Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 31st 22-23
Week – November 07th to November 11th

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

"Whenever you see a successful business, someone once made a courageous decision."

– Peter F. Drucker.

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 and Bankruptcy Board of India ("**IBBI**").

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

- SEBI vide circular dated November 07, 2022 issued master circular on redressal of investor grievances through SEBI Complaints Redress Systems (SCORES) platform.

- SEBI vide circular dated November 10, 2022 imposed the applicability of GST on fees remitted to SEBI for issue and listing of Non-convertible Securities (NCS), Securitized Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of November 07 to November 11, 2022.

Thank you,
Swift team

Table of Contents

REGULATORY UPDATES

SEBI

1. **SEBI vide circular dated November 07, 2022 issued master circular on redressal of investor grievances through SEBI Complaints Redress Systems (SCORES) platform.**

- SEBI vide circular dated November 07, 2022 issued the master circular on redressal of investor grievances through SCORES Platform.

- The SCORES platform was launched in June, 2011 with a view to help the market participants to resolve the issues that remained unattained by the companies, intermediaries and market infrastructure institutions.

- In regard to this, SEBI has now made it mandatory to take up the grievances firstly to the authorities concerned basis the representations received from companies, intermediaries and market infrastructure institutions that the complaints can be better addressed had they been directly taken up by the concerned authority.

- The complainant can raise the complaint with the specific entity through the SCORES portal by registering itself on the portal as is given in the circular, which will be called as the "**Direct Complaint**" for resolution in 30 days.

- However, if the entity fails to resolve the same, then the same complaint shall be registered on SCORES and taken up by SEBI.

- To enable SEBI to better redress the issues, it is mandatory to register the complaint on SCORES in a period of 1 year from the cause of action

  - The complaint has been lodged with the entity.
  - The Entity has rejected the complaint
  - No communication received from the entity
  - Complainant not being satisfied with the reply of the entity.

- The SCORES also provides for "**review**" option, wherein the complainant if dissatisfied with a part of resolution given by the entity can within a period of 15 days apply for review from the SEBI.

- The circular also provides for a list of the complaints that will not be dealt through by SCORES.

- The mechanisms for complaints that are received against the companies intending to list their securities on Stock Exchange shall was first introduced in October, 2021.

- The companies intending to get their securities listed will have to fill in the online form along with the declaration signed by the Compliance Officer and submit the same on the SCORES portal.

- There are two types of declarations by the Compliance Officer

  - Companies intending to list of Main Board: declaration that DHRP has been filed.
  - Companies intending to list on SME/Debt Platform: declaration that application to list the securities has been submitted.

- Once registered the credentials will be sent to the Compliance Officer, with the facility of modifying the email address for future correspondence as and when needed.

- The complaints received by the listed companies can be either dealt with by the company in-house or through the RTA. In case of RTA processing the grievances; any failure on their part will be treated as a default by the proposed listed entity.

- The circular also details out how the stock exchanges shall address the listed companies and the action that will be taken in case of the listed entity failing to resolve the complaint.

- The circular also contains the annexure that stipulates the complaints that shall not be dealt by with SEBI but be forwarded to respective authorities.

To read the circular in detail, please click here.

2. **SEBI vide circular dated November 10, 2022 imposed the applicability of GST on fees remitted to SEBI for issue and listing of Non-convertible Securities (NCS), Securitized Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper.**

- SEBI vide circular dated November 10, 2022 issued the revision on Chapter XX of Operational Circular on NCS.

- Vide circular no. SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021 SEBI brought in the procedure that is to be followed for the payment of fees applicable under the SEBI (Issue and Listing of Non-convertible debt securities), Regulation, 2021.

- SEBI vide SEBI vide circular ref. no. SEBI/HO/GSD/TAD/CIR/P/2022/0097dated July 18, 2022 mandated the persons dealing in securities market to pay the GST of 18% from any dealings effective from July 18, 2022.

- Pursuant to the GST applicability circular, amendments have been made to the Chapter –XX (Bank account details for payment of fees) of the NCS Operational Circular.

- Now for any remittances made, immediately the particulars of the parties shall be mailed to od-ddhs@sebi.gov.in in the format mentioned in the circular.

- This circular shall come into force from immediate effect.

To read the circular in detail, please click here**.**

3. SEBI vide notification dated November 07, 2022 issued Master Circular on issuance of No Objection Certificate ("NOC") for release of 1% of Issue Amount.

- As per the regulation 38 (1) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**ICDR Regulations**"), before opening of the subscription list the issuer is mandated to deposit 1% of the issue size available for subscription to the public with the designated stock exchange ("**DSE**"). This 1% will be released to the issuer only after obtaining the NOC.

- SEBI notified that in order to obtain NOC, the issuer is required to submit an application in its letter head addressed to SEBI in the format specified under the aforesaid circular, after the expiry of 2 months form the date of listing on the latest stock exchange which permitted listing.

- The Post Issue Lead Merchant Banker ("**PILMB**") is required to file the application for NOC, on the condition that all issue related complaints have been resolved by the PILMB/issuer, with the concerned designated office of SEBI under which the registered office of the issuer falls.

- SEBI notified that the bank guarantees, if any, on the date of application which forms part of 1% deposit by issuer is required have a minimum 2 months' residual validity.

- The PILMB is required to submit a certificate confirming that all the Self-Certified Syndicate Banks involved in the Application Supported by Blocked Amount ("**ASBA**") have unblocked ASBA accounts. The application for NOC is required to be accompanied by a confirmation by PILMB that all the accounts in ASBA have been "unblocked" or the application shall be considered incomplete by SEBI.

