Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

Week – April 22nd to April 26th

Quote for the week:

"It's not whether you get knocked down, it's whether you get up"

– Vince Lombardi *(American football coach)*

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 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"**), International Financial Services Authority ("**IFSCA**") and Orders.

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

- **SEBI vide circular dated April 23, 2024 issued circular on Cross Margin benefits for offsetting positions having different expiry dates.**

- **IFSCA vide circular dated April 22, 2024 issued on Internet banking services to clients of IFSC Banking Units (IBUs).**

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

Thank you, Swift team

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. **SEBI vide circular dated April 23, 2024, issued circular on Cross Margin benefits for offsetting positions having different expiry dates.**

   - The SEBI has extended the cross-margin benefit on offsetting positions having different expiry dates subject to the following:

     - For offsetting positions in correlated indices with different expiry dates, a spread margin of 40% will be levied, If the positions have the same expiry date, the existing requirement of a 30% spread margin will continue.

     - For offsetting positions in an index and its constituents with different expiry dates, a spread margin of 35% will be levied, for this benefit the expiry dates of futures contracts for all constituents must be the same, If the expiry dates are the same for both the index and its constituents, the existing requirement of a 25% spread margin will continue.

     - If the expiry dates of both legs of a position are different, the spread margin benefit will be revoked at the beginning of the expiry day of the position that expires first (either the index or its constituents).

     - Exchanges/Clearing Corporations will establish systems to monitor cross margin activities of participants.

   - The said circular would be effective three months from its date of issuance.

To read the circular in detail, please click here.

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

1. **IFSCA vide circular dated April 22, 2024 issued on Internet banking services to clients of IFSC Banking Units (IBUs).**

   - 'Internet banking services' shall mean the provision of information service, interactive information exchange service and transactional service via electronic delivery channels based on computer networks or internet technologies, including fixed line, cellular or wireless networks, web-based applications and mobile devices.

   - **Types of Internet Banking Services to be offered by IBU: -**

     At Minimum, Internet banking services to be offered by IBUs are as follows –
     - Information service
     - Interactive information exchange service
     - Transactional service

   - General Directions for IBUs are as follows:

     - It shall provide internet banking services only to its clients.

     - It shall ensure that the platform through which the internet banking services are provided are secure, user-centric, provides seamless digital experience and is available to clients throughout the day, with minimum system down time.

   - Risk Management and security measures for IBUs are provided in this circular.

   - Timeline for implementation; -

     - IBUs are required to submit implementation plan to Authority for providing internet banking services, within 45 days from the date of this circular outlining the internet banking services that it intends to offer along with the proposed implementation strategy and timelines and it must establish the said services within 6 months from the date of issue of this circular.

To read the circular in detail, please click here.

RESERVE BANK OF INDIA (RBI)

1. **RBI vide notification dated April 23, 2024, issued Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024**

   - RBI vide the said notification have bought amendments under the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 ("Principal Regulation")

   - RBI vide the amendment has inserted **Schedule XI (Purchase or Subscription of Equity Shares of Companies Incorporated in India on International Exchanges Scheme by Permissible Holder)** in regulation 3.1 of Principal Regulation as below: -

     - The amount of consideration for purchase / subscription of equity shares of an Indian company listed on an International Exchange shall be paid (i) through banking channels to a foreign currency account of the Indian company held in accordance with the Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2015, as amended from time to time; or (ii) as inward remittance from abroad through banking channels.

   - The remittance of sale proceeds (net of taxes) of the equity shares may be remitted outside India or may be credited to the bank account of the permissible holder maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

   - Further, amendment has been bought by substituting the existing provisions under regulation 4(8) of the principal regulations as below

     - The Authorized Dealer Category I banks shall report to the Reserve Bank in Form LEC (FII) the purchase / transfer of equity instruments by FPIs on the stock exchanges in India.

     - The Investee Indian company through an Authorised Dealer Category I bank shall report to the Reserve Bank in Form LEC (FII) the purchase/subscription of equity shares (where such purchase / subscription is classified as Foreign Portfolio Investment under the rules) by permissible holder, other than transfers between permissible holders, on an International Exchange."

   - The said amendment shall come into force from the date of their publication on the official gazette.

To read the notification in detail, please click here.

2. **RBI vide the notification dated April 23, 2024, issued Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Amendment) Regulations, 2024**

   - RBI vide the said notification have bought amendments under the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015 ("Principal Regulation")

- RBI has bought amendment under regulation 5 (F) (1) of the principal regulation by substituting the following regulation as below-

  - "Subject to compliance with the conditions in regard to raising of External Commercial Borrowings (ECB) or raising of resources through American Depository Receipts (ADRs) or Global Depository Receipts (GDRs) or through direct listing of equity shares of companies incorporated in India on International Exchanges, the funds so raised may, pending their utilisation or repatriation to India, be held in foreign currency accounts with a bank outside India."

