Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

Swift e-Bulletin
Edition 34th 21-22
Week – November 22nd to November 26th

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

"You fill face many defeats in life, but never let yourself be defeated"

- Maya Angelou

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 issues clarifications regarding amendments made to SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations").**

- **IFSCA permits Broker Dealers to access exchanges in jurisdictions outside IFSC.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of November 22, 2021 to November 26, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

SEBI UPDATES.

1. **SEBI issues clarifications regarding amendments made to SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations") vide Circular dated November 22,2021**

- The AIF Regulations had been amended to allow Category III AIFs, including any large value funds for accredited investors of Category III AIFs, to calculate the concentration norm based on Net Asset Value ("**NAV**") of the fund for investment in listed equity of an investee company.

- In this regard, the following clarifications have been issued, among other things which include –

  - *The limit for investment in listed equity shall be calculated based on the NAV of the fund on the business day immediately preceding the date on which the Category III AIF makes such investment; and*
  - *NAV of the AIF shall be the sum of value of all securities adjusted for mark to market gains/losses (including cash and cash equivalents). The NAV shall exclude any funds borrowed by the AIF.*

- Further, the AIF Regulations were amended to include the term co-investment, in respect to this amendment it has been clarified that appointment of custodian, shall be applicable if the sum of corpus of the AIF and the value of the co-investment managed by the Manager of the AIF as co-investment Portfolio Manager is more than INR 500 Crore (Indian Rupees Five Hundred Crore only).

  To read the Circular in detail, please click here.

2. **SEBI Mandates certain disclosures to be made by Merchant Bankers ("MB") vide Circulars dated November 23, 2021 and November 26, 2021.**

- Provisions of these Circulars shall come into effect from ***January 01, 2022.***

- With a view to provide investors an idea about the various activities pertaining to primary market issuances as well as exit options like Takeovers, Buybacks or Delisting, an Investor Charter disclosed in (**Annexure-A of this Circular**) has been developed in consultation with the MB, which is advisable to be disclosed on the website of such MBs.

- Further MBs in order to bring about transparency in the Investor Grievance Redressal Mechanism shall in addition also disclose the data on complaints received against them or against issues dealt by them and redressal thereof latest by 7th of succeeding month as per **Annexure B of this Circular**.

- Further with a view to provide investors relevant information about the various activities pertaining to primary market issuances in the **debt market,** a separate Investor Charter has been prepared for such MBs.

- A separate Investor Charter has also been made applicable to MBs about the primary market issuances by REITs and InvITs.

  To read the Circulars in detail, please click here and here.

3. **SEBI mandates certain disclosures to be made by Stock Exchanges, Depositories and Clearing Corporations vide Circular dated November 23, 2021**

- Provisions of this Circular shall come into effect from ***January 01, 2022***.

- In order to bring transparency in the Investor Grievance Redressal Mechanism the Board has decided that all the Stock Exchanges (excluding Commodity Derivatives Exchanges)/Depositories/Clearing Corporations shall disclose on their websites, the data on complaints received against them and redressal thereof, latest by 7th of succeeding month, as per the format enclosed at **Annexure - 'A'** of this Circular.

  To read the Circular in detail, please click here

4. **SEBI extends timeline for segregation and monitoring of collateral at client level vide Circular dated November 23, 2021.**

- SEBI, vide its earlier Circular had issued certain provisions in regard to segregation and monitoring of collateral, in regard to that Circular "*Paragraphs 4 and 5 of that Circular would come into force with effect from **October 01, 2021**, and other provisions of that Circular would come into force with effect from **December 01, 2021***".

- Based on representations received from stakeholders, it has been decided that provisions of the said Circular (apart from provisions of Paragraphs 4 and 5) shall now come into force with effect from ***February 28, 2022*** instead of ***December 01, 2021***.

  To read the Circular in detail, please click here.

5. **SEBI issues norms for Silver Exchange Traded Funds ("Silver ETFs") and Gold Exchange Traded Funds ("Gold ETFs") vide Circular dated November 24, 2021**

- SEBI had amended the SEBI (Mutual Funds) Regulations, 1996 vide a Gazette Notification dated November 09, 2021 in order to have regulatory mechanism for Silver ETF, in regard to this, the following norms have been prescribed which among other things shall include the following:

  - *Investment Objective;*
  - *Investments;*
  - *Valuation;*
  - *Determination of NAV;*
  - *Total expense ratio;*
  - *Disclosure requirements etc.*

- In respect to Gold ETFs, they shall have to comply with the following Norms of this Circular:

  - *Disclosure of NAV and other disclosures;*
  - *Tracking Error & Tracking Difference;*
  - *Dedicated Fund Manager;*

  To read the Circular in detail, please click here.

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IFSCA UPDATES

1. IFSCA permits Broker Dealers to access exchanges in jurisdictions outside IFSC vide Circular Dated November 25, 2021

- This Circular is applicable on the Broker Dealers ("**BDs**") incorporated in the IFSC and does not apply to foreign broker dealers operating in the form of branch.

- The Authority has permitted BDs to access exchanges in jurisdictions outside IFSC either through:

  - *Cross-border arrangement with an entity providing access to an exchange outside IFSC, provided that such entity is a regulated entity in the other jurisdiction;*
  - *Registering itself as a trading member of an exchange outside IFSC.*

- BDs shall seek a no-objection from the recognized stock exchange in IFSC before availing global access, which the exchange may either facilitate or restrict such global access, on their risk assessment emerging out of such access.

- BDs providing global access shall make such disclosures as provided to its clients and shall submit the following additional report to the recognized stock exchange in accordance with the prescribed format, on an annual basis, within 30 days from the end of financial year.

