Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

Edition 21th 23-24

Week – September 18th to September 23th

Quote for the week:

“People succeed when others say negative things”

– *Kim Seokjin (Member of music band; Bangtan Sonyeondan)*

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**”), Reserve Bank of India (“**RBI**”) and Insolvency and Bankruptcy Board of India (“**IBBI**”)

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

- IBBI vide Notification dated September 18, 2023 amended the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations.

- IBBI vide Circular dated September 18, 2023 amended and issued Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2023.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of September 18^{th} to September 23^{th}.

Thank you,
Swift team

REGULATORY UPDATES

SEBI

1. **SEBI vide Circular dated September 20, 2023 issued redressal of investor grievances through the SEBI Complaint Redressal (SCORES) Platform and linking it to Online Dispute Resolution Platform.**

- SEBI vide Circular dated June 3, 2011 had launched an centralized web based complaint redressal facilitation platform for the benefit of aggrieved investors (a) listed company (b) registered intermediary (c) market infrastructure institution remain unresolved ("**Entities**").

- The process of investor grievances redressal on SCORES is governed by the Master Circular dated November 07, 2022 on "Processing of investor complaints against listed companies in SEBI Complaints Redress System – SCORES".

- In order to strengthen the existing investor grievance handling mechanism through SCORES SEBI notified the Securities and Exchange Board of India (Facilitation of Grievance Redressal Mechanism) (Amendment) Regulations, 2023 and amended the regulations as mentioned under 'Schedule I' vide notification dated August 16, 2023.

- Consequently, it becomes necessary to revise the extant process for redressal of investors' grievances against Entities and provide for a mechanism through which Designated Bodies (as specified in 'Schedule II') may monitor the process of the redressal of investors' grievances by Entities.

- Further, SEBI has revised the framework for handling of complaints received through SCORES platform for Entities and for monitoring the complaints by designated bodies is specified in "**Annexure I**" and the other general provisions applicable to all Entities concerning SCORES portal are at "**Annexure II**" to the said Circular.

- The Entities shall submit the Action Taken Report ("**ATR**") to SEBI within 21 calendar days from the date of receipt of the complaint.

- The provisions of this Circular related to work flow of processing of investor grievances by Entities and framework for monitoring and handling of investor complaints by the Designated Bodies shall come into force with effect from December 04, 2023.

- The said Circular shall rescind the Master Circular dated November 07, 2022 above with effect from December 04, 2023.

- All the Entities and Designated Bodies shall comply with this Circular. Market Infrastructure Institutions and Designated Bodies shall bring the provisions of this Circular to the notice of all listed companies and registered intermediaries, and disseminate the same on their respective websites.

- The said Circular shall be applicable to all recognized stock exchanges (including commodity exchanges), all depositories, all listed companies, all SEBI registered intermediaries, association of investment bankers of India. association of mutual funds in India, association of portfolio managers in India, association of portfolio managers in India, BSE Administration & Supervision Ltd, India REITs association and trustees association of India.

To read the Circular in detail, please click here.

2. **SEBI vide Press Release dated September 21, 2023 discussed and approved various frameworks.**

- SEBI in its 202nd board meeting discussed various trends in the securities markets including technology trends and inter-alia, approved the following:

  - Flexibility in the framework for Large Corporates (**"LCs"**) for meeting incremental financing needs through issuance of debt securities:

    (1) A higher monetary threshold has been specified for defining LCs, thereby reducing the number of entities qualifying as LCs.

    (2) Removal of penalty on LCs which are not able to raise a certain percentage of incremental borrowing from the debt market.

    (3) Introduction of incentives and moderated disincentives.

  - Streamlining the Framework for credit of unclaimed amounts of investors in listed entities other than companies, REITS and InvITs to the Investor Protection and Education Fund (**"IPEF"**) and process of refund from the IPEF:

    (1) Prescribing a uniform process of claim for such amounts in a streamlined manner for the ease and convenience of investors.

    (2) Creating a regulatory framework for segregation of unclaimed amounts of investors in the IPEF, to facilitate utilization and processing of such amounts in the manner prescribed by the Board.

  - SEBI extends timeline for compliance with enhanced qualification and experience requirements for Investment Advisers:

    (1) SEBI, vide SEBI (Investment Advisers) (Amendment) Regulations, 2020, required individual investment advisers, principal officers of non-individual investment advisers and persons who are with the investment advisers and associated with

investment advice to comply with enhanced qualification and experience requirements by September 30, 2023 and now SEBI has allow time up to September 30, 2025 to comply with these requirements.