- The said amendment shall come into force from the date of their publication on the official gazette.

To read the circular in detail, please click here.

3. RBI vide notification dated April 24, 2024, issued notification on Unauthorized foreign exchange transactions.

- RBI has come across instances of unauthorized entities offering foreign exchange (forex) trading facilities to Indian residents with promises of disproportionate/exorbitant returns. In this context attention of Authorized Dealer Category-I (AD Cat-I) banks is invited to:

  - As per Sec 3 (a) of Foreign Exchange Management Act ('**FEMA**'), 1999 no person shall deal in or transfer any foreign exchange or foreign security to any person who is not an 'Authorised Person' without permission of the RBI.

  - As per Notification No. FEMA 25/2000-RB dated May 3, 2000 a person may enter into a foreign exchange derivative contract only with an authorised dealer or on recognised exchanges.

  - As per Para 3 (1) of the Electronic Trading Platforms (Reserve Bank) Directions, 2018 dated October 05, 2018, any entity shall not operate as an Electronic Trading Platform without obtaining prior authorisation of the RBI.

  - RBI has issued 'Alert List' containing names of entities which are neither authorized to deal in forex under FEMA, 1999 nor authorised to operate ETP for forex transactions under the Electronic Trading Platforms (Reserve Bank) Directions, 2018.

- The RBI advised Authorized Dealer Category-I banks to be more vigilant and exercise greater caution to prevent the misuse of banking channels in facilitating unauthorised forex trading.

- The RBI has published the list of 'Authorized Persons' and 'Authorized ETPs' on its website

To read the notification in detail, please click here.

4. **RBI vide notification dated April 24, 2024, issued master direction on Asset Reconstruction Companies (ARCs).**

- The RBI has interalia has specified directions which shall apply to every assets reconstruction company (ARC) registered with the Reserve Bank under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as below: -

  - ARC can undertake both securitization and asset reconstruction activities, once the Certificate of Registration (CoR) is obtained. Further, it shall commence its business within 6 months from the date of grant of CoR which can be extended upto 12 months from the said date by RBI.

  - An ARCs are required to have a minimum net owned fund (NOF) of ₹300 crores and thereafter, on an ongoing basis, before commencing its business. RBI has also specified NOF requirement in respect of an existing ARCs as on the date in this master direction.

  - ARCs are permitted to commence/undertake only securitization and asset reconstruction activities. It may invest in equity share of another ARC as a sponsor and for establishing Joint Venture.

  - Short-term instruments viz., money market mutual funds, certificates of deposit and corporate bonds/ commercial papers which have a short-term rating equivalent to the long-term rating of AA- or above by an eligible credit rating agency (CRA), subject to a cap of 10% of the NOF of the ARC on maximum investment in such short-term instruments.

  - No ARC shall invest in land or building. However, this restriction shall not apply to the condition specified in the Directions.

  - Various measures regarding change in takeover code of the management of the business of the borrower, grounds effecting the takeover code and Eligibility conditions to exercise power for change in or takeover of management are stated in notification.

  - Reserve Bank may, if it considers necessary for avoiding any hardship to the ARCs or for any other just and sufficient reason exempt all ARCs or a particular ARC, from all or any of the provisions of these Directions either generally or for any specified period, subject to such conditions as the Reserve Bank may impose

- It shall further be noted that this master direction is applicable on every ARCs registered with RBI and is effective with immediate effect.

To read the notification in detail, please click here.

SEBI ORDERS

1. ADJUDICATION ORDER IN THE MATTER OF TIPSON CONSULTANCY SERVICES PRIVATE LIMITED

Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted inspection of M/s Tipsons Consultancy Services Private Limited (hereinafter referred to as "**Noticee**") to ascertain compliances with various SEBI Regulations as a SEBI registered Merchant Banker.

Based on the findings of inspection, SEBI initiated the Adjudication proceedings, and the Adjudicating Officer ("AO") was appointed to inquire into and adjudge for the aforesaid alleged violations by the Noticee. Accordingly, a show cause notice was issued to the Noticee to show cause as to why an inquiry should not be held and penalty be not imposed under section 15HB of the SEBI Act for the aforesaid alleged violations.

During the investigation, the following allegations levelled against the Noticee:

- Due Diligence of investors was conducted prior to appointment as merchant banker.
- Delay in conducting due diligence related to issue of Non-Convertible Debentures ("**NCD**") of U Gro Capital Limited ("**the issuer**") for which the Noticee was the merchant banker;
- Inadequate due diligence conducted with respect to fines levied by the stock exchanges.

