Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 47th 21-22
Week – February 28th to March 04th

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

"Make every detail perfect and limit the number of details to perfect."

— Jack Dorsey, co-founder of Twitter.

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 Reserve Bank of India ("RBI") and orders passed by the SEBI, and NCLAT.

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

- RBI issues notification approving investment in Umbrella Organization (UO) by Primary (Urban) Co-operative Banks.

We have prepared a comprehensive summary for quick reference of the aforesaid update and Judgements / orders issued during the week of February 28, 2022 to March 03, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

RBI

1. **RBI issues notification approving investment in Umbrella Organization (UO) by Primary (Urban) Co-operative Banks.**

RBI has accorded regulatory approval to National Federation of Urban Co-operative Banks and Credit Societies Limited **("NAFCUB")** in June 2019 for formation of Umbrella Organization **("UO")** for the UCB Sector. The approval inter-alia permits UCBs to subscribe to capital of the UO on voluntary basis.

It is advised that the investment made for subscribing to the capital of the UO, for acquiring its membership, shall be exempt from the limits prescribed in Paragraphs 2(i) and 2(iii)(b) of the circular.

To read the Notification in detail, please click here.

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JUDGEMENT/ORDERS

SEBI Orders

1. **SEBI imposes penalty on employee of the Company on failure to make relevant 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 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 conducted investigation and noted the Noticee was an employee of the Company and had transacted in the Company's scrip on multiple occasions, including during the Investigation Period. It was further observed that the Noticee had done transactions aggregating to a traded value in excess of Rs 10,00,000 [INR Ten Lakhs only].

The Company did confirm no disclosures were received from Noticee under PIT regulations and prima facie observed that the Noticee had failed to make the required disclosure. The Adjudication Officer **("AO")** issued a Show Cause Notice **("SCN")** to Noticee as why an inquiry should not be held against him and also opportunity of personal hearing was given. The AO analyzed facts of the case and noted that the Noticee did traded in scrips of the Company and crossed the threshold under PIT Regulations and was required to make relevant disclosure with Company. However, Noticee in response to SCN stated that he was not aware of PIT regulations and hence violated the Provisions of PIT Regulations. The AO noted that there is no merit in Noticee's submission and it goes against the legal principle of "ignorantia juris non excusat" which translates into ignorance of law is not an excuse and also considered other facts of case and concluded that disclosure under PIT regulations was not made and accordingly penalty was imposed.

To read the order in detail, please click here.

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NCLAT

1. NCLAT Chennai Tribunal held that a suspended Board of Directors does not have the power under the IBC to replace a RP.

The NCLAT, Chennai in the case of Anil Kumar Ojha v. Chandramouli Ramasubramaniam Resolution Professional of SLO Industrial Ltd. & Anr. held that the suspended Board of Directors has no power under the IBC to appoint a Resolution Professional. The power to do so has only been vested in the Committee of Creditors **(CoC)** and then the Adjudicating Authority **("AA")**.

The NCLAT dismissed the appeal filed by the Appellant filed u/s 60(5) of the IBC, challenging the order of the Adjudicating Authority which refused to admit the Application of the Appellant u/s 60(5) and held that the suspended Board of Directors has no right to change the RP and imposed a cost of INR 1,00,000 (INR One Lakhs) on the Appellant.

To read the order in detail, please click here.

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HIGH COURT

1. **Delhi High Court disposes of application filed by Maithri Aquatech under Order VII Rule 10 read with Section 151 of the Civil Procedure Code 1908**

Saisons Trade and Industry Private Limited	Plaintiff
Maithri Aquatech Private Limited & ORS.	Defendants

Date of Judgement: March 03, 2022

Delhi High Court issued an order, which disposed of the application filed on behalf of defendant No.1 under Order VII Rule 10 read with Section 151 of the Civil Procedure Code 1908 (**"CPC"**) for return of the plaint as well as the application of the plaintiff under Section 20(b) of the CPC seeking leave to file the suit in Delhi.

It was stated that the Delhi High Court has no territorial jurisdiction, as not even a single transaction has been shown to have taken place within the jurisdiction of this Court and it was stated in the application that the Plaintiff"s pre-grant opposition was pending before the Patent Office and thus, the suit was without cause of action. In the reply filed to this application, the suit had been filed for permanent and mandatory injunction against the three defendants to restrain them from violating and infringing the rights of the plaintiff in the suit patent.

In the reply, it has been stoutly denied that the suit was filed beyond limitation, or that there was no urgency, or that the plaintiff being a licensee had no right to file the present suit.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. **Supreme Court concluded that Loop Telecom and Trading Limited was in equal fault** The **Department of Telecommunications ("DoT") and the then officials of the Union Government.**

Loop Telecom and Trading Limited	**Appellant**
Union of India & Anr.	**Respondents**

Date of Judgement: March 03, 2022

Appeals under Section 18 of the Telecom Regulatory Authority of India Act 19971 arise from the judgments of the Telecom Disputes Settlement and Appellate Tribunal, claiming a refund of Rs 1454.94 crores representing the Entry Fee (together with interest) paid by it for 2G licenses for twenty-one service areas.

By the judgment of Supreme Court in Centre for Public Interest Litigation v. Union of India3, the 2G licenses which were granted by the Union of India, including to the appellant, were quashed, wherein the appellant claims to be entitled to the refund of its Entry Fee on, as it contends, well settled principles of civil, contractual and constitutional law.

The Supreme Court concluded that the appellant was in Pari delicto with The Department of Telecommunications **("DoT")** and the then officials of the Union government. The appellant was the beneficiary of the ―First Come First Serve‖ policy which was intended to favour a group of private bidding entities at the cost of the public exchequer. The contention of the appellant that it was exculpated from any wrongdoing by the judgment of this Court in CPIL (supra) is patently erroneous. The process leading up to the award of the UASLs and the allocation of the 2G spectrum the appellant was in pari delicto with DoT and the then officials of the Union government. The appellant was the beneficiary of the ―First Come First Serve‖ policy which was intended to favour a group of private bidding entities at the cost of the public exchequer. The contention of the appellant that it was exculpated from any wrongdoing by the judgment of this Court in CPIL (supra) is patently erroneous. The process leading up to the award of the UASLs and the allocation of the 2G spectrum was found to be arbitrary and constitutionally infirm. The need for an open and transparent bidding process for the allocation of natural resources was substituted by a process which was designed to confer unlawful benefits on a group of selected bidders by which the appellant benefitted. The appellant has tried to obviate these findings by relying on its acquittal by the Special Judge, CBI. It is important to note that the criminal trial before the Special Judge, CBI was limited to the question as to whether the promoters of the appellant had cheated the DoT by providing a false representation of its compliance with Clause 8 of the UASL Guidelines, since it was allegedly being controlled by the Essar group. The Special Judge, CBI acquitted the promoters of the appellant since the prosecution was unable to prove that: (i) officers of DoT considered the representation of the appellant to be false; (ii) the appellant was engaging in a sham transaction; or (iii) the appellant was actually controlled by the Essar group. Hence, the acquittal of the promoters of the appellant of these criminal charges does not efface or obliterate the findings which are contained in the final judgment of this Court in CPIL (supra). Hence, as a beneficiary and confederate of fraud, the appellant cannot be lent the assistance of this Court for obtaining the refund of the Entry Fee. In any event, such a course of action before the TDSAT was clearly in the teeth of the judgment of this Court in CPIL (supra).

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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