Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

Week – March 18th to March 23rd

Quote for the week:

“The harder the conflict, the more glorious the triumph.”

–Thomas Paine *(American Founding Father)*

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**”), International Financial Services Authority (“**IFSCA**”) and NCLAT Order.

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

- ❖ **SEBI vide circular dated March 19, 2024 allowed entities to use e-KYC Aadhar Authentication services of UIDAI in Securities Market as sub-KUA.**

- ❖ **IFSCA vide circular dated March 22, 2023 issued circular on Issuance of Indian Financial System Code (IFSC code) to 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 March 18th to March 23rd.

Thank you, Swift team

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. **SEBI vide circular dated March 19, 2024, allowed entities to use e-KYC Aadhar Authentication services of UIDAI in Securities Market as sub-KUA.**

   - The Master Circular on Know Your Client (KYC) norms for the securities market dated October 12, 2023, inter alia has detailed the provision for "the adaptation of Aadhaar based e-KYC process and eKYC Authentication facility for Resident Investors under section 11A of the Prevention of Money Laundering Act, 2002, entities permitted to undertake e-KYC Aadhaar Authentication service of UIDAI in Securities Market as sub-KUA, and onboarding process of sub-KUA by UIDAI'

   - The Department of Revenue, Ministry of Finance vide gazette notification dated July 13, 2022, and January 30, 2023, has notified 155 and 39 entities respectively, to undertake Aadhaar authentication services of UIDAI under Section 11A of the Prevention of Money Laundering Act, 2002.

   - The Department of Revenue – Ministry of Finance has notified another 4 entities which are permitted to use Aadhaar authentication services of UIDAI under section 11A of the Prevention of Money – Laundering Act, 2002. A copy of the notification is attached to the said circular as **Annexure – A**.

   - Further, the above-mentioned entities shall follow the process as detailed in SEBI circular dated October 12, 2023 and as may be prescribed by UIDAI from time to time. The KUAs shall facilitate the on-boarding of these entities as sub – KUAs to provide the services of Aadhaar authentication with respect to KYC.

   - The said circular shall be appliable to All Intermediaries registered with SEBI under Section 12 of the Securities and Exchange Board of India Act, 1992 and Stock Exchanges.

To read the circular in detail, please click here.

2. **SEBI vide circular dated March 20, 2024 issued Amendment to Circular for mandating additional disclosures by FPIs that fulfil certain objective criteria.**

   - SEBI vide circular dated August 24, 2023, mandated additional disclosures for FPIs that fulfil objective criteria as specified in the said Circular. Further, FPIs satisfying any of the criteria listed under Para 8 of the said Circular were exempted from the additional disclosure requirements, subject to conditions specified in the said Circular.

   - In this regard, in addition to the criteria it has been decided that an FPI having more than 50% of its India equity AUM in a corporate group shall not be required to make the additional disclosures as specified in Para 7 of the said Circular, subject to compliance with all of the following conditions:

- The apex company of such corporate group has no identified promoter. For this purpose, the list of corporate groups based on the corporate repository published by the Stock Exchanges and their respective apex companies having no identified promoters shall be made public by Depositories.

- The FPI holds not more than 50% of its Indian equity AUM in the corporate group, after disregarding its holding in the apex company (with no identified promoter).

- The composite holdings of all such FPIs (that meet the 50% concentration criteria excluding FPIs which are either exempted or have disclosed) in the apex company is less than 3% of the total equity share capital of the apex company.

- Custodians and Depositories shall track the utilisation of this 3% limit for apex companies, without an identified promoter, at the end of each day. When the 3% limit is met or breached, Depositories shall make this information public before start of trading on the next day.

- Thereafter, for any prospective investment in the apex company by FPIs, that meet the 50% concentration criteria in the corporate group, the FPIs shall be required to either realign their investments below the 50% threshold within 10 trading days or make additional disclosures prescribed in the said Circular dated August 24, 2023, provided no such requirement, to realign or make disclosure, shall be applicable unless the 3% cumulative limit for the apex company continues to be met through the said 10 trading days.