To read the Circular in detail, please click here.

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IBBI

1. **IBBI vide Circular dated September 18, 2023 amended and issued Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2023.**

- IBBI vide this Circular amended the following regulation of IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.

- Summary of few amendments made by IBBI are as below:

  - Substituted Para VI, clause 10, sub-clause (1) as "An individual or an insolvency professional entity may apply for enrolment as a professional member by submitting an application in Part – I of Form A and Part – I of Form AA, respectively, of the Second Schedule to Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, in such manner and with such fees as may be specified by the Agency"

  - Substituted Para VI, clause 10, sub-clause (7) excluding the time given for the purposes stated in clause (6) of the said regulation, the words "within sixty days of receipt of the application" shall be inserted after the words "to these bye laws"

  - Substituted Para XI, clause 29 as "The Agency may refuse to accept the surrender of membership by any professional member if

    (1) there is grievance or disciplinary proceeding pending against it before the Agency or the Board

    (2) it does not comply with requirements, as on the date of application for surrender of professional membership

    (3) it has been appointed as an interim resolution professional, resolution professional, liquidator or authorised representative or bankruptcy trustee for a process under the Code, or the appointment of another insolvency professional may be detrimental to such process.

  - Substituted Para XI, clause 30 as A professional member shall be expelled by the Agency on being ineligible, expiry of thirty days, upon non-payments, upon cancellation of certificate of registration, upon the order of any court of law. Further, while expelling the professional member, the Agency may take into account the factors provided in clause 29.

To read the Circular in detail, please click here.

2. **IBBI vide Notification dated September 18, 2023 amended the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations.**

- Pursuant to the amendment these Regulations are called the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2023.

- The said Notification inter-alia amended the following Regulations

  - **Regulation 5(b)**: To be eligible for registration as Insolvency Professional (IP); he has completed a pre-registration educational course within twelve months from the date of payment of non-refundable application fee under Regulation 6.

  - **Regulation 6(1)**: An individual enrolled with an insolvency professional agency as a professional member may make an application to the Board through the insolvency professional agency of which he is a member, in Part – II of Form A of the Second Schedule to these Regulations, along with a non-refundable application fee of twenty thousand rupees to the Board.

  - **Regulation 6(1A)**: An insolvency professional entity eligible for registration as an insolvency professional under sub-regulation (2) of regulation 4 may make an application to the Board through the insolvency professional agency of which it is a member, in Part – II of Form AA of Second Schedule to these Regulations, along with a non-refundable application fee of two lakh rupees to the Board.

  - **Regulation 6(2A)**: The insolvency professional agency shall verify and forward the application to the Board within thirty days from the date of payment of fee under sub-regulations (1) or (1A), as the case may be, excluding the time given by the insolvency professional agency to the professional member for submitting additional documents, information, or clarification, as the case may be.

  - **Regulation7**: The Board on being satisfied that the applicant is eligible; he will be granted the Certificate of Registration to IP within **30 days** of application.

  - **Regulation 8 (2)**: The communication under sub-regulation (1) shall be made to the applicant within **30 days** of receipt of the application, excluding the time given by the Board for presenting additional documents, information or clarifications, or appearing in person, as the case may be.

  - **Regulation 10A**: Surrender of Certificate of Registration

    The IP making an application to surrender will accompany the same with the original Certificate of Registration. The Board on being satisfied, may accept the request within 30 days of receipt and upon such approval the registration of such IP shall stand cancelled. On and from date of cancellation of certificate of registration, the concerned person shall not represent itself to be a holder of the certificate for carrying out the activity for which such certificate had been granted.

- **Regulation 10B**: Special procedure for action on surrender, expulsion, etc.

  The Board shall not be bound by the procedure specified in Regulation 11; while disposing off the matter. If need be the Board may call upon the IP to explain as to why the certificate of registration, granted under the regulations, should not be cancelled. The professional member to make the written submission, if any within a period of 21 days from the date of the notice. The Board may decide to cancel the registration or issue directions to complete the ongoing assignments, make pending compliances including payment of fee, etc. within a period of 30 days. On and from the date of cancellation of the certificate of registration, under this regulation, the legal heirs or assignee of the insolvency professional shall take steps for delivery of any record(s) or document(s) or assets that may be in its custody or control, within the time period and in the manner, as may be required under the relevant regulations or as may be directed by the Board.

