Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

Week – February 05th to February 10th

Quote for the week:

“The truth is not always beautiful, nor beautiful words the truth.”

– Lao Tzu (Chinese philosopher and writer)

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 Ministry of Corporate Affairs (“**MCA**”), Reserve Bank of India (“**RBI**”), Insolvency and Bankruptcy Board of India (“**IBBI**”), International Financial Services Authority (“**IFSCA**”), Securities and Exchange Board of India (“**SEBI**”) and NCLAT Order(“**ORDER**”)

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

- **MCA vide General Circular dated February 07, 2024 issued relaxation of additional fees and extension of last date of filing of Form No. LLP BEN- 2 and Form No. 4D under the Limited Liability Partnership Act, 2008.**

- **SEBI vide Circular dated February 08, 2024 issued revised pricing methodology for institutional placements of privately placed Infrastructure Investment Trust (InvIT).**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements/ orders issued during the week of February 05th to February 10th.

Thank you, Swift team

MINISTRY OF CORPORATE AFFAIRS (MCA)

1. **MCA vide General Circular dated February 07, 2024 issued relaxation of additional fees and extension of last date of filing of Form No. LLP BEN- 2 and Form No. 4D under the Limited Liability Partnership Act, 2008.**

    - The Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 have been notified by the Ministry of Corporate Affairs through G.S.R. dated 09.11.2023. Additionally, e-form LLP BEN-2 has been prescribed to be filed with the Registrar in relation to a declaration made under Section 90 of the Companies Act, 2013.

    - Similarly, via G.S.R. dated 27.10.2023, MCA notified the Limited Liability Partnership (Third Amendment) Rules, 2023 and prescribed e-form LLP Form no. 4D to file a return to the Registrar regarding the declaration of beneficial interest in contribution received by the Limited Liability Partnership ("LLP").

    - In view of transition of MCA-21 from version-2 to version-3 and to promote compliance on part of reporting LLP's, it is informed that such LLP's may file Form LLP BEN-2 and LLP Form No. 4D, without payment of any additional fees, upto 15.05.2024.

    - The two forms shall be made available in version-3 for filing purposes ***w.e.f 15.04.2024***.

To read the General Circular in detail, please click here.

SECURITITES AND EXCHANGE BOARD OF INDIA (SEBI)

1. **SEBI vide Circular dated February 08, 2024 issued revised pricing methodology for institutional placements of privately placed Infrastructure Investment Trust (InvIT).**

    - Regulation 14(4) of the SEBI (Infrastructure Investment Trusts) Regulations, 2014 ('**InvIT Regulations**') provides that any subsequent issue of units after initial public offer may be by way of institutional placement, in addition to other mechanisms provided in the regulations.

    - In Paragraph 7.9 of the SEBI Master Circular for InvITs dated July 06, 2023, provides the pricing guidelines for institutional placement of InvIT, which state that the institutional placement by InvIT shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks preceding the relevant date.

    - The guidelines for pricing institutional placements of InvITs have been reviewed in response to industry requests regarding pricing for privately placed InvITs; recommendations made by the Hybrid Securities Advisory Committee ('**HySAC**'); and efforts to facilitate ease of doing business. It has been determined, based on the aforementioned evaluation, that the NAV per unit of privately placed InvITs will serve as the institutional placement floor price.

    - Further, the pricing for listed InvITs stand modified as under so that privately placed InvITs can undertake institutional placement based on NAV of the assets of the InvIT.

- Paragraph 7.9.1 of the SEBI Master Circular for InvITs dated July 06, 2023 is modified as given below:

  "The institutional placement by public InvIT shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks preceding the relevant date.

  Provided that the public InvIT may offer a discount of not more than five percent on the price so calculated, subject to approval of unitholders through a resolution as specified in para 7.2.1.

- Insertion of Paragraph 7.9.2 to the SEBI Master Circular for InvITs dated July 06, 2023:

  "The institutional placement by privately placed InvIT shall be made at a price not less than the NAV per unit, based on the full valuation of all existing InvIT assets conducted in terms of InvIT Regulations."

▪ This Circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 33 of the InvIT Regulations. This circular is issued with the approval of the competent authority.

To read the Circular in detail, please click here.

2. SEBI vide Circular dated February 06, 2024 issued guidelines for returning of draft offer document and its resubmission.

