Swift e-Bulletin
Edition 44th 21-22
Week –February 07th to February 11th

Quote for the week:

"I'm too busy working on my own grass to notice if yours is greener."

– Unknown

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**"), Reserve Bank of India ("**RBI**"), Ministry of Corporate Affairs ("**MCA**") and orders passed by the SEBI, High Court and Supreme Court.

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

- ❖ MCA issue notification for Companies (Accounts) Amendment Rules, 2022.
- ❖ SEBI issue Circular on Conversion of Private Unlisted InvIT into Private Listed InvIT.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of February 07, 2022 to February 11, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

MCA

1. **MCA issue notification for Companies (Accounts) Amendment Rules, 2022.**

- MCA vide notification dated February 11, 2022. Amended Rule 12 by Inserting a new Sub-rule (1B) in Companies (Accounts) Rules, 2014, after sub-rule (IA): -

- The extract of Sub-rule (IB) is as follows

“Every company covered under the provisions of sub-section (1) to section 135 shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (IND AS), as the case may be:

Provided that for the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before 31st March 2022, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (IND AS), as the case may be."

- The said notification also contains the FORM CSR-2 [Report on Corporate Social Responsibility (CSR)]

To read the Circular in detail, please click here.

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SEBI

1. **SEBI issue circular on Framework for conversion of Private Listed InvIT into Public InvIT**

- A Private Listed InvIT may convert into a Public InvIT on making a public issue of units through a fresh issue and/or an offer for sale in terms of the InvIT Regulations in the manner as provided in Annexure A of the circular

- Post issuance and listing of such units through public issue in accordance with this circular, the Private Listed InvIT shall stand transformed and shall be considered a Public InvIT and it shall be required to comply with all provisions of the InvIT Regulations prescribed for Public InvITs.

- Annexure A to circular provides the following

  - Definitions
  - Conditions for issuance
  - Conditions for offer for sale of units
  - Process for public issue of units
  - Minimum sponsor(s) contribution
  - Restrictions on transferability of units
  - Maximum subscription from investors
  - Disclosures in the draft offer document/offer document

  To read the Circular in detail, please click here

2. **SEBI issue Circular on Conversion of Private Unlisted InvIT into Private Listed InvIT.**

- SEBI vide Circular dated February 09, 2022 issues Framework for conversion of Private unlisted InvIT to Private Listed InvIT.

- SEBI in exercise of powers conferred under Section 11(1) of Securities and Exchange Board of India Act, 1992 read with Regulation 26Fand Regulation 33 of the InvIT Regulations.

- Few of these conditions as mentioned in Annexure –A to the Circular are:

- The assets held by the InvIT satisfies the conditions specified under sub-regulation (4) of Regulation 18 of InvIT Regulations.
- It is compliant with all the applicable obligations and disclosure requirements for Private Unlisted InvIT since the date of issuance of its unlisted units or preceding three (3) years, whichever is less.
- It has not defaulted in making any distribution since issuance of its unlisted units, as applicable under the terms of the InvIT Regulations, its distribution policy (if any) and other applicable laws since the date of issuance of its unlisted units or preceding three (3) years, whichever is less.
- It has obtained approval from seventy-five per cent. of the unit holders by value for such private placement of units.

To read the Circular in detail, please click here.

3. SEBI issue circular on Audit Committee of Asset Management Companies (AMCs)

- The working group constituted for the purpose of the regulatory revamp exercise of SEBI (Mutual Funds) Regulations, 1996 and various circulars issued thereunder suggested that an Audit Committee may be constituted at AMC level. The agenda was discussed in the Mutual Fund Advisory Committee **(MFAC)** and it was recommended that the AMC of mutual fund should constitute an Audit Committee
- Basis the recommendation of MFAC and the feedback received from the industry, it has been decided that the AMCs of mutual funds shall be required to constitute an Audit Committee.
- The providers in detail following about the AMCs of mutual funds
  - Roles and responsibility
  - Membership i.e. the constitution of audit committee
  - Meetings
  - Reporting framework
  - Powers and responsibility
  - Audit and internal controls
  - Regulatory compliance and other functions
- The circular shall be effective from August 01, 2022

To read the Circular in detail, please click here

RBI

1. **RBI issues master Circular on Asset Reconstruction Companies to have all current instructions/ guidelines on the subject at one place.**

   - In order to have all current instructions/ guidelines on the subject at one place, the Reserve Bank of India issues updated circulars/ guidelines. The instructions contained in The Asset Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003 (vide Notification No. DNBS.2/CGM(CSM)-2003, dated April 23, 2003) together with Guidance Notes updated as on January 31, 2022 are reproduced below.

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

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JUDGEMENT/ORDERS

SEBI

1. SEBI imposed penalty on Employee of the Company on account of failure to make disclosure under PIT regulations.

Securities and Exchange Board of India ("SEBI") received a letter dated October 26, 2018 from Mindtree **Limited ("Company")** informing SEBI regarding instances of violation of the code of conduct **("Company CoC")** framed by the Company under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 **("PIT Regulations")** by two of its employees and action taken by the Company pursuant to the same. Accordingly, SEBI initiated an examination in the matter against the said two employees.

