Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 2nd 22-23
Week – April 11th to April 15th

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

"A business that makes nothing but money is a poor business"

– Henry Ford

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

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

- **RBI issues notification where in the role and function of Chief Compliance Officer (CCO) in NBFCs are explained.**
- **SEBI Issues circular clarifying the risk parameters for classifying commodities for Risk O Meter.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of April 11, 2022 to April 15, 2022.

Thank you,
Swift team

REGULATORY UPDATES

RBI

1. **RBI issues notification where in the role and function of Chief Compliance Officer (CCO) in NBFCs are explained.**

- RBI vide notification dated April 11, 2022, issued Framework for Compliance Function and Role of Chief Compliance Officer in Non-Banking Financial Companies.

- As per RBI's guidelines on 'Scale Based Regulation **(SBR)** every Non-Banking Financial Companies in the Upper Layer **(NBFC-UL)** and Middle Layer **(NBFC-ML)** would be required, to have an independent Compliance Function and a Chief Compliance Officer (CCO).

- It is established to set up some standards, procedures and principles for the smooth compliance framework which is a must in ensuring good corporate governance.

- Based on the framework as annexed to this notification RBI requires NBFC-UL & NBFC-ML to put in place.

  - Board approved policy.
  - Compliance function
  - Appointment of Chief Compliance Officer (CFO).

  By 1st day of April, 2023 and 1st day of October, 2023.

- The said circular is to be placed in the next board meeting for the directors to review also attention must be paid in ensuring that the board oversees the said framework.

To read the full notification please click here

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SEBI

1. **Securities and exchange board of India (issue and listing of nonconvertible securities) (amendment) regulations, 2022**

- The said regulation deals with the issue and listing of non convertible debt securities.
- The issuer shall be satisfied of hundred percent or more security of the said debt instrument.
- The debenture trustee before the opening of the public issue of debt securities issue undertake a due deligence, the different formats for secured and unsecured debts is as specified in the schedules.
- Any charge created on the debt security shall now be mentioned in the offer document.
- Credit rating pertaining to the said issue shall also be disclosed in a timely manner.

To read the full notification, please click here.

2. **SEBI Amends vide multiple notifications dated April 11, 2022 amends and issues SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2022, SEBI (Debenture Trustees) (Amendment) Regulations, 2022.**

- SEBI vide its notifications dated April 11, 2022 has amended the provisions of
  - SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and
  - SEBI (Debenture Trustee) Regulations, 1993.

- To align the framework and terminology with respect to 'security cover' wherein the term 'asset cover' has been substituted with term 'security cover' in SEBI (Debenture Trustee) Regulations, 1993, and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

- Further, it is prescribed that the maintenance of security cover is sufficient to discharge both principal and interest thereon in SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

To read the full notification relating to

- SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2022 please click here.
- SEBI (Debenture Trustees) (Amendment) Regulations, 2022 please click here.

3. **SEBI Issues Comprehensive Risk Management Framework for Electronic Gold Receipts (EGR) segment.**

- SEBI Board in its meeting held on September 28, 2021 approved the framework for Gold Exchange and SEBI (Vault Managers) Regulations, 2021.

- Government of India vide Gazette notification S.O. 5401 (E) dated December 24, 2021, has notified "Electronic gold receipts" as 'securities' under Section 2(h)(iia) of the Securities Contracts (Regulation) Act 1956, and vide Gazette notification dated December 31, 2021, SEBI (Vault Managers) Regulations, 2021, have been notified.

- Paving the way for operationalizing the electronic gold exchange SEBI Issues Comprehensive Risk Management Framework for Electronic Gold Receipts (EGR) segment, where in the framework deals in the following aspects

  - Margin requirements
  - Haircuts on liquid assets
  - Collection of Mark to Market Losses
  - Computation of VaR Margin., Extreme Loss Margin etc.

To read the full circular, please click here.

4. **SEBI Issues circular clarifying the risk parameters for classifying commodities for Risk O Meter.**

- SEBI vide circular on 'Product Labeling in Mutual Fund schemes – Risk-o-meter' dated October 5, 2020, issued detailed guidelines for evaluation of risk levels of scheme for the purpose of risk-o-meter.

- SEBI vide these circular issues framework for evaluation of risk value of commodities in which mutual funds are permitted to invest.

- It has been decided that investment in commodities by mutual fund schemes shall be assigned a risk score corresponding to the annualized volatility of the price of the said commodity.

