEBI') had conducted an examination in the matter of Multipurpose Trading and Agencies Ltd.('Company/Target Company'). The examination was to ascertain whether there was any violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ('SAST Regulations, 2011') by certain entities.

During the examination, it was observed that Innovist India Pvt. Ltd.,('the Noticee')has failed to disclose the acquisition of shares and subsequent change in its shareholding,to the company and the exchange (BSE).Hence, it was alleged that the Noticee had violated Regulations 29 (1) and 29(2) read with 29 (3) of SAST Regulations, 2011.

The Adjudicating Officer (**"AO"**) issued Show Cause Notice (**"SCN"**) to the Noticee as to why an inquiry should not be held against it and why penalty, if any, should not be imposed for the alleged violation. The SCN was duly delivered to the Noticee but did not file any reply and additional time for filing reply. Further on principle of natural justice opportunity for personal hearing was provided but notice did not appear. Hence AO proceeded with ex parte on basis for existing material

During the examination period the Noticee acquired shares of Target Company and which were needed to be disclosed as per SAST regulation to the Company and BSE. However, on checking with the Company and BSE the entity disclosure was provided by the Notice and hence AO of the view that the disclosures requirements unde the respective regulations serve very important purposes. The stock exchang is informed via disclosure so that the investing public will come to know of the position enabling them to stick on with or exit from the company. Further, timely disclosures of the details of the shareholding of the persons acquiring substantial stake is of significant importance a such disclosures also enable the regulators to monitor such acquisitions. AO basis information found the Notice in default and accordingly monetary penalty was imposed.

To read the order in detail, please click here

National Company Law Tribunal

1. **National Company Law Tribunal dispenses requirement of shareholders and creditors meeting as there were no secured and unsecured creditors.**

The application was filed by Parity Computing India Private Limited (Transferor Company 2) under Section 230 to 232 of the Companies Act, 2013 for sanction of the proposed Scheme of Amalgamation between Transferor Company 1 & 2 and Transferee Company. The contents of the application are supported by the affidavit of Mr. Pankaj Nangia, Authorized Signatory of the Transferor Company 2 seeking dispensation of convening the meetings equity shareholder of Transferor Company 2 or direction for calling and convening meeting of the equity shareholders of Transferor Company 2.

The Board of Directors of the applicant company had unanimously approved the Scheme vide their respective Board resolution dated 09.04.2021, subject to sanctioning of the same by this National Company Law Tribunal (NCLT)

The learned Counsel for the Transferor Company 2 had submitted a certificate provided by Chartered Accountants that there are no Secured Creditors and Unsecured Creditors as of March 31, 2021. Hence NCLT dispensed the requirement to hold shareholder meeting and creditors meeting.

To read the order in detail, please click here

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HIGH COURT

1. **Cement Corporation of India, prays to set aside the order passed before and to declare the calculation of arbitration fees, as correct in its petition.**

Cement Corporation of India	Petitioner
Promac Engineering Industries Limited	Respondents

<u>Date of Judgement</u>: December 20, 2021

Cement Corporation of India, being the petitioner in the present case, has filed the petition under Section 9 of the Arbitration and Conciliation Act, 1996, inter alia, praying to set aside the challenged order in the interest of justice and to declare Petitioner's calculation for INR 15,00,000/- (Indian Rupees Fifteen Lakh Only) as an arbitration fees payable to each of the arbitrators as just and correct calculation in terms of Schedule IV of the Act.

The aforementioned orders challenged were the procedural orders passed by the Arbitral Tribunal fixing the fee payable by the parties and the grievance is that the Arbitral Tribunal has fixed a separate fee for counter-claims, which are not permissible as the total fee payable thereafter, would exceed the maximum fee fixed under Schedule IV of the A&C Act. The reliefs sought by the petitioner do not fall within the scope of interim measures of protection as under Section 9 of the A&C Act, which was made clear.

The option to courts in case of arbitration is limited to the extent as provided under the A&C Act and accordingly the petition was dismissed.

To read the Judgement in detail, please click here.

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circumstances. This newsletter does not substitute the need to refer to the original pronouncements.

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Call us toll free to explore a topic or let us answer your questions

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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