▪ SEBI through this Circular issue guidelines which states that Adequate disclosures by the issuer and timely processing of offer documents are important for the vibrancy of the primary market.

▪ It has observed that at times, draft offer document/ draft letter of offer filed with the board for public/ right issue of securities are found lacking in compliance.

▪ To ensure completeness of the offer document for investors and provide greater clarity & consistency in the disclosures and for timely processing, it has been decided to issue 'Guidelines for returning of draft offer document and its resubmission.

▪ The draft offer document shall be scrutinized based on the broad guidelines and such document not competent with the instructions provided under schedule VI of ICDR regulation shall be returned to the issuer.

▪ Broad guidelines for returning of draft offer document and its resubmission are placed at Annexure A of this Circular.

▪ There shall be no requirement for payment of any fees on account of resubmission of draft offer document.

To read the Circular in detail, please click here.

RESERVE BANK OF INDIA (RBI)

1. **RBI vide Notification dated February 08, 2024 notified implementation of Section 51A of UAPA, 1967.**

   - Please refer to Section 51 of our Master Direction on Know Your Customer ('**MD on KYC**') dated February 25, 2016, as amended on January 04, 2024. Pursuant to Section 51A of the Unlawful Activities (Prevention) ('**UAPA**') Act, 1967 and amendments thereto, "Regulated Entities ('**REs**') shall ensure that they do not have any account in the name of individuals/entities appearing in the lists of individuals and entities, suspected of having terrorist links, which are approved by and periodically circulated by the United Nations Security Council ('**UNSC**')".

   - This is in regard to the UNSC press release dated February 07, 2024, which states that the entries below on the ISIL (Da'esh) and Al-Qaida Sanctions List of people and organizations subject to the travel ban, arms embargo, and asset freeze outlined in paragraph 1 of Security Council resolution 2610 (2021) were modified in light of the 2022 Annual Review that was carried out in compliance with paragraphs 90 and 91 of the resolution 2610 (2021).

   - REs are advised to take appropriate action in terms of Section 51 of the MD on KYC and strictly follow the procedure as laid down in the UAPA Order dated February 02, 2021 (amended on August 29, 2023) annexed to the MD on KYC.

To read the Notification in detail, please click here.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

1. **IBBI vide Press Release dated February 05, 2024 have amended the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.**

   - The IBBI has issued amendments in the Voluntary Liquidation Regulations make the following key modifications:

   - The directors of the corporate person while initiating the voluntary liquidation process shall make disclosure about pending proceedings or assessments before statutory authorities, and pending litigations and shall also declare that sufficient provision has been made to meet the likely obligations arising, if any, on account of the pending proceedings.

   - If the liquidator fails to liquidate the corporate person within stipulated period of 90 days or 270 days as the case may be, he shall hold a meeting of contributories of the corporate person and present a status report within fifteen days from the end of such period and thereafter at the end of every such succeeding period, specifying the reasons for not completing the process within the stipulated time period and apprise the meeting about additional time required for completing the process.

- After submission of final report but before the corporate person is dissolved, stakeholders claiming entitlement to funds in the Corporate Voluntary Liquidation Account can apply to the liquidator for withdrawal. Upon receiving such a request, the liquidator shall verify the claim and request the Board to release the funds to him/her for onward distribution.

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

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

1. **IFSCA vide the Circular dated February 09, 2024 issued direct listing of Indian companies on the stock exchanges in IFSC – Monitoring of investments from countries sharing land border with India.**

    - The Government of India has notified the Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2024 and the Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024 on January 24, 2024 enabling direct listing of equity shares by public Indian companies on the International Exchanges at IFSC.

    - Clause 2 of Schedule XI of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (NDI Rules), inter-alia, provides that

      "Permissible holder - (a) permissible holder means a holder of equity shares of the Company which are listed on International Exchange, including its beneficial owner: Provided that such a holder who is a citizen of a country which shares land border with India, or an entity incorporated in such a country, or an entity whose beneficial owner is from such a country, shall hold equity shares of such public Indian company only with the approval of the Central Government.

      Explanation 2.- The permissible holder, including its beneficial owner, shall be responsible for ensuring compliance with this requirement. The public Indian company, in its offer document, by whatever name called in the permissible jurisdiction, shall make a disclosure to this effect."