- The annualized volatility shall be computed quarterly based on past 15 years' prices of benchmark index of the said commodity and risk score for the commodity shall be in terms of the following table:

Annualized volatility	Risk value on risk-o-meter(Risk)
<10%	3 (Moderate)

10-15%	4 (Moderately High)
15-20%	5 (High)
>20%	6 (Very High)

To read the full Circular, please click here.

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IFSCA

1. Expert Committee on Longevity Finance recommends setting up of Longevity Hub at GIFT-IFSC.

- 'Longevity' has no set definition and means different things for different people. To some, it means a long life, while for others, the term is more philosophical. The longer a person lives, the more resources they will consume. Longevity is directly proportional to resource requirement.

- Seeing this opportunity, IFSCA encourage setting up of Global Longevity Hub focusing on financial and allied services.

- IFSCA constituted Expert Committee on Longevity Finance co-chaired by Ms. Kaku Nakhate, Country Head (India), Bank of America and Mr. Gopalan Srinivasan, Ex-CMD, New India Assurance Co. Ltd, submitted its final report to Chairperson, IFSCA on April 12, 2022

- The committee examined emerging trends in Longevity Economy globally and observed that people over 60 years are still very much a highly productive demographic group in terms of purchasing power and make up the wealthiest part of financial system with a global spending power of USD15 trillion.

- Highlighting the critical role of financial services sector for the growth of Longevity industry, the Committee recommended the setting up of first Global Longevity Hub(GLH) in GIFT-IFSC and suggested that the hub should focus on developing the longevity economy by offering various longevity finance solutions in coordination with leading corporates and financial institutions such as Banks, Pension Funds, Asset Management Funds, Insurance Companies, etc.

To read the full Press release, please click here.

To read the full report as submitted by the committee please click here.

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Ministry of Finance - Department of Economic Affairs

1. **Ministry amends and issues new Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2022.**

- The Central Government amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

- Few of the major amendments are as follows:
    - Definition of convertible bond: period of conversion increased from 5 years to 10 years;

    - Definition of equity instruments:
        - ✓ Convertible debentures will include CCDs which are fully paid up; Condition of CCDs being fully paid was not provided for earlier
        - ✓ Convertible preference shares will include CCPS which are fully paid up; Condition of CCPSs being fully paid was not provided for earlier
        - ✓ Share warrants to include warrants issued by an Indian company under provisions of Companies Act, 2013 or SEBI regulations or any other law. Earlier share warrants included only warrants issued under SEBI regulations

    - Definition of foreign investment: declaration regarding beneficial ownership held by a person resident outside India under any law to be considered as foreign investment; earlier declarations only under Companies act were covered.

    - Rule 8 of the Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2022 inter alia provides that an Indian company may issue “employees’ stock option”, “sweat equity shares”, and “Share Based Employee Benefits” to its employees or directors or employees or directors of its holding company or joint venture or wholly owned overseas subsidiary or subsidiaries who are resident outside India.

      Provided that. –
        - ✓ the scheme has been drawn either in term of regulations issued under the Securities and Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 or as per other applicable law, as the case may be;
        - ✓ the “employee’s stock option” or “sweat equity shares” or “Share Based Employee Benefits” so issued under the applicable rules or regulations are in compliance with the sectoral cap applicable to the said company;

- ✓ the issue of “employee’s stock option” or “sweat equity shares” or “Share Based Employee Benefits” in a company where foreign investment is under the approval route shall require prior government approval;
- ✓ issue of “employee’s stock option” or “sweat equity shares” or “Share Based Employee Benefits” to a citizen of Bangladesh or Pakistan shall require prior government approval.

- ➢ It may be noted that an individual who is a person resident outside India exercising an option which was issued when he or she was a person resident in India shall hold the shares so acquired on exercising the option on a non-repatriation basis.

To read the amendment, please click here.

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JUDGEMENTS AND ORDERS

SEBI Order

1. **In the matter of Indian Infotech & Software Limited, SEBI revised the penalty imposed from INR. 3,00,00,000/- (INR Three Crore only) to INR.4,00,000/- (INR Four Lakh only) for violation of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as 'Takeover Regulations, 1997/Takeover Regulations').**

- Securities and Exchange Board of India **("SEBI")** in matter of Jayanti Prime Software Advisory Private Limited (**Acquirer**) for acquisition of 8,65,661 fully paid equity shares of INR. 10/-each of Indian Infotech & Software Limited. (hereinafter referred to as the '**Company'**) observed that the Company and the erstwhile promoters of the company (hereinafter collectively referred to as '**the Noticees'**) had violated the Regulation 11(1) read with Regulation 14 of the Takeover Regulations, 1997 and the Adjudicating Officer of SEBI (hereinafter referred to as '**erstwhile AO'**) imposed penalty of INR. 3,00,00,000/- (INR Three Crore only) on the Noticees.