- The revised Format for "**Form A**" and "**Form AA**" pertaining to the Unified Enrolment and Registration Application Form is annexed to the said Notification.

To read the Notification in detail, please click here.

3. **Press Release on Insolvency and Bankruptcy Board of India amends the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations).**

- To facilitate smooth functioning of the Corporate Insolvency Resolution Process (CIRP) under Insolvency and Bankruptcy of India, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 (Amendment Regulations) on 18th September, 2023.

- Under the new amended Regulations, to lessen the burden of the applications piling with the Adjudicating Authority (AA) timelines for the filing the claims have been extended up to the date of issue of request for resolution plans under Regulation 36B or ninety days from the insolvency commencement date, whichever is later.

- Further empowers the RP to give his view on the acceptance of claim for its collation even for claims submitted beyond this time and committee of creditors (CoC) to recommend their acceptance for inclusion in the list of claims and its treatment in the resolution plan before the same is adjudicated or condoned by the AA.

- The amendment provides enhanced role and responsibilities of Authorised Representative (AR) which are inter-alia included below along with the enhancement of fees pursuant to such increased role

    - to review the contents of minutes prepared by the RP to ensure correctness and completeness;
    - to provide assistance to the creditors in evaluating resolution plan;
    - to regularly update the creditors in a class on the progress of the CIRP;
    - to assist in modifications of the resolution plan on behalf of class of creditors represented by him.

- Further, the amendment also enables committee members to get an audit of the Corporate Debtor (CD) conducted and makes cost of such audit to be part of CIRP cost.

- Pursuant to the amendment, the format of Form G has been revised to provide additional details to prospective resolution applicants in order to fetch a better value in resolution plan.

- Additionally, Compliance Certificate (Form H) is introduced vide this amendment to include the minutes of committee of creditors in which resolution plan is approved to enable the AA to understand the rationale of the decision of the CoC in a better manner.

- In situation of the debt being assigned by the creditor; the details of such assignment are required to be provided to the RP within 7 days of the such assignment.

- The Amendment Regulations specify for submitting details of chronology of debt, default, and limitation along with evidence in case of application filed u/s 7 or 9 so that the AA is facilitated in adjudicating such cases.

- The amended Regulations have come in force from September 18, 2023.

To read the Press Release in detail, please click here.

4. **IBBI vide Notification dated September 18, 2023 amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations.**

- Pursuant to the amendment these Regulations are called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023.

- The said Notification inter-alia amended the following Regulations

    - **Regulation 2 (D)**: Details of debt, default and limitation in respect of applications under section 7 or section 9.

While filing an application under section 7 or 9, the financial creditor or the operational creditor, as the case may be, shall also submit along with evidence, chronology of the debt and default including the date when the debt became due, date of default, dates of part payments, if any, date of last acknowledgment of debt and the limitation applicable.

- **Regulation 3(A)**: Assistance and cooperation by the personnel of the corporate debtor.

- **Regulation 12 (1):** A creditor shall submit claim with proof on or before the last date mentioned in the public announcement. Provided that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, as the case may be, up to the date of issue of request for resolution plans under regulation 36B or ninety days from the insolvency commencement date, whichever is later: Provided further that the creditor shall provide reasons for delay in submitting the claim beyond the period of ninety days from the insolvency commencement date.

- **Regulation 13(1A)**: Where the interim resolution professional or the resolution professional, as the case may be, does not collate the claim after verification, he shall provide reasons for the same.

- **Regulation 13(1B)**: In the event that claims are received after the period specified under sub-regulation (1) of regulation 12 and up to seven days before the date of meeting of creditors for voting on the resolution plan or the initiation of liquidation, as the case may be, the interim resolution professional or resolution professional, as the case may be, shall verify all such claims and categorise them as acceptable or non-acceptable for collation.

- **Regulation 16A (3A)**: The financial creditors in the class, representing not less than ten per cent. voting share may seek replacement of the authorised representative with an insolvency professional of their choice by making a request to the interim resolution professional or resolution professional who shall circulate such request to the creditors in that class and announce a voting window open for at least twenty-four hours.

- **Regulation 16A (3B)**: Subject to clauses (a) and (b) of sub-regulation (2) of regulation 4A, the interim resolution professional or resolution professional, as the case may be, shall offer choice of at least three insolvency professionals to the financial creditors in the class including such insolvency professional(s) proposed under sub-regulation (3A) along with the existing authorised representative.

- **Regulation 30 (B)**: Audit of corporate debtor

To read the Notification 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