SEBI also initiated a separate investigation for ascertaining any violation of regulation under PIT Regulations with regard to the transactions of promoters, directors and employees of the Company and investigation revealed that Puvanesh Pandi an employee **("Noticee")** had transacted in the Company's scrip on multiple occasions, including during the Investigation Period and on checking with Company it was noted that no disclosure under PIT regulations was made by Noticee and adjudication proceeding was initiated.

The appointed Adjudicating officer **("AO")** issued SCN to which Noticee responded saying that he has done trading with information available in public and did not had access to any UPSI and was not aware about PIT regulation and he also paid penalty to Company. Further opportunity for personal hearing was also give to Noticee and Noticee appeared before the authority. The AO reviewed the submission by Noticee and after analyzing the facts and provision found that the Noticee violated provisions of PIT regulations and accordingly penalty was imposed

To read the order in detail, please click here

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HIGH COURT

1. **Delhi High Court dismisses the appeal made by Evergreen Landmark Private Limited as unmerited for not accepting to adjust the arrears of rent from the security deposit**

Evergreen LandMark Private Limited	Petitioner
John Tinson And Co Private Limited and ANR	Respondents

<u>Date of Judgement</u>: February 10, 2022

Evergreen LandMark Private Limited had taken a premise on lease from respondent in terms of Lease Deed for running a restobar (restaurant and a bar) at the leased premises. The respondents had issued a notice terminating the lease in respect of their respective premises and called upon the appellant to hand over vacant possession of the same. However, it is not in dispute that the appellant has not paid the lease rentals in respect of the aforesaid premises to respondents for a certain period. Although the appellant was in possession of the leased premises and was using the same for its business, it claims that it is not required to pay the lease rentals on account of force majeure conditions that have resulted from the outbreak of Covid-19 and the directions issued under the Disaster Management Act, 2005 (Disaster Management Act).

The respondents had issued a notice terminating the lease in respect of their respective premises and called upon the appellant to hand over vacant possession of the same. In addition, the respondents also claimed arrears of the lease amount due from the appellant and had filed an application, inter alia, praying that the appellant be directed to deposit the arrears of lease rentals to secure their claims. The appellant earnestly contended that the business was adversely affected due to the prevalent pandemic and the directions issued by the concerned Authorities under the Disaster Management Act in the wake of outbreak of the Covid-19 pandemic. Admittedly, the appellant had failed to pay the lease rentals in terms of the lease agreements entered into with the respondents.

The appeal was dismissed as unmerited by the Delhi High Court considering the appeal in its view that the security deposit furnished by the appellant to the respondents in terms of the lease agreements was required to be dealt with in terms of the agreements. Thus the contention that the same may be adjusted from the arrears of rent cannot be accepted.
To read the Judgement in detail, please click here.

SUPREME COURT

1. **Supreme Court allows the appeal filed by Jaina Construction Company, affirming the order of the State Commission**

Jaina Construction Company	Appellant
The Oriental Insurance Company Limited & ANR.	Respondents

Date of Judgement: February 11, 2022

The Judgement passed by the National Consumer Disputes Redressal Commission, New Delhi **("NCDRC")** in revision petition was challenged by filing an appeal. The NCDRC while allowing the said revision petition filed by The Oriental Insurance Company Limited, had set aside the order passed by the State Consumer Disputes Redressal, Commission, Haryana at Panchkula and the order passed by the District Consumer Disputes Redressal Forum, Gurgaon.

The precise question that falls for consideration before this Court is -whether the Insurance Company could repudiate the claim in to, made by the owner of the vehicle, which was duly insured with the insurance company, in case of loss of the vehicle due to theft, merely on the ground that there was a delay in informing the company regarding the theft of vehicle?

Tata Aiwa Truck purchased by the appellant was the vehicle in question, considered to be the undisputed facts transpiring from the record, whereby the vehicle was robbed by some miscreants and consequently, an FIR was registered by the appellant – complainant for the offence under Section 295 IPC at Police Station Nagina, District Mewat (Haryana). The police had arrested the accused and also filed the challan against them in the concerned Court, however, the vehicle in question could not be traced and, therefore, the police filed an untraceable report. Thereafter, the complainant lodged the claim with the Insurance Company with regard to the theft of the vehicle in question. The Insurance Company, however, failed to settle the claim within a reasonable time, and therefore, the appellant-complainant filed a complaint before the District Consumer Disputes Redressal Forum, Gurgaon.

The Supreme Court allowed the appeal, affirming the order of the State Commission, by providing its view on the matter, stating that the Court is of the opinion that the NCDRC should not have set aside the orders of the District Forum and the State Commission by holding that the repudiation of the insurance claim by the insurance company was justified.

The impugned order being erroneous and against the settled position of law, deserves to be set aside, and was set aside, accordingly.

To read the Judgement 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 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.

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