Swift e-Bulletin

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Edition 33/21-22
Week – November 15th to November 19th

Quote for the week:

"Great things never came from comfort zones"

- Anonymous

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 Insolvency Bankruptcy Board of India ("**IBBI**"), and critical judgements and orders passed by the SEBI, High Court and Supreme Court.

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

- **SEBI amends Master Circular on framework for Schemes of Arrangement by listed entities**

- **IBBI issues clarification regarding obtaining No Objection Certificate or No Dues Certificate from the Income Tax Department during Voluntary Liquidation Process**

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

Thank you,
Swift team

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REGULATORY UPDATES

SEBI UPDATES

1. **SEBI amends Master Circular on framework for Schemes of Arrangement by listed entities vide Circular dated November 16, 2021 and subsequent addendum dated November 18, 2021.**

- SEBI vide its Master Circular dated December 22, 2020, had laid down the framework for Schemes of Arrangement to be followed by listed entities. In order to bring more clarity on the processing of draft schemes filed with the stock exchange, SEBI has brought the following amendments which shall come into immediate effect.

- Companies while filing its valuation report shall henceforth also include an undertaking from the listed entity stating that no material events impacting the valuation has occurred during the intervening period of filing the scheme documents with Stock Exchange and period under consideration for valuation.

- Declaration from the listed entity on any past defaults of listed debt obligations of the entities forming part of the scheme also any No Objection Certificate from the lending scheduled commercial banks/financial institutions.

- Any fractional entitlements shall be aggregated and held by the trust, nominated by the Board in that behalf, who shall sell such shares in the market at such price, within a period of 90 days from the date of allotment of shares, as per the draft scheme submitted to SEBI along with a report from its Audit Committee and the Independent Directors certifying that the listed entity has compensated the eligible shareholders.

- Further Circular dated **November 18, 2021** the Board further amended the scheme of arrangement whereby, the scheme should also include a No Objection Certificate from the lending scheduled commercial banks/financial institutions/debenture trustees

  To read the Circular in detail, please click here.

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2. **SEBI amends the SEBI (Intermediaries) Regulation, 2008 vide Gazette Notification dated November 17, 2021.**

- This amendment shall be called as **SEBI (Intermediaries) (Third Amendment) Regulations, 2021,** which should come into immediate force.

- A new Schedule II has been introduced in place of the earlier Schedule which among other things shall include the following matters:

  - *Updated fit and Proper criteria for such persons mentioned in the Schedule which shall include the applicant and principal officer, the directors or managing partners, the compliance officer, promoter and promoter group etc;*
  - *If any person has not fulfilled the fit and proper criteria then such person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order;*
  - *Any disqualification of an associate or group entity of the applicant or intermediary shall not have any bearing on the fit and proper person criteria of the applicant or intermediary unless the applicant or intermediary or any other person is also found to incur the same disqualification in the said matter.*

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

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IBBI UPDATES

1. **IBBI issues clarification regarding obtaining No Objection Certificate or No Dues Certificate from the Income Tax Department during Voluntary Liquidation Process.**

- Regulation 14 of the IBBI (Voluntary Liquidation Process) Regulations, 2017 (the Regulations) mandates the liquidator to make the public announcement within five days of his appointment, calling for submission of claims by stakeholders within thirty days from the liquidation commencement date. If claims are not submitted within the aforesaid time, then corporate person may get dissolved without dealing with such claims and such claims may consequently get extinguished.

- It has been noticed that the liquidators seek 'No Objection Certificate' ("**NOC**") or 'No Dues Certificate' ("**NDC**") from the Income Tax Department despite the fact that the Code or the Regulations do not envisage seeking. The process of applying and obtaining of such NOC/NDC from the Income Tax Department consumes substantial time and thus militates against the express provisions of the Code, and also defeats the objective of time-bound completion of process under the Code.

- Hence the authority issues a clarification that under the voluntary liquidation process requirement of seeking any NOC/NDC from the Income Tax Department as part of compliance in the said process is henceforth not required.

To read the clarification in detail, please click here.

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JUDGEMENTS/ ORDERS

SEBI

1. **Disclosure under SEBI SAST Regulation is applicable when shares are transferred pursuant to amalgamation.**

Securities and Exchange Board of India ("**SEBI**") had conducted an examination in the matter of VMS Industries Ltd. **(“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 Monotype India Ltd. **(“Noticee”)** has failed to disclose the acquisition of shares and subsequent change in its shareholding, to the exchange (BSE). Hence, it was alleged that the Noticee had violated Regulations 29 (1) read with 29 (3) of SAST Regulations, 2011.

