Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin

Edition 43rd 21-22

Week – January 31st to February 04th

Quote for the week:

"“To be successful, you have to have your heart in your business, and your business in your heart.

– Thomas Watson, Sr., former CEO, IBM.”

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”), International Financial Services Centers Authority (“IFSCA”) and orders passed by the High Court and Supreme Court.

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

- **IFSCA issue notification of IFSCA (Insurance Web Aggregator) Regulations, 2022.**
- **SEBI issue Guidelines on Accounting with respect to Indian Accounting Standards (IND AS).**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of January 31, 2022 to February 04, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

SEBI

1. **SEBI issue Guidelines on Accounting with respect to Indian Accounting Standards (IND AS).**

- SEBI vide notification dated January 25, 2022 amended SEBI (Mutual Funds) Regulations, 1996 (MF Regulations), Which, inter-alia, mandated that the AMCs shall prepare the Financial Statements and Accounts of the Mutual Fund Schemes in accordance with IND AS.

- Few of the guidelines are

  - Mutual Fund schemes shall prepare the opening balance sheet as on date of transition and the comparatives as per the requirements of INDAS;

  - Mutual Fund schemes shall furnish following additional information perspective historical per unit statistics:

    a) Label the previous Generally Accepted Accounting Principles (GAP) information prominently as not being prepared in accordance with IND AS; and
    b) Disclose the nature of the adjustments that would be required to make it comply with IND AS Mutual Funds schemes need not quantify those adjustments.

To read the guidelines in detail, please click here.

2. **SEBI issues circular on Schemes of Arrangement by Listed Entities.**

- SEBI vide Circular No. SEBI/HO/CFD/DIL2/CIR/0/2021 dated November 16, 2021 and Circular No. SEBI/HO/CFD/DIL2/CIR/P/2021/0000000659 dated November 18, 2021, has notified changes to the Master Circular No. SEBI/HO/CFD/DIL1/CIR/P/2020/249 dated December 22, 2020 **('the circular').**

- In respect of the No Objection Certificate (NOC) as required in terms of Circular dated November 16, 2021 and November 18, 2021, Part I Para A 2(k) of the circular* shall read as follows:

  "No Objection Certificate (NOC) from the lending scheduled commercial banks/ financial institutions/ debenture trustees, from not less than 75% of the secured creditors in value."

  To read the Circular in detail, please click here.

3. SEBI issues Circular relating to change in control of the asset management company involving scheme of arrangement under Companies Act, 2013.

- SEBI vide Circular no. SEBI/HO/IMD/DF2/CIR/P/2021/024 dated March 04, 2021, inter-alia, prescribed procedure to be followed for the change in control of an AMC.

- To streamline the process of providing approval to the proposed change in control of an AMC involving scheme of arrangement which needs sanction of National Company Law Tribunal ("NCLT") in terms of the provisions of the Companies Act, 2013, following has been decided:

  - The application seeking approval for the proposed change in control of the AMC under Regulation 22(e) of MF Regulations shall be filed with SEBI prior to filing the application with the NCLT;

  - Upon being satisfied with compliance of the applicable regulatory requirements, an in-principle approval will be granted by SEBI;

  - The validity of such in-principle approval shall be three months from the date of issuance, within which the relevant application shall be made to NCLT;

  - Within 15 days from the date of order of NCLT, applicant shall submit the following documents to SEBI for final approval:

    - Application for the final approval;
    - Copy of the NCLT Order approving the scheme;
    - Copy of the approved scheme;

- Statement explaining modifications, if any, in the approved scheme vis-à-vis the draft scheme and the reasons for the same; and
- Details of compliance with the conditions/ observations mentioned in the in-principle approval provided by SEBI.

To read the Circular in detail, please click here.

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IFSCA

1. **IFSCA notifies IFSCA (Insurance Web Aggregator) Regulations, 2022.**

- IFSCA vide notification dated February 3, 2022 notified new IFSCA (Insurance Web Aggregator) Regulations, 2022.

- These regulations aim to put in place a process of registration and operations of Insurance Web Aggregator in an International Financial Services Centre under the regulatory purview of the International Financial Services Centres Authority.

- The key aspects of these regulations are
  - Eligibility criteria for registration as Insurance Web Aggregator (IWA).
  - Capital/net worth requirements.
  - Conduct of business.
  - Aspects relating to Corporate governance, operations & management like:
    - Amalgamation & transfer of business
    - Maintenance of books of accounts
    - Change in ownership and control etc.

