Swift e-Bulletin

Swift e-Bulletin
Edition 36th 21-22
Week –December 06th to December 10th

Quote for the week:

"Remember, today is the tomorrow you worried about yesterday"

- Dale Carnegie

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 Ministry of Corporate Affairs(**"MCA"**) and Securities and Exchange Board of India ("**SEBI** and critical judgements and orders passed by High Court and Supreme Court.

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

- MCA issues clarification on conducting Annual General Meeting ("AGM") through Video Conferencing ("VC") or Other Audio Visual Means ("OAVM")

- SEBI mandates Transaction in Corporate Bonds through Request for Quote platform by Portfolio Management Services ("PMS")

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of December 06, 2021 to December 10, 2021.

Thank you,
Swift team

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REGULATORY UPDATES

MCA UPDATES

1. **MCA issues clarification on conducting Annual General Meeting ("AGM") through Video Conferencing ("VC") or Other Audio Visual Means ("OAVM") vide Circular dated December 08, 2021**

- In response to clarifications received from various stakeholders, MCA vide Circular dated December 08, 2021 has allowed the companies whose AGM are due for the year 2021, to conduct their AGM on or before June 30, 2022 in accordance with the requirements laid down in Para 3 and Para 4 of the General Circular No. 20/2020 dated May 5th, 2020.

  To read the Circular in detail, please click here.

2. **MCA issues clarification on conducting Extraordinary General Meeting ('EGM") through Video Conferencing ("VC") or Other Audio Visual Means ("OAVM") vide Circular dated December 08, 2021.**

- In reference to the previous Circulars, MCA vide Circular dated December 08, 2021 has allowed companies to conduct their EGMs through Video Conference (**"VC"**) or Other Audio-Visual Means (**"OAVM"**) or transact items through postal ballot in accordance with framework provided in the previous Circulars up to 30th June, 2022.

  To read the Circular in detail, please click here.

SEBI UPDATES

1. **SEBI amends and issues Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2021 vide Notification date December 06,2021.**

- SEBI vide Notification dated December 06, 2021 amended the existing Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2021.

- The major amendments are as follows:

  - The substituted Regulation 5A provides framework for delisting of shares while making open offer by an acquirer; and
  - Floor Pricing for a further delisting attempt.

  To read the Notification in detail, please click here.

2. **SEBI mandates transaction in Corporate Bonds through request for quote platform by Portfolio Management Services ("PMS") vide Circular dated December 09, 2021**

- In order to enhance transparency pertaining to debt investments by Portfolio Management Services ("**PMS**") in Corporate Bonds ("**CBs**") and to increase liquidity on exchange platform.

- PMS shall ensure that at least 10% (by value) of their secondary market trades in CBs in current month and immediate preceding two months (i.e. February 2022, March 2022 and April 2022) are executed by placing / seeking quotes through OTO or OTM mode of RFQ. Further, for the month of May 2022, the secondary market trades executed in CBs in the months of March 2022, April 2022 and May 2022 shall be considered for the purpose of aforesaid calculation.

  To read the Circular in detail, please click here.

3. SEBI issues clarification on usage of pool accounts by the Mutual Funds vide Circular dated December 10, 2021.

- With regards to representation received from the Mutual Fund industry and based on the recommendations of Mutual Funds Advisory Committee **("MFAC")** to improve the operational ease of the Mutual Funds, SEBI has issued guidelines to use pool account for executing transactions at mutual fund level.

To read the Circular in detail, please click here.

4. SEBI issues clarification regarding amendment to SEBI (Portfolio Managers) Regulations, 2020 ("PMS regulations") vide circular dated December 10, 2021.

- Clarification has been issued by SEBI regarding the previous amendments made to PMS Regulations vide notifications dated November 09, 2021.

- The said clarification deals with the following aspects.

  - Procedure for undertaking of Co-investment portfolio management services;
  - Periodic reporting by Portfolio managers; and
  - Direct on-boarding of clients by Portfolio Managers.

To read the Circular in detail, please click here.

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JUDGEMENTS/ ORDERS

SEBI

1. **If a Company gets dissolved/strucked off the adjudication cannot be proceeded and should be disposed off.**

Securities and Exchange Board of India ("SEBI") initiated an investigation to ascertain the violation of the provisions of Securities and Exchange Board of India, Act 1992 ('SEBI Act') and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations, 2003') in the scrip of Sun and Shine Worldwide Limited ('Company/ SSWL').") for the period between October01, 2012 to September 30, 2014 ('Investigation Period/IP') by Shah Realcom Private Limited ("Noticee"), it is alleged that Noticee violated the provisions of the SEBI Act read with of the PFUTP Regulations. Accordingly, SEBI initiated Adjudication Proceedings against the Noticee for the aforesaid violation of the provisions of SEBI Act and PFUTP Regulations, 2003.

