Swift e-Bulletin

Week – September 30th to October 05th

Quote for the week:

"Don't get too greedy and don't get too scared"

– Shelby M. C. Davis (American philanthropist)

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 Securities and Exchange Board of India ("**SEBI**"), Reserve Bank of India ("**RBI**") & SEBI Orders ("**Orders**").

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

- **RBI vide notification dated October 01, 2024 issued directions on Compounding of Contraventions under FEMA, 1999**

- **SEBI vide circular dated October 03, 2024, issued Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 –Reg.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements/ orders issued during the week of September 30th to October 05th.

Thank you, Swift team

RESERVE BANK OF INDIA (RBI)

1. RBI vide notification dated October 01, 2024 issued directions on Compounding of Contraventions under FEMA, 1999

- Government of India ('**GoI**'), vide Notification dated September 12, 2024, read with Trade Notice dated September 17, 2024, has notified the Foreign Exchange (Compounding Proceedings) Rules, 2024 in supersession of the Foreign Exchange (Compounding Proceedings) Rules, 2000.

- Further, the Government has advised the following modifications/clarifications :

- Compounding application may be submitted physically to PRAVAAH Portal. All applications shall be submitted with the fee of ₹10,000/- (plus applicable GST, which at present is 18%) by way of demand draft in favour of "Reserve Bank of India" and payable at the concerned Regional Office/ CO Cell, New Delhi/ Central Office or through National Electronic Fund Transfer (NEFT), or other permissible electronic or online modes of payment.

- Certain cases not eligible for compounding

  - contravention committed by any person within a period of 3 years from the date on which a similar contravention was committed and the same was compounded.

  - unless the requisite administrative action is completed by the applicant.

  - Contraventions of serious nature e.g. terror financing or affecting sovereignty and integrity of the nation.

- Factors to be considered by Compounding Authority for the purpose of passing compounding order and determining amount on payment of which contravention

  - Undue gains

  - the amount of loss caused to any authority/ exchequer as a result of the contravention

  - the repetitive nature of the contravention, the track record and/or history of non-compliance of the contravener

  - contravener's conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing; and any other factor as considered relevant and appropriate.

- After affording an opportunity of being heard to the applicant Compounding Authority shall pass a compounding order as expeditiously as possible and not later than 180 days from the date of receipt of such compounding application by Reserve Bank.

- The compounding amount as specified in the compounding order shall be paid by way of demand draft in favour of the "Reserve Bank of India" or National Electronic Fund Transfer (NEFT), or Real Time Gross Settlement (RTGS) within 15 days from the date of the order of compounding of such contravention and on payment a certificate shall be issued by the Reserve Bank to applicant.

To read the notification in detail, please click here.

2. **RBI vide notification dated October 04, 2024 issued regarding Due diligence in relation to non-resident guarantees availed by persons resident in India**

- RBI has come across the instances of guarantees (including Standby Letters of Credit [SBLCs] and / or performance guarantees) issued by persons resident outside India, favouring persons resident in India, which are not permitted under the extant FEMA regulations.

- AD Category-I banks may ensure that guarantee contracts advised by them to, or on behalf of, their resident constituents are in accordance with the FEMA regulations. The contents of this circular may be brought to the notice of your constituents.

To read the notification in detail, please click here.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. **SEBI vide circular dated October 03, 2024, issued Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 –Reg.**

   - SEBI, vide circular dated October 7, 2023, had relaxed the applicability of regulation 36(1)(b) of the of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**") for Annual General Meetings (**AGMs**)and regulation 44(4) of the LODR Regulations for general meetings (in electronic mode) held till September 30, 2024, based on the relaxations provided by MCA vide General Circular no. 09/2023 dated September 25, 2023.

   - Recently, MCA, vide General Circular No.09/2024 dated September 19, 2024, has extended the relaxation from sending physical copies of financial statements (including Board's report, Auditor's report or other documents required to be attached therewith) to the shareholders, for the AGMs conducted till September 30, 2025. SEBI has also received representations to extend the relaxations mentioned at para 1 above

   - Further, In view of the above, it has been decided to extend the relaxations mentioned at para 1 above till September 30, 2025.

   - It is reiterated that the listed entities shall ensure compliance with the conditions stipulated at para 5.1 and 5.2 of section VI - J of chapter VI of the Master Circular dated July 11, 2023, on compliance with the provisions of the LODR Regulations while availing the relaxations specified above.

   - This circular applicable to all listed entities that have listed their specified securities & All recognized stock exchanges.

   To read the circular in detail, please click here.

SEBI ORDERS

ADJUDICATION ORDER IN THE MATTER OF SHERKHAN LIMITED

Securities and Exchange Board of India (hereinafter referred to as "SEBI") had conducted an inspection of of M/s NSE Data and Analytics Limited (hereinafter referred to as the ("Noticee"), registered with SEBI as a KYC Registration Agency (KRA) bearing Registration no. IN/KRA/003/2012 to ascertain possible violation(s) of the provisions of the Securities and Exchange Board of India Act, 1992 ("SEBI Act"), SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as the "Intermediaries Regulations") ,SEBI KYC (Know Your Client) Registration Agency} Regulations, 2011(hereinafter referred to as the "KRA Regulations") and various applicable SEBI Circulars by the Noticee.

During the inspection, it had been alleged that the Noticee contravened various provisions of the securities law in respect of the activities carried out by it. The violations alleged to have been committed by Noticee are as mentioned below:

- Irregularities with respect to backup of records and details of BCP/DR Site.
- Delay in Sending Letter of Acknowledgement to investors.
- Irregularities w.r.t system audit reports and cyber security audit framework.
- Failure to validate KYC Records.
- Irregularities w.r.t segregation of operations and Infrastructures.

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 15-I of the SEBI Act for the aforesaid alleged violations.

After considering all the facts and the circumstances of the case, and the material available on record, the AO is of the view that it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. However, the Noticee being a registered intermediary is expected to adhere to fair practices and maintain a high degree of professionalism in the conduct of its business. It is also observed from the records that the Noticee has not been penalized by SEBI in the past.

AO imposed a penalty of INR 12,00,000/- on Noticee for violation of SEBI Regulations.

To read the order in detail, please click here.

ADJUDICATION ORDER IN THE MATTER OF ANAND RATHI SHARE AND STOCK BROKER LIMITED

Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted a comprehensive inspection of of M/s Anand Rathi Share and Stock Broker Limited (hereinafter referred to as the (**"Noticee"**), registered stock broker of BSE, NSE, MCX and NCDEX with SEBI Registration no. INZ000170832.

During the inspection, various non-compliances were observed SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as **Stock Brokers regulation**) and circulars issued by SEBI, NSE and BSE. The violations alleged to have been committed by Noticee are as mentioned below:

- Non-compliance in monthly/ quarterly settlement of funds.
- Passing of penalty to clients on account of short/ non-collection of upfront margins.
- Margin Trading Funding.
- Observation of Business Continuity Planning (BCP) and Disaster Recovery Site DRS.
- Non-compliance in capacity planning and monitoring.
- Unreported Technical Glitches

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, and the material available on record, the AO is of the view that it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. However, the Noticee was under a statutory obligation to abide by and comply with the provisions of the Circulars / directions issued by SEBI and stock exchanges, which they failed to do during the inspection period. It is also observed from the records that the Noticee has not been penalized by SEBI in the past.

AO imposed a penalty of INR 10,00,000/- on Noticee for violation of SEBI Regulations.

To read the order in detail, please click here.

DISCLAIMER:

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

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Call us 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 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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