  To read the Circular in detail, please click here.

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JUDGEMENTS/ ORDERS

NCLT

1. **National Company Law Tribunal initiates Corporate Insolvency Resolution Process ("CIRP") against M/s. TV Products India Private Limited**

NCLT, Mumbai Bench **("Tribunal")** admits the application filed by Mr. Amit Sangal, Proprietor of M/s. Arsenius Skill Capital **("Operational Creditor")** under section 9 of the Insolvency and Bankruptcy Code, 2016 **("IBC")** and Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and initiates CIRP against the M/s. TV Products India Private Limited **("Corporate Debtor").**

The Corporate Debtor had entered into agreement with Operational Creditor for availing services of call center, management consultant, support in human resource training and operations. The Operational Creditor had raised various invoices in respect of said services, however the Corporate Debtor failed to make any payments against such invoices, amounting to a default of INR 5,99,250 /- (Five Lakh Ninety-Nine Thousand Two Hundred and Fifty) including the interest component towards services provided during the relevant period.

The Operational creditor had submitted various proofs evidencing that the said invoices were duly recorded in the Corporate Debtor's books of accounts. The Operational Creditor had also served a demand notice, demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

The Corporate Debtor failed to issue any reply / letter against the issue of the demand notice. On the date of hearing, the Corporate Debtor admitted and acknowledged the due amount. However, Corporate Debtor did not reply to the demand notice sent to it under section 8 of the Code. The Corporate Debtor further stated that Company was not actively carrying any business activities since past 18 months and has not been able to generate any turnover and as a result the Company was not in position to repay the claim amount.

Based on the facts presented, Tribunal was satisfied that the Corporate Debtor had made a default in payment for services provided by Operational Creditor. Tribunal admitted the said application filed by the Operational Creditor and declared moratorium in accordance to section 14 of the IBC. Tribunal resolved to appoint Mr. Manish Shah to act as the IRP.

Tribunal further directed the Operation Creditor to deposit an amount of INR 2,00,000 **(INR Two Lakhs)** to the Insolvency Resolution Process **("IRP")** to meet the immediate expenses for CIRP which shall be fully accountable by the IRP and shall be reimbursed to the Operational Creditor as costs of the CIRP.

To read the order in detail, please click here.

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HIGH COURT

1. **Writ Petition seeking substantial reliefs filed by Las Ground Force Private Limited, was held to be devoid of merit.**

Las Ground Force Private Limited & ANR. Petitioners

Airport Authority of India & ORS. Respondents

Date of Judgement: November 23, 2021

Las Ground Force Private Limited, is a company registered under the Companies Act, 2013 in Mumbai, engaged in handling ground services offered to airlines at Airports, being the Petitioner no. 1 in the present case who has filed the Writ petition seeking substantial relief. Whereas, the Petitioner No. 2 is also a company registered under the Companies Act, 2013 in Goa and is a Joint Venture (JV) company/ SPV (Special Purpose Vehicle) of Petitioner No.1 and its consortium partner Goldair Handling S.A. (based in Greece) to perform contractual obligations under tenders awarded to the consortium as a Concessionaire.

The Respondent no. 1 is the Airports Authority of India **("AAI")** which is the authority empowered to manage airports across India and to give licenses/ concessions to service providers for providing ground handling services in airports across India.

A tender was floated for selecting a concessionaire to provide ground handling facilities at Goa airport and various other airports. However, the said tender was cancelled without assigning any reason and a new tender was again floated in August, 2018 for various airports, classified under different groups, where the said tender was subsequently cancelled, and a new tender was floated, where the consortium of Petitioner no. 1 and Goldair Handling S.A. was selected as the successful bidder for Goa Airport and some other airports as well. However, the said tender was also cancelled.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **Supreme Court held that bar under Section 34 of the SARFAESI Act, which is not permissible at all, cannot be approved.**

Electrosteel Castings Limited	Appellant(s)
UV Asset Reconstruction Company Limited &Ors.	Respondent(s)

Date of Judgement: November 26, 2021

Electrosteel Castings Limited, being aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Madras by which the Division Bench of the High Court has dismissed the said appeal preferred by the original plaintiff rejecting the plaint/suit filed by the appellant herein – original plaintiff on the ground that the suit is barred by Section 34 of the SARFAESI Act, 2002, the original plaintiff has preferred the present appeal.

It is submitted that the High Court has not properly appreciated and considered the fact that in the suit plaintiff had pleaded the fraud and it was the case on behalf of the plaintiff – appellant herein that the assignment agreement is fraudulent and relief was sought to declare the assignment agreement as null and void by the plaintiff – appellant herein, the said relief cannot be granted by the DRT under the provisions of the SARFAESI Act and therefore the bar under Section 34 of the SARFAESI Act shall not be applicable.

It was further submitted that when the suit is filed alleging 'fraud' the bar under Section 34 of the SARFAESI Act shall not be applicable and the suit for the reliefs sought in the plaint shall be maintainable.

Upon having considered the pleadings and averments in the suit more particularly the use of word 'fraud' even considering the case on behalf of the plaintiff, the Court found that the allegations of 'fraud' are made without any particulars and only with a view to get out of the bar under Section 34 of the SARFAESI Act and by such a clever drafting the plaintiff intends to bring the suit maintainable despite the bar under Section 34 of the SARFAESI Act, which is not permissible at all and which cannot be approved.

To read the Judgement in detail, please click here.

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+91 22 6669 5000

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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.

Swift India Corporate Services LLP

Regd. Office: 91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
LLPIN: AAH-4705, registered under the Limited Liability Partnership Act, 2008
Tel +91 22 6669 5000, Fax +91 22 6669 5001

www.swiftindiallp.com