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. The AO analyzed took note of trading volume, average traded price and last trading price etc. Further SCN dated August 05, 2019. as issued to the Noticee had been delivered. However no reply was submitted by the Noticee. Subsequently, during the course of the proceedings, the status of the Noticee was ascertained from the Ministry of Corporate Affairs (MCA) . It was observed that the name of the Noticee has been struck off from the list of companies by the Office of Registrar of Companies, Ahmedabad (RoC).It is clear that the name of the Noticee has been stuck-off from the ROC list and hence, the Noticee stands dissolved. It is an established fact that when a company's name is struck-off from the RoC list and the company is also dissolved, then it is a non-existing company and the adjudication proceedings against the non-existing company is thus nullity. Further, Black's Law Dictionary explains 'dissolution' as termination or winding up. It further clarifies that the dissolution of a corporation is the termination of its legal existence. Strike off essentially means removing the name of the company from the Register maintained by the Registrar of Companies. It is like closure of the company and the company will not be in existence after being struck-off and cannot perform any operations. Therefore the adjudication cannot be proceeded and AO disposed the case.

To read the order in detail, please click here

HIGH COURT

1. **Arbitrator was requested to decide the petition filed by Aditya Birla Finance Limited under Section 17 of the Arbitration and Conciliation Act, 1996.**

Aditya Birla Finance Limited	Petitioner
Presidium Educational And Charitable Trust & Ors.	Respondent

Date of Judgement: December 06, 2021

Aditya Birla Finance Limited, a company engaged in the business of rendering financing services had extended facilities of Rs. 100 Crores to the Contesting Respondents by taking over their liabilities towards Respondent No. 20, from which they had taken loans aggregating to INR 260 Crores. The Company had filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, which was filed seeking interim reliefs pending constitution of the Arbitral Tribunal.

The disputes fact before the Court was that the loan advanced by the Petitioner Company has not been repaid and there is a default on part of the Contesting Respondents. The default, prima facie has occurred due to financial indiscipline on part of the Contesting Respondents. Petitioner has sought interim measures under Section 9 of the Act to, inter alia, secure the amount in dispute. To
achieve this objective, learned Receiver was appointed by consent of the parties. Petitioners contend that Respondents are not depositing the entire amounts collected by them in the escrow accounts. There were certain interim Orders are in force, that were referred to in later in the Order.

The Court had clarified that it has not expressed any opinion on the contractual rights and obligations of the parties relating to the right to operate the escrow accounts and all contentions of the parties are left open. Hence the Court had requested the learned Arbitrator to decide the present petition under Section 17 of the Arbitration and Conciliation Act, 1996 within a period of six weeks from the date of the judgement.

To read the Judgement in detail, please click here.

SUPREME COURT

1. **Supreme Court directs that the additional surcharge already recovered from the captive consumers/captive users shall be adjusted in the future wheeling charges bills.**

Maharashtra State Electricity Distribution Co. Limited.	**Appellant (s)**
M/s. JSW Steel Limited & Ors.	**Respondent (s)**

Date of Judgement: December 10, 2021

Maharashtra State Electricity Distribution Co. Limited, had preferred the present appeal, being aggrieved and dissatisfied with the impugned judgment and order passed by the Appellate Tribunal for Electricity, Delhi in earlier Appeals, whereby the Appellate Tribunal has allowed the said appeals preferred by the respondents herein – the 'captive consumers' has set aside the order passed by the Maharashtra Electricity Regulatory Commission in Petition, by which the State Commission has held that the group of 'captive consumers' are liable to pay additional surcharge.

Basis the observations and findings, the issue whether such captive users are subject to levy of additional surcharge leviable under sub-section (4) of Section 42 is required to be considered, as it is applicable only in a case where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply and only such consumer shall be liable to pay additional surcharge on the charges of wheeling, as may be specified by the State Commission. Captive user requires no such permission, as he has statutory right. At this stage, it is required to be noted that as per the Scheme of the Act, there can be two classes of consumers, (i) the ordinary consumer or class of consumers who is supplied with electricity for his own use by a distribution licensee / licensee and; (ii) captive consumers, who are permitted to generate for their own use as per Section 9 of the Act, 2003.

The Supreme Court dismisses the present appeals, basis the observations, considering the fact that there shall be huge liability on the appellant – distribution license if they have to now refund the amount of additional surcharge recovered at a stretch. The Supreme Court further directs that the additional surcharge already recovered from the captive consumers/captive users shall be adjusted in the future wheeling charges bills.

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).

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