Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 6th 22-23
Week – May 09th to May 13th

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

"One of the tests of leadership is the ability to recognize a problem before it becomes an emergency"

– Arnold H. Glasow".

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 orders passed by the SEBI and National Company Law Appellate Tribunal ("NCLAT")

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

- **SEBI notifies amended regulation for Infrastructure Investment Funds.**
- **SEBI issues notification amending Collective Investments Scheme Regulation, 1999.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of May 09, 2022 to May 13, 2022.

Thank you,
Swift team

Table of Contents

REGULATORY UPDATES

SEBI

1. SEBI vide notification has made amendment in Infrastructure Investment Trusts Regulations 2014.

- SEBI vide its notification dated May 04, 2022 has introduced SEBI (Infrastructure Investment Trusts) (Amendment) Regulations, 2022. Vide this amendment SEBI has amended and replaced the Para 4 to the Second Schedule of SEBI (InvIT) Regulation, 2014 as below: -

  "With respect to privately placed InvIT, the InvIT shall pay non-refundable filing fees of:

  i. 0.1% in case of initial offer; and
  ii. 0.05% in case of rights issue, of the total issue size including green shoe option, if any, at the time of filing of draft placement memorandum or letter of offer, as applicable, with the Board;"

- With the said amendment it is now clear that there is a clear bifurcation between the non-refundable fees that ought to be paid in case of initial offer as also different rate to be paid if the said issue is a rights issue.

To read the Circular in detail, please click here.

2. SEBI has issued a notification on amendment in Collective Investments Scheme (CIS) Regulation, 1999.

- SEBI vide its notification dated May 10th, 2022 amends the SEBI (Collective Investment Schemes) Regulations, 1999.

- SEBI has amended and inserted certain definitions and meanings; by adding or substituting some the older definitions

- Few of the amendments from the said notification are mentioned herein below: -

  a. The subscription period under this scheme shall now be 15 days.
  b. Immediately post closure of the scheme's subscription list the CIS now has to comply with the said conditions

I. Rupees 25 Crore will be the minimum subscription amount
II. The scheme will have minimum 20 investors
III. The maximum a person can hold is 25% of the assets under the management of the scheme.

To read the notification in detail please click here.

3. SEBI vide press release no. 16/2022 grants NSDL Database Management Limited (NDML) to act as an Accreditation Agency.

- SEBI vide notification dated August 03, 2021 amended SEBI (Alternative Investment Funds) Regulations, 2012, SEBI (Portfolio Managers) Regulations, 2020 and SEBI (Investment Advisers) Regulations, 2013 to introduce framework for “Accredited Investors” in the Indian Securities Market.

- SEBI’s notification dated August 26th, 2021 issued modalities for implementation of the framework for Accredited Investors and applications have been received from entities for recognition as Accreditation Agency.

- After the verification of all the applications submitted the Board granted NSDL Database Management Limited (NDML) the permit to act as an Accreditation Agency which also happens to be a wholly owned subsidiary of National Securities Depository Limited (NSDL).

To read the notification in detail, please click here.

4. SEBI has issued the circular granting relaxation of certain provisions of SEBI (Listing Obligations and Disclosure Regulations) 2015.

- SEBI vide its circular dated May 13th, 2022 specifies certain relaxation in the provisions of SEBI Listing Obligations and Disclosure Regulations.

- SEBI by issuance of this circular decided to provide the relaxation under regulation 36(1) which required sending hard copy of annual report containing salient features of all the documents prescribed in Section 136 of the Companies Act, 2013 to the shareholders who have not registered their email addresses. Further, the notice of Annual General Meeting published by advertisement in terms of Regulation 47 of LODR Regulations, shall contain a link to the annual report, so as to enable shareholders to have access to the full annual report up till December 31, 2022.

- However, it is emphasized that in terms of Regulation 36(1)(c) of LODR Regulations, listed entities are required to send the Hard copies if full annual report to those shareholders who request for the same.

- The SEBI has also dispensed the requirement of sending proxy forms under Regulation 44 (4) of the LODR Regulations up to December 31, 2022, in case of general meetings held through electronic mode only.

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

To read the Circular in detail, please click here.

[This space is intentionally left blank]

JUDGEMENTS AND ORDERS

SEBI

1. **In the matter of M/s Adamina Traders Private Ltd. SEBI has imposed penalty of INR. 10,00,000/- on Noticee for violation of certain provisions of PFUTP Regulations.**

- Securities and Exchange Board of India ("**SEBI**") conducted an investigation into the trading activities of certain entities in the scrip of **Secunderabad Healthcare Ltd ("SHL")** during the Investigation Period ("**IP**") to ascertain any violation of provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred as '**PFUTP Regulations**').

- During this period it was observed that M/s Adamina Traders Pvt. Ltd. ("**Noticee**") had traded in the scrip of the SHL and contributed to significant positive last traded price which led to alleged violation of regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of the PFUTP Regulations. SEBI served Show Cause Notice ("**SCN**") on Noticee for aforesaid violation and imposed penalty of INR. 10,00,000/-.

- Thereafter Noticee filed an appeal to SAT against the Adjudication order passed. On consideration the appeal SAT directed SEBI to inquire the aforesaid violations. During the process of inquiry, it was observed that Noticee was not a genuine buyer, manipulated the price of the SHL scrip and created a misleading appearance of trading in the said scrip which resulted in violation of provisions of PFUTP Regulations, 2003.

- AO considered various allegations, submissions and hearing made during inquiry and stated that the allegations against the Noticee was clearly established and imposed a monetary penalty of INR. 10,00,000/- upon the Noticee i.e, M/s Adamina Traders Pvt. Ltd. under section 15HA of the SEBI Act

To read the order in detail, please click here.

[This space is intentionally left blank]

NCLAT

1. **NCLAT set aside the order passed by Adjudicating authority basis the fact that there was pre pre-existing dispute with regard to the Operational Debt claimed.**

An appeal was filed by a Suspended Director of the Corporate Debtor challenging the order passed by the Adjudicating Authority ("National Company Law Tribunal"), New Delhi, Bench IV by which order Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') filed by Respondent No.1 – the Operational Creditor was been admitted. Aggrieved against the said order, the Appellant had come up in this Appeal. While issuing notice in this Appeal on **December** 23, 2021, an interim order was passed directing that the Committee of Creditors shall not be constituted.

The Operational Creditor along the other person from Piramal group intended to fraud the corporate debtor by claiming the GST amount for assignment of trademark and basis which an notice was send by the Operational Creditor to Corporate Debtor under the Code.

Basis the detailed facts of the case it was clear that there is pre-existing dispute with regard to the Operational Debt claimed by the Respondent No.1 in its Section 9 Application. The Notice under Section 8 was replied and in reply pre-existence of dispute has been claimed and referred which was neither spurious nor illusory, hence, the Adjudicating Authority was obliged to reject the application and the Adjudicating authority referred to the Judgment of Hon'ble Supreme Court in (2018) 1 SCC 353, 'Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. The impugned order passed by the Adjudicating Authority is unsustainable and was ordered to set aside.

<u>To read the order in detail, please click here</u>

[This space is intentionally left blank]

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