- Further, all other provisions specified in the said circular dated August 24, 2023 shall remain unchanged.

- For FPIs that met the objective criteria specified under Para 7(a) of the said Circular dated August 24, 2023, as on October 31, 2023 and neither realigned their portfolio within the specified time-period nor were exempted, additional disclosures were required to be made on or before March 12, 2024.

- It is clarified that such FPIs who met the conditions specified under Para 2 above, as on March 12, 2024, shall not be subjected to actions consequent to non-disclosures, as specified in Para 12 and Para 13 of said Circular dated August 24, 2023.

- The process flow to implement this circular shall be framed by the pilot Custodians and DDPs Standards Setting Forum (CDSSF) and adopted by all the DDPs/ Custodians, in consultation with SEBI.

- The said circular shall come into force with immediate effect.

- The said circular shall be applicable to FPIs, DDPs and Custodians, The Depositories, The Stock Exchanges and Clearing Corporations, Registrars to an Issue and Share Transfer Agents, Listed Companies.

To read the circular in detail, please click here.

3. **SEBI vide circular dated March 21, 2024, issued circular regarding Introduction of Beta version of T+0 rolling settlement cycle on optional basis in addition to the existing T+1 settlement cycle in Equity Cash Markets.**

- SEBI through its circular dated September 07, 2021, allowed for introduction of T+1 rolling settlement cycle. All stock exchanges, clearing corporations and depositories (collectively referred to as "Market Infrastructure Institutions (**MIIs**)") jointly decided to shift to T+1 settlement cycle in a phased manner, which was fully implemented w.e.f. January 27, 2023.

- A shortened settlement cycle will bring cost and time efficiency, transparency in charges to investors and strengthen risk management at clearing corporations and the overall securities market ecosystem.

- Pursuant to deliberations and approval of the Board, it has been decided to put in place a framework for introduction of the Beta version of T+0 settlement cycle on optional basis in addition to the existing T+1 settlement cycle in equity cash market, for a limited set of 25 scrips and with a limited number of brokers.

- The operational guidelines in this regard are introduces regarding Eligible Investors, Surveillance Measures, Trade Timings, Price Band, Index calculation and settlement price computation and Netting of Obligations.

- To ensure smooth implementation, the MIIs shall publish other operational guidelines (including mechanism for trading, clearing and settlement, risk management, etc.)and Frequently Asked Questions (FAQs)along with the list of 25 scrips for the Beta version of T+0 settlement cycle and disseminate the same on their respective websites.

- SEBI through its circular advised MIIs to a take necessary step and put in place necessary systems for implementation of the above;

To read the circular in detail, please click here.

4. **SEBI vide circular dated March 20,2024 issued Safeguards to address the concerns of the investors on transfer of securities in dematerialized mode.**

- SEBI Master circular for Depositories dated October 06,2023 prescribed guidelines to address the concerns arising out of transfer of securities from the Beneficial Owner (BO) Accounts without proper authorization by the concerned investor.

- To harmonize the classification of inactive/dormant accounts across stock exchanges and depositories and to strengthen the measures to prevent fraud/mis appropriation for inoperative demat accounts, based on consultation.

- Safeguards to address the concerns of the investors on transfer of securities in dematerialized mode: -

  - The depositories shall give more emphasis on investor education particular with regard to carful preservation of Delivery Instruction Slip (DIS) by the Bos.

  - The DPs shall not accept pre-signed DIS with blank columns from the BO(s).

- If the DIS booklet is lost/stolen/not traceable by the BO, the same must be intimated to the DP immediately by the BO in writing. On receipt of such intimation, the DP shall cancel the unused DIS of the said booklet.

- The DP shall also ensure that a new DIS booklets issued only on the strength of the DIS instruction request slip (contained in the previous booklet) duly complete in all respects, unless the request for fresh booklet is due to loss, etc.

- The DPs shall not issue more than 10 loose DIS to one account holder in a financial year (April to March). The loose DIS can be issued only if the BO(s) come in person and sign the loose DIS in the presence of an authorized DP official.