The Adjudicating Officer (**“AO”**) issued Show Cause Notice (**“SCN”**) as to why enquiry should not be held to which Notice replied that the shares were bought by Mono Herbicides Ltd and subsequently Mono Herbicides Ltd was amalgamated into Noticee and said where transferred to Notice pursuant to amalgamation. Hence no disclosure was required under Regulations 29(1) read with 29(3) of SAST Regulations. Further the Company was making appropriate disclosure under the listing agreement whereby the public shareholders were made aware of changes in shareholding. The AO considered the facts of the case and said that there is no exemption available to the Company from not making disclosure under SAST regulation even if the shares transferred were result of Amalgamation and further disclosure made by the Company under listing agreement contain only the summarized information of the shareholding of its equity shareholders rather than specific details as required in the aforementioned form under Regulation 29(1) of SAST Regulation. Hence, such quarterly/annual disclosures under Listing Agreement cannot be a substitute for compliance of obligation under Regulation 29(1) read with 29(3) of the SAST Regulations, 2011 which more specific and contains specific details about transactions of promoters of the Company.

Further the disclosures requirements under the respective regulations serve very important purposes. The stock exchange is informed so that the investing public will come to know of the position enabling them to stick on with or exit from the company. Timely disclosures of the details of the shareholding of the persons acquiring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions.

The AO found Noticee in default of SAST regulations and accordingly penalty was imposed.

To read the order in detail, please click here

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HIGH COURT

1. **M/s. Renewable Energy Systems Limited' petition was dismissed for want of merit and the claims raised were barred by limitation.**

M/s. Renewable Energy Systems Limited	Petitioner
M/s. Bharat Sanchar Nigam Limited	Respondents

Date of Judgement: November 16, 2021

M/s. Renewable Energy Systems Limited, Petitioner in the present case, being a company incorporated under the Companies Act, 1956, is engaged in manufacturing and dealing with Solar Photovoltaic Power Sources and other renewable energy technologies. The petitioner had submitted its bid pursuant to the notice for supplying the Solar Photovoltaic Power Sources **("SPPS")** which was accepted and the respondent – M/s. Bharat Sanchar Nigam Limited issued an Advance Purchase Order for the SPPS with the basic invoice.

The parties had entered into a Lease Agreement whereby the respondent agreed to Lease the SPPS from the petitioner. In terms of the Lease Agreement, it was agreed that the term of the lease was for fixed period of five years to be computed from the end of the three months' period within which the entire delivery of the SPPS was required to be made at the sites. The respondent agreed to pay the quarterly lease rentals (QRL) of the basic invoice value and the said QLR was required to be paid within seven days after the completion of each quarter. It was also agreed that the QLRs would be variable and linked to the prime lending rate of the State Bank of India (SBI) and it was agreed that the ownership of the SPPS would continue to vest with the petitioner, but the respondent shall have the right to retain the possession of the SPPS for the full term of the lease period.

The petitioner had pursued the respondent for payment of the outstanding dues, however the same were not settled. Hence a Committee was formed in 2001 to resolve the claims of the petitioner. However, despite the request made by the petitioner, the respondent neither settled the claims of the petitioner nor informed them regarding the report submitted by the Committee.

The Delhi High Court held the petition filed by M/s. Renewable Energy Systems Limited is unmerited and was accordingly, dismissed, as the claims made by the petitioner are barred by limitation.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **Supreme Court directs the Oriental Insurance Co. Limited to deposit the amount before the Registry, as it finds no merit in the Civil Appeal.**

The Oriental Insurance Co. Limited	**Appellant(s)**
Malana Power Company Limited	**Respondent(s)**

Date of Judgement: November 15, 2021

Aggrieved by the order by the National Consumer Disputes Redressal Commission, New Delhi, Oriental Insurance Company Limited filed the Civil Appeal.

Malana Power Company Limited runs a Hydro Power Project around Malana Nalah and was interested in securing an indemnity in respect of any shortfall that may take place in aggregate annual power generation at its Hydro Power Plant due to failure of hydrology which depends upon vagaries of nature. For the year 2001-02, the Malana Power Company Limited has obtained policies from M/s. IFFCO-TOKIO General Insurance Company. M/s. IFFCO-TOKIO General Insurance Company provided a package deal of the two insurance policies to the respondent. First one was Industrial All Risk Insurance Policy which covered material, damages due to fire and special perils, machinery breakdown, loss of profit etc., for a period of 12 months. The second insurance policy was Special Contingency Policy which covered loss of power generation due to loss of hydrology.

The Supreme Court in the present case was of the view that there is no merit in this Civil Appeal, and the same being devoid of merit, is dismissed, basis the previous policy with IFFCO-TOKIO for the preceding year for the period from 07.07.2001 to 06.07.2002 was made known to the appellant, as such, it cannot be said that there was any suppression or non-disclosure. Further the Court held that the appellant has deposited an amount of Rs.1.25 crores before Registry of this Court which is kept in fixed deposit. We permit the respondent to withdraw the said amount of Rs.1.25 crores along with accrued interest, if any, without furnishing any security. The appellant shall pay the balance amount due to the respondent within a period of three (03) months.

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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