Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

Swift e-Bulletin
Edition 35th 21-22
Week – November 29th to December 03rd

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

"If you want the rainbow, you got to put up with the rain"

- Dolly Parton

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")** and High Court.

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

- SEBI mandates Publishing of Investor Charter and disclosure of Investor Complaints by Stock Brokers on their websites

- IFSCA permits Investment Banking Activities in IFSC

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of November 29, 2021 to December 03, 2021.

Thank you,
Swift team

Table of Contents

REGULATORY UPDATES

SEBI UPDATES

1. **SEBI mandates Publishing of Investor Charter and disclosure of Investor Complaints by Stockbrokers on their websites vide Circular dated December 02, 2021**

- In order to facilitate investor awareness about various activities which an investor deals with such as opening of account, KYC and in person verification, complaint resolution, issuance of contract notes and various statements, process for dematerialization/rematerialization, SEBI has prepared an Investor Charter for Stock Brokers inter-alia detailing the services provided to Investors, Rights of Investors, DOs and DON'Ts for Investors and Grievance Redressal Mechanism etc which is attached in **Annexure – A** of this Circular.

- Hence SEBI has directed Stock Brokers to bring the Investor Charter for Stock Brokers to the notice of their clients through disclosing the Investor Charter on their respective websites and other places and also to disclose on their respective websites, the data on complaints received against them or against issues dealt by them and redressal thereof, latest by 7th of succeeding month.

To read the Circular in detail, please click here.

[This space is intentionally left blank]

IFSCA UPDATES

1. **IFSCA issues Clarifications on Disclosure of Dealing in Securities by Directors and Key Management Personnel ("KMP") of all recognized Market Infrastructure Institutions ("MIIs") in GIFT vide Circular Dated November 30, 2021**

- Vide an earlier Circular, the Authority had issued the guidelines on the "**Code of Conduct and Code of Ethics for the Directors and KMP of recognized MIIs in GIFT**" dated September 13,2021.

- The Clause 5 (c), clause 9 and clause 10 of the circular pertains to disclosure of dealing in securities by the Directors and KMP. For ease of reference It is hereby clarified by the Authority that the aforementioned clauses will only be applicable with respect to dealings in securities in GIFT-IFSC only.

To read the Circular in detail, please click here.

2. **IFSCA permits Investment Banking Activities in IFSC Vide Circular Dated December 03, 2021**

- With a purpose for ease of doing business and considering that the investment banking activities in the capital markets are being carried out by banks or their associates in various jurisdictions globally, the Authority has permitted licensed banking units ("**BU**") to undertake investment banking activities in the IFSC.

- Such BUs will have to comply with the below mentioned framework in order to provide investment banking activities, some of which are:

  - *BU will have to intimate the Authority well in advance;*
  - *BUs shall maintain arm's length relationship between its investment banking activity and other activities*
  - *They shall have to submit a report to the Authority on a half-yearly basis, within 45 days.*

To read the Circular in detail, please click here.

JUDGEMENTS/ ORDERS

NCLT

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

National Company Law Tribunal **("Tribunal")** accepts the appeal filed by shareholder of the M/s. Manish Movies Private Limited **("Appellant Company")** under section 252 of the Companies Act, 2013 **("the Act")** and allows the restoration of the Appellant Company.

The Registrar of Companies **("RoC")** Allahabad, had struck off the name of Appellant Company from the register of companies due to default in statutory compliances namely non-filing of financial statements and annual returns since its date of incorporation i.e. from September 17, 1998 onwards thereby giving rise to the surmise that the business of the company was not in operation, in accordance with section 248 of the Act. Further, the Appellant Company had not filed application under section 455 of the Act for obtaining status of Dormant Company.

The learned counsel of Appellant Company submitted that the default in statutory compliance and non-filing of statutory returns was due to lack of proper professional guidance, oversight, inadvertent reasons and lack of knowledge of the person authorized to look after the filing of the same. Further, the Appellant Company did not receive any show cause notice from the Respondent nor any opportunity of being heard was given to explain the reason of said default in statutory compliance and non-filing of statutory returns.

In support of the said plea, the learned counsel of Appellant Company had placed before the Tribunal, the copies of audited financial statements contending that the Appellant Company had fixed assts in its possession and it will be unfair to the Creditors and the Company if the company is struck-off and the Creditors do not receive their dues. He further affirmed that the Appellant Company shall file all necessary document as may be required by the RoC.

Based on facts presented, the Tribunal was satisfied that during the relevant period the Appellant Company was in fact in operation and passed the restoration order subject to their filing of all statutory returns for the defaulting years as required by law and completion of all formalities and on payment INR 2,30,000 /- towards cost for restoration of company.

To read the order in detail, please click here.

HIGH COURT

1. **For the unauthorized use and occupation of the subject land by Airwil JKM Infracon Private Limited, the judgement was ruled in favour of Cadillac Infotech Private Limited.**

Airwil Jkm Infracon Private Limited	**Petitioner**
Cadillac Infotech Private Limited	**Respondent**

Date of Judgement: November 29, 2021

Dispute arose between the parties in connection with a Property Development Agreement entered into between Petitioner and Respondent for development of the land in the District Gautam Budh Nagar, Uttar Pradesh. As per the agreement, the Petitioner would develop an IT Project on the Subject Land, which would include structures, buildings, recreational areas, open spaces, parking spaces, landscaping, developments, etc. in accordance with the plans sanctioned by the concerned authority. The Petitioner holds leasehold rights in respect of the Subject Land in terms of lease deed(s) executed by New Okhla Industrial Development Authority (NOIDA) in favour of the Petitioner and the Subject Land was allotted by NOIDA for setting up buildings for IT and IT Enabled Services.

The petitioner **(hereinafter referred to as 'AJIPL')** has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 impugning an arbitral award dated 16.10.2018 (hereafter 'the impugned award') delivered by an Arbitral Tribunal and the arbitral proceedings were conducted under the aegis of the Delhi International Arbitration Center (DIAC) and in accordance with its rules and in terms of the impugned award, AJIPL has been directed to hand over vacant and physical possession of the property.

Basis the facts and proceedings in the given case, the challenged award was set aside by the Delhi High Court to the extent that it directs payment of a sum of INR 20 Lakh per month, in favour of Cadillac Infotech Private Limited and against the Petitioner for the unauthorized use and occupation of the subject land.

To read the Judgement in detail, please click here.

DISCLAIMER The contents of this newsletter should not be construed as legal opinion. View detailed disclaimer.

This newsletter provides general information existing at the time of preparation. The newsletter is intended as a news update and Swift India Corporate Services LLP neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this newsletter. It is recommended that professional advice be taken based on the specific facts and circumstances. This newsletter does not substitute the need to refer to the original pronouncements.

+91 22 6669 5000

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.

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