- The NOC shall be issued by SEBI only after satisfying itself that the complaints arising from the issue received on SEBI Complaint Redress System ("**SCORES**") against the issuer have been resolved to its satisfaction; Issuer has been submitting Action Taken Reports on the complaints; Fees due to intermediaries associated with the issue process including ASBA Banks have been paid by the issuer.

- The circular is applicable to all companies whose securities are listed on the stock exchanges and all registered merchant bankers are advised to comply with the notified terms and conditions.

- Also, the stock exchange is advised to make amendments to the relevant bye-laws, rules and regulations for the implementation of the terms in the aforesaid circular.

To read the notification in detail, please click here.

[This space is intentionally left Blank]

IBBI

1. **IBBI vide circular dated November 09, 2022 have reviewed the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations ["IP Regulation"], 2016, other relevant regulations and rescinded circulars that are no longer required on account of being already provided in relevant regulation.**

- IBBI periodically from time to time issues circular to facilitate Insolvency Professionals ("**IP**") to carry out processes under the Insolvency and Bankruptcy Code ("**The Code**").

- The board has conducted the review of regulations, circulars and it observed that that certain circulars are no longer required on account of being already provided in the ["**IP Regulation**"] or the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 ["**Model Bye-Laws Regulations**"] or the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 ["**IU Regulations**"], as the case may be.

- Accordingly, it has been decided to rescind such circulars with immediate effect.

- List of such circulars are given as an annexure in the notification.

To read the notification in detail, please click here.

[This space is intentionally left blank]

JUDGEMENT / ORDER

SEBI ORDER

1. **SEBI imposed penalty on Noticees for Off market transfer of securities without actual payment of consideration.**

- Securities and Exchange Board of India ('SEBI') had conducted an investigation in the matter of scrip Amsons Apparels Limited to ascertain any violation of the provisions of SEBI Act, 1992 and Securities Contracts (Regulation) Act, 1956.

- During the examination, it was observed that Citizen Compset Private Limited, Dhanlaxmi Builders & Developers Private Limited, Shri Balaji Comfin Traders, SSD Real Estate Developers Private Limited and Meticulous IT Solutions Private Limited, ('the Noticees') had transferred the shares of Amsons in off market transfer (spot transaction). However, it was observed that no such fund transactions were reflecting in any of the bank statements of the Noticees. Therefore, it was alleged that Noticees had violated the Section 16 of Securities Contracts (Regulation) Act, 1956 read with SEBI Notification dated October 03, 2013, Section 13 and Section 18 of Securities Contracts (Regulation) Act, 1956 read with section 2(i) of Securities Contracts (Regulation) Act, 1956.

- The Adjudicating Officer (**"AO"**) issued Show Cause Notice (**"SCN"**) to the Noticees as to why an inquiry should not be held against it and why penalty, if any, should not be imposed for the alleged violation. The SCN was delivered to only Noticee 1 and SCN issued to Noticees 2 to 5 was returned undelivered. Hence, the SCN were served through newspaper publication. However, the Noticees did not file any reply nor have availed the opportunity of personal hearing. Hence AO proceeded with ex parte on basis for existing material

- After considering all the facts and circumstances of the case, the material/evidence available on record. The AO imposed penalties on Noticees viz. Citizen Compset Private Limited, Dhanlaxmi Builders and Developers Private Limited, Shri Balaji Comfin Traders, SSD Real Estate Developers Private Limited and Meticulous IT Solutions Private Limited under Section 23H of Securities Contracts (Regulation) Act, 1956.

To read the order in detail, please click here

HIGH COURT

1. **Complaint case instituted with respect to eleven cheques issued by M/s. Whitefields Overseas Limited and Delhi Court finds no reason to interfere with the impugned judgment and the present petition stands dismissed**

_M/s. Whitefields Overseas Limited. & ANR.	Petitioners
M/s. Diat Agro Holdings Private Limited	Respondents

Date of Judgement: November 10, 2022

- The present petition has been instituted under Section 482 of the Code of Criminal Procedure, 1973 seeking setting aside of the impugned judgment passed by II Additional Sessions Judge – 03, (Central), Tis Hazari Courts, Delhi in Criminal Revision, titled M/s Whitefields Overseas Limited. & Ors v. M/s DIAT Agro Holding Private Limited; dismissing the said revision petition qua the present petitioners.

- Under Section 138 Negotiable Instruments Act, 1881, the petitioners, along with others, were summoned for the offence punishable, who had sought setting aside of summoning order passed by Metropolitan Magistrate (NI Act), Digital Court – 02, Central, Tis Hazari Courts, Delhi.

- In the present case, the respondent herein supplied consignments to petitioner and raised invoices with respect to the same, wherein the Petitioner issued eleven cheques in the sum of Rs. 85,26,50.39/-, drawn on 'Woori Bank, 1st Floor, ABlock, Salcon Platina Building, DLF, Phase-1, Sikanderpur, M.G. Road, Sector – 28, Haryana – 122001; in favor of the respondent. On presentation, the said cheques returned unpaid.

- Complaint case was instituted with respect to the aforementioned eleven cheques, of which four were outdated, and hence, the case did not lie with respect to those cheques.

- The Delhi High Court held that, it is for the petitioner to prove that the said cheques were not issued towards discharge, in whole or part, of any debt or liability. This court cannot go into factual issues which are not admitted between the parties. Moreover, it is settled law that the scope of enquiry in exercise of jurisdiction under Section 482 CrPC is limited. The court should be slow to grant relief at a pre-trial stage, before parties have had an opportunity to adduce evidence. This inherent jurisdiction must be exercised sparingly and with great circumspection.

- Further, in view of the above, this Court finds no reason to interfere with the impugned judgment and the present petition is dismissed and disposed of accordingly.

To read the complete judgement, 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