To read the regulation in detail, please click here.

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JUDGEMENTS / ORDERS

HIGH COURT

1. **Breach in Loan Agreement triggers arbitration clause to resolve the dispute between Tata Capital and its Borrower & Co-Borrower.**

Tata Capital Financial Services Limited	Petitioner
M/s. Focus Imaging Research Centre Private Limited	Respondent

<u>Date of Judgement</u>: February 01, 2022

Tata Capital Financial Services Limited, being the petitioner in the present case is engaged in the business of financing as a NBFC, interalia, Business Loans Against Properties, Personal Loans, Vehicle Loans etc, who has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator for adjudication of disputes with respondent.

M/s. Focus Imaging Research Centre Private Limited, being the respondent, is the Borrower & Co-borrowers respectively applied and availed financial assistance as a Business Loan from petitioner and based on the representations and documents presented by respondents, petitioner approved, sanctioned and disbursed a business loan amounting to INR 60,00,000/- (INR Sixty Lakhs Only) vide Loan Cum-Guarantee, which was repayable with interest @ 13% p.a. in 36 monthly instalments.

Due to the breach committed by the respondent to the loan agreement, Clause 19 of the agreement got triggered and therefore the disputes between the parties were liable to be settled through arbitration.

Thereafter, with the consent of both the parties to the dispute, a sole arbitrator was appointed to adjudicate the dispute between the parties, who shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration and whose fee shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

To read the Judgement in detail, please click here.

SUPREME COURT

1. **Appeal filed by M/s Consolidated Construction Consortium Limited was allowed to setting aside the Order of the NCLAT, stating that the CIRP in respect of the M/s Hitro Energy Solutions Private Limited is ongoing**

M/s Consolidated Construction Consortium Limited	**Appellant**
M/s Hitro Energy Solutions Private Limited	**Respondent**

Date of Judgement: February 04, 2022

A project which was being executed by the appellant with Chennai Metro Rail Limited **('CMRL')**, in the course of which the respondent, M/s Hitro Energy Solutions Private Limited placed an order for supply of light fittings. In turn, the appellant placed orders with the Proprietary Concern, which was the supplier of Thorn Lighting India Private Limited through three purchase orders and it was noted that the delivery of the light fittings would strictly be in accordance with the schedule provided by the appellant.

CMRL issued a cheque of INR 50,00,000 (INR Fifty Lakhs) in favor of the respondent and later it was informed to the appellant that the project they had been working has been terminated, which the appellant communicated immediately to the respondent. In meantime, the Proprietary Concern had deposited the cheque and withdrew the amount.

Since the project had been terminated, CMRL informed the appellant that the amount would be deducted from the dues payable to it unless the amount was returned. The appellant paid the amount of Rs 50,00,000 to CMRL and intimated this to the Proprietary Concern and requested them to make the payment.

During the course of time, the respondent company was incorporated with the main object to take over the Proprietary Concern and hence the appellant requested the Proprietary Concern to refund the amount of Rs 50,00,000 since the contract had been terminated and the amount had been returned by the appellant to CMRL. It noted that once the amount was released by the Proprietary Concern, it would indemnify them against any future claim from CMRL.

M/s Consolidated Construction Consortium Limited thereafter files the present appeal under Section 62 of the Insolvency and Bankruptcy Code 2016 ('IBC'), which arises from a judgment and order of the National Company Law Appellate Tribunal by which it reversed the decision of the National Company Law Tribunal, Chennai.

NCLT admitted that an application filed by the appellant under Section 9 of the IBC for the initiation of the Corporate Insolvency Resolution Process ('CIRP') against the respondent, wherein the NCLT while admitting the application held that the respondent's Memorandum of Association without evidence to the contrary, proved that it took over a proprietary concern, Hitro Energy Solutions, and that the Proprietary Concern did owe the appellant an outstanding operational debt. Further, moratorium under Section 14 of the IBC was declared by NCLT and thereby appointed an Interim Resolution Professional. The NCLAT thereafter had set aside the NCLT's decision by dismissing the application of the appellant under Section 9 of the IBC and released the respondent from the ongoing CIRP.

To read the Judgement in detail, please click here.

+91 22 6669 5000

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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 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