▪ The DPs shall mandatorily verify with a BO before acting upon the DIS, in case of an inactive/dormant account, whenever any security in such account is transferred at a time. Such verification by DPs shall require are corded phone call on registered number of BO by the authorized official of the DP and shall be additionally authorized by the Compliance officer or any other designated senior official of the DP. The authorized official of the DP verifying such transactions with the BO, shall record the details of the process, date, time, etc., of the verification on the instruction slip under his/her signature.

▪ The depositories are accordingly advised to make necessary amendments to the relevant bye-laws rules and regulations for the

To read the circular in detail, please click here.

INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY (IFSCA)

❖ **IFSCA vide circular dated March 22, 2023 issued circular on Issuance of Indian Financial System Code (IFSC code) to IFSC Banking Units (IBUs)**

- Please refer to the circular entitled "Allocation of Indian Financial System Code (IFSC code) to IBU's dated November 28, 2023, issued by the Authority.

- As of date, 19 IBUs operating in GIFT City International Financial Service Centre have been issued the IFSC code. The names of the IBUs and the IFSC codes is provided in the said circular.

- The IFSC codes are to be used for only by the remitters to undertake cross border remittance to IBUs for mentioning in the relevant field of cross border payment systems messages where quoting of IFSC code of the destination branch in India is a mandatory requirement. The above mentioned IFSC codes shall not be used for initiating payments using any of the domestic payment systems like NEFT, RTGS etc

- Financial Institutions in IFSC are requested to host this information, as updated from time to time, on their IFSC webpages and appraise their customers about the above. Bank IT system databases and applications may also be updated accordingly.

- This circular is applicable to all financial Institutions in IFSC

To read the circular in details, please click here.

NCLAT ORDER

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

Before the National Company Law Appellate Tribunal (**"NCLAT"**), New Delhi Bench, the Appellant had filed Company Appeal (u/s 252(3)) wherein the relief was sought for reconsidering the revival of the Applicant Company pursuant to the judicial powers given to NCLT u/s 252(3) to restore the name of the company to do justice while taking in consideration the additional documents submitted along with the present application.

The Respondent / Registrar of Company, NCT of Delhi & Haryana(**"RoC"**) 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 it has immovable property and is the sole absolute owner and in possession of the property/land. Also, that the immovable property/land of the Company according to the Directors-cum-members is intended to be used for developing it and starting a home-stay business for their daily survival and livelihood and they have also received a proposal from Brentwood Hotel, 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. Further, all the present directors are willing to give an undertaking for three years that they will not sell the property. The Respondent had struck off the name of the Applicant's company for non-filing of the statutory annual returns i.e. FY 2011-12 to FY 2019-20. The Appellant contends that it could not file the statutory returns for the said financial years as the only one director out of total of five directors, who was looking after the company and was aware about its compliances, could not do the needful due to his ill health.

On a careful consideration of the Appellant's contentions and facts and circumstances of the case, the NCLAT, ongoing through the impugned order dated 27.05.2022 was of the view that the non-compliance with the requirement of filing the annual accounts appears to be inadvertent, non-deliberate and unintentional. NCLAT further noticed that the directors as well as the company were not served with any notice in person by RoC, whose aim of issuing public notice was to weed out shell companies, caused grave prejudice to the Appellant and hence could not submit a representation. NCLAT interpreted the term *otherwise just and equitable* under Section 252(3) of the Companies Act, 2013 and stated that it envisages revival/restoration of the company on the rolls of ROC if it is not a shell company or a company dealing with siphoning funds or advancing loan to sister concern. Accordingly, it observed that Nil revenue from operations is not the sole criteria for a company's name to be struck off from the rolls of ROC as the Appellant company is not a shell transactionary vehicle and it is holding a fixed asset.

In the light of facts and circumstances of the case, NCLAT held that if the company's name is not restored then, of course, it would result to an irreparable loss and prejudice to the appellant and the fixed assets of company would be a deadlock and would result in wastage of property which is contrary to the public policy. Therefore, it finds it *just and equitable* to restore the name of the appellant company to the record of ROC and set aside the impugned order dated 27.05.2022 passed by the Ld. NCLT

To read the order in detail, please click here

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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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