    - Based on suggestions received from stakeholders, IFSCA hereby specifies the following mechanism to ensure compliance by permissible holders with the proviso to clause 2 of Schedule XI of NDI Rules

        - Know Your Customer ('**KYC**') and Client Due Diligence ('**CDD**') by Broker Dealers, Depository Participants and Custodians: -

        - Declaration by Clients: -
            - Clients from countries sharing land border with India.
            - Clients from countries sharing land border with India

        - Primary Market Issuance: - recognized stock exchanges in the IFSC shall have adequate mechanisms to ensure that the Identified Clients do not participate in the primary market issuance of equity shares of Indian companies listed on the recognized stock exchanges in the IFSC, without approval of the Central Government.

- Secondary Market Trading: - Broker dealers and custodians in the IFSC shall have adequate mechanisms to ensure that their respective Identified Clients do not buy any equity shares of Indian companies listed on the recognized stock exchanges in the IFSC, without approval of the Central Government.

- Monitoring and Surveillance by stock exchanges: - The recognized stock exchanges in IFSC shall conduct market surveillance to monitor any trading activity by such Identified Clients in the secondary market.

- The report in this regard shall be submitted by the stock exchanges to IFSCA on monthly basis

- Stock exchanges, broker dealers, depository, depository participants and custodians in the IFSC are directed to take necessary steps to put in place appropriate mechanisms for implementation of the circular.

To read the Circular in detail, please click here.

2. **IFSCA vide the Circular dated February 08, 2024 issued Reporting norms for Capital Market Intermediaries under IFSCA (Capital Market Intermediaries) Regulations, 2021.**

▪ IFSCA in exercise of the power conferred under Section 12 and 13 of the International Financial Services Centres Authority Act, 2019, read with Regulation 15 of the IFSCA (Capital Market Intermediaries) Regulations, 2021, the International Financial Services Centres Authority ("Authority") hereby specifies the reporting norms for Capital Market Intermediaries ("CMIs") in IFSC as under:

  - CMIs shall submit information to the Authority in the prescribed formats (provided at on a quarterly basis

  - The quarterly report to the Authority shall include:

    a. Quantitative information and other information sought in the prescribed format about the operations of the CMI, which shall be submitted in an editable excel file.

    b. A signed undertaking which shall be submitted as a scanned PDF file in the prescribed format.

  - While the first report under this Circular, corresponding to the period October 01, 2023 to December 31, 2023, shall be submitted latest by February 28, 2024, the subsequent reports for each quarter shall be submitted within 15 calendar days from the end of the quarter.

  - The reports shall be submitted to the Authority by way of an email to cmi-supervision@ifsca.gov.in.

  - The Authority will continue to monitor Capital Market Intermediaries in IFSC and may supplement / update the reporting formats, if so required.

- With effect from the date of this circular, Reporting Requirements for Investment Bankers as specified at Sr. No. 6 of IFSCA Circular Capital Markets dated December 03, 2021 shall stop being in force.

To read the Circular in detail, please click here.

3. **IFSCA vide the Circular dated February 06, 2024 have issued fee structure for the entities undertaking or intending to undertake permissible activities in IFSC.**

- IFSCA in exercise of the power conferred under Section 12 and 13 of the International Financial Services Centres Authority Act, 2019, the International Financial Services Centres Authority ("**Authority**") issues this circular, alongwith the schedules I and II annexed, laying down a consolidated fee structure for an entity desirous of getting licence, registration, recognition or authorisation or availing of any permitted financial service in the IFSC under the relevant regulations and circulars and for other entities which have granted license, registration, recognition or authorisation by the Authority ("**Regulated Entities** ('**REs**')").

- The fees payable to the Authority fall into the following categories:

  - Application fees and License /Registration/Recognition/Authorisation fees - payable during the process of application.
  - Recurring fees - payable after grant of licence, registration, recognition, or authorization.
  - Activity based fees — payable based on the nature and volume of activity carried out by the FIs.
  - Processing fees — payable for handling specific requests such as modification of terms of license, waiver of regulations etc.

- A fee is payable as part of any application or request to the Authority, the application or request shall not be regarded as submitted until such fee has been paid in full.