After considering all the facts and the circumstances of the case, and the material available on record, the AO was of the view that the above violations make the Noticee liable for monetary penalty under Section 15 HB of the SEBI Act, 1992. The AO also noted that no quantifiable figures were available to assess the disproportionate gain or unfair advantage made as result of such non-compliance by the Noticee. However, there has been violation of SEBI Regulations. Hence, AO imposed penalty of INR 3,00,000/- on the Noticee for violation of various provisions of said regulations to be paid.

To read the order in detail, please click here.

2. ADJUDICATION ORDER IN THE MATTER OF MAXPRO ASIA

Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") and Multi Commodity Exchange of India Limited (MCX) had conducted comprehensive inspection of Stock Broking (Commodity) operations of Maxpro Asia (hereinafter referred as "**Noticee**"), which is a SEBI registered Stock Broker to ascertain violation(s) of the provisions of the SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956 (hereinafter, referred to as **"SCRA"),** SEBI (Stock Broker) Regulations, 1992 (hereinafter referred to as the **"Brokers Regulations"**), SEBI (Certification Of Associated Persons In The Securities Markets) Regulations, 2007, SEBI (Intermediaries), Regulations 2008 and various SEBI Circulars by the Noticee.

Basis the findings of the inspection, it had been alleged that the Noticee contravened various provisions of securities law in respect of the activities carried out by it which are listed below:

- Misuse of clients' funds and securities;
- Settlement of Clients' Funds;
- Analysis of Enhanced Supervision Data;
- Segregation of Bank accounts (transfer of funds between own, client & settlement account);
- Nomenclature of bank accounts maintained by the member;
- Client Registration Process (KYC and KRA process);
- Contract Notes;
- Terminal verification and certification;
- Financial Statement Analysis.

In view of the above, SEBI initiated the Adjudication proceedings, and the Adjudicating Officer ("AO") was appointed to inquire into and adjudge for the aforesaid alleged violations by the Noticee. Accordingly, a show cause notice was issued to the Noticee to show cause as to why an inquiry should not be held and penalty be not imposed under section 15HB of the SEBI Act for the aforesaid alleged violations.

After considering all the facts and the circumstances of the case, the AO is of the view that the material does not quantify any disproportionate gains or unfair advantage made by Noticee and the losses, if any, suffered by the investors. However, the AO is of the view that it is of utmost importance that every stakeholder takes all necessary steps to comply with all the provisions, Rules and Regulations as laid down by the Regulator. The very purpose of the said provisions is to deter wrong-doing and to promote ethical conduct in the securities market. Hence, the AO imposed penalty of INR 15,00,000/- on the Noticee for violation of various provisions of said regulations.

To read the order in detail, please click here.

3. ADJUDICATION ORDER IN THE MATTER OF ASIAN HOTELS NORTH LIMITED

Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted examination to ascertain whether Asian Hotels North Limited (hereinafter referred to as "**Noticee**") has violated any provision(s) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**") with respect to disclosures related to default on payment of interest/ repayment of loans taken from bank/ financial institutions.

Based on the findings of inspection, SEBI initiated the Adjudication proceedings and the Adjudicating Officer ("AO") was appointed to inquire into and adjudge for the aforesaid alleged violations by the Noticee. Accordingly, a show cause notice was issued to the Noticee to show cause as to why an inquiry should not be held and penalty be not imposed under section 15HB of the SEBI Act for the aforesaid alleged violations.

During the investigation, the following allegations levelled against the Noticee regarding the disclosure requirements as per LODR Regulations:

- The Noticee failed to disclose the signing of Inter-Creditor Agreement;
- The Noticee failed to disclose the approve One Time Restructuring credit facility to the stock exchange(s) within the stipulated timeline;

- The Noticee further failed to disclose the material developments like the Loan Recall Notice dated February 17, 2022 issued by Yes Bank as well as litigation and orders of the Hon'ble Delhi High Court with respect to the Loan Recall Notice and declaration of NPA by the lenders.

After considering all the facts and the circumstances of the case, the AO is of the view that the material does not quantify any disproportionate gains or unfair advantage made by Noticee and the losses, if any, suffered by the investors. However, the AO is of the view that the relevant details regarding developments in any matter need to have been disclosed in a timely manner for the benefit of all stakeholders by the Noticee. However, it is noted that no investor complaint is on record with respect to the established violations. Further, the Noticee is not a repeated offender.

However, the correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision. Hence, the AO imposed penalty of INR 15,00,000/- on the Noticee for violation of various provisions of said regulations.

To read the order in detail, please click [here].

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

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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 affiliate entity of Nishith Desai Associates (“NDA”), a preeminent India centric law firm. We are a premier and boutique firm specialized in meeting with the global standard corporate governance aspirations of our clients operating in India.

Our team comprises of professionals with a prolific corporate, legal and secretarial compliance background. We aim to provide pragmatic and business-oriented solutions in governance and compliance matters, through a unique holistic approach that blends our expertise and decades of experience in compliance and regulatory areas.

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