- The list of Fees payable during various process are stated below: -

  - Fees payable during the application process: -
  - Fees payable after grant of licence, registration, recognition, or authorization: -
  - Multiple applications
  - Fees payable based on the nature and volume of activity carried out by the FIs
  - Fees payable for handling specific requests such as modification of terms of licence, waiver of regulations etc.
  - Late payment of any outstanding dues/fees or delay in submission of periodic returns.
  - Additional /Supplementary fees
  - Request for approval of key managerial personnel/directors/trustee etc
  - Waiver of fees
  - Manner of Payment: Fees to be paid to respective following authority as specified.

- In case any of the provisions of this circular are found to be in contravention with any provision of any applicable Act, Rule or Regulation, then such provision of the applicable Act, Rule or Regulation shall prevail.

To read the Circular in detail, please click here.

4. IFSCA vide the Circular dated February 09, 2024 issued format and manner of seeking authorisation as Payment Service Provider (PSP).

- IFSCA authority through this Circular hereby specifies the format and manner for applying to the Authority for authorisation as a PSP.

- An applicant shall submit the application form (Schedule I) and additional information/submissions (Schedule II) to the Authority in physical form.

- An applicant shall fill up the application form and submit the information sought in English. Incomplete applications shall not be considered. In case the applicant has already answered a question elsewhere in the schedules, specific reference to that cell/section may be provided to avoid duplication.

- In case the applicant is of the opinion that an information sought in the schedules does not apply to him; the applicant shall answer to that effect stating the reasons justifying the non-applicability.

- Applicants are advised to refer to the IFSCA website for latest amendments in the IFSCA (Payment Services) Regulations/ Frameworks/ Circulars etc. that may be pertinent to the application.

- In case the documents that are not in English, a certified English translation of the same shall be enclosed. The English translation must be certified “true copy” by an external legal counsel. All documents submitted with the application shall be self-certified. However, in case of foreign nationals or companies the relevant documents (e.g., Certificate of Incorporation, Certificate / Declaration of the person being authorised to act on behalf of the entity etc.) are to be apostilled / notarised.

To read the Circular in detail, please click here.

JUDGEMENTS/ORDER

NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT) ORDER

1. NCLAT dismissed the Appeal for revival of struck off Company.

Before the National Company Law Tribunal (**"NCLT"**), Cuttack Bench, the Appellant had filed Company Appeal (u/s 252(3) & (420) of the Companies Act read with Rule 11 of NCLT Rules, 2016) wherein the relief was sought for reconsidering the revival of the Applicant Company pursuant to the Order passed by the Hon'ble High Court of Orissa while taking in consideration the additional documents submitted along with the present application.

The Respondent / ROC, Orissa had stated that the Appellant had not generated 'any revenue' and the same, was not a 'Going Concern', which is repudiated by the Appellant Company, stating that the immovable property was purchased from the money raised through loans from the Promoters. Also, that the immovable Assets of the Company according to the Appellant needs to be utilised, to pay back the Creditors of the Company, therefore, a plea is taken on behalf of the Appellant that it is not just and equitable to strike off the name of the Appellant Company. The Respondent had struck off the name of the Applicant's company non-filing of the statutory annual returns i.e. FY 2016-17 and 2017-18 and failed to consider Section 248 (6) of the Companies Act, 2013. It may be noted that the Company had filed Returns for earlier years and there are Assets and Liabilities for the Petitioner/Appellant Company and the Respondent had failed to fulfill the requirements as per Section 248(6) of the Act. Therefore, it is the contention of the Petitioner/Appellant had failed to fulfill the ingredients of Section 248(6) of the Act and as such, the action taken by the Respondent is an illegal one.

On a careful consideration of the Appellant's contentions, the NCLAT, ongoing through the impugned order dated 08.08.2023 was of the view that the Appellant had not filed appeal within the two years period as envisaged under Section 420 (2) of the Companies Act, 2013 and in fact had filed the before the 'Tribunal' 16.12.2022, after the lapse of two years' period on 16.12.2022. Therefore, the 'Tribunal' had rightly opined that the appeal was not to be considered in regard to the receiving of additional documents / additional evidence. Looking at from any angle, the impugned order dated 08.08.2023, passed by the NCLT, Cuttack Bench is free from any legal flaws. Resultantly, the Appeal sans merits.

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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