- Aggrieved by the said AO, Noticees filed an Appeal before Hon'ble Securities Appellate Tribunal (hereinafter be referred to as, the "**Hon'ble SAT**"). SAT referred the matter back to SEBI for determining the quantum of penalty for the alleged violation.

- In this regard, SEBI reconsidered the matter and on taking into account all observations, facts, circumstances of the case and the materials available on record, the Adjudicating Officer revised the penalty quantum of INR. 3,00,00,000/- (INR Three Crore only) and imposed penalty of INR.4,00,000/- (INR Four Lakh only) on the Noticees under Section 15H(ii) of SEBI Act payable jointly and severally, which will be commensurate with the violations committed by the Noticees.

To read the order in detail, please click here.

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HIGH COURT

1. **Petition was filed seeking dismissal of revocation petition on the ground that it is barred by limitation.**

Dr. Reddys Laboratories Limited & ANR	**Petitioners**
The Controller of Patents & ORS.	**Respondents**
Thyssenkrupp Rothe Erde Germany Gmbh	**Petitioner**
The Controller of Patents & ORS.	**Respondents**

&

Date of Judgement: April 12, 2022

- This present application was filed seeking dismissal of the present revocation petition on the ground that it is barred by limitation. The patent in this case of which revocation is sought is Indian Patent 268846 titled 'Glucopyranosyl-substituted Benzenol derivatives, drugs containing said compounds, the use thereof and method for the production thereof' granted and published in the official gazette by the Patent Office.

- By applying Section 137 of the Limitation Act, 1963The time period for the post grant opposition had expired and the time period to file the revocation petition had also expired. The Senior Counsel appearing for the Defendant-Patentee argued that in such a case, the limitation period as per the Limitation Act would commence once the cause of action has arisen, and the Petitioner cannot choose to approach the Court at any time during the life of the patent. However, on the other hand Counsel appearing for the Petitioner, submits that the only two pre-conditions for filing of the revocation petition under Section 64 (2)(b), of the Patents Act, 1970 (i) that the person who approaches the Court is a `person interested' and (ii) that the patent continues to remain on the Patent Register. If these two conditions are satisfied, the revocation petition under Section 64 can be filed any time during the life of the patent.

- The Delhi High Court on hearing, referred that the matter before the High Court of Calcutta, arose out of an application filed under Section 71 of the Patents Act seeking rectification of the register, and not Section 64 of the Patents Act. Thus, the Court held the Limitation Act to be applicable. Therefore, the present application was dismissed, as it lacked merit stating that, in Section 64 of the Patents Act, since there is no limitation which is prescribed either in the Patents Act or under the Patents Rules, this Court holds that a limitation period cannot be read it into the provision. In the light of the above cited judicial pronouncements and the dynamic/broad definition of 'persons interested', filing of a revocation petition could be done at any point in time when such a person's interest either arises or continues during the life/term of the Patent.

To read the Judgement in detail, please click here.

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SUPREME COURT

1. Application was filed for release of Mutual funds worth the value of INR 350 Crores

Securities and Exchange Board of India	Applicant (S)
II and FS Securities Services Ltd. and ORS.	Respondent (S)
And In The Matter Of:	
Dalmia Cement (Bharat) Ltd.	Applicant/ Respondent No.5

Date of Judgement: April 12, 2022

- The present application is filed for modification of the order and for the release of the mutual funds in favour of the applicant/ Respondent No. 5, which are of the value of INR 350 Crores. The Court had given the option to the application/ Respondent No. 5 to get the mutual funds converted/encashed and the amount be deposited in a fixed deposit account of a nationalized bank.

- It was submitted that, subsequent to the passing of the Order, a supplementary charge-sheet has been filed by the Economic Offences Wing ("EOW") in which a clear finding against the II and FS Securities Services Ltd ("ISSL")/Respondent No. 1 and Allied/ Respondent No. 4 has been recorded to the extent it has been found that, "after settlement of above trades by ISSL out of the funds of Allied, the Securities fraudulently pledged by Allied became free from collateral and ought to have been rightfully returned to its original/rightful owner i.e. Complainant and ISSL cannot have any claim of any nature over the said securities" (Complainant was the applicant/Respondent No.5).

- It has been further contended that the Serious Fraud Investigation Office (for short 'SFIO') reported prima facie finding that the buying and selling of illiquid contracts were preplanned synchronized activity wherein the exchange platform was used to camouflage a financial transaction.

- Keeping in view the aforesaid facts and circumstances, the Court was of the opinion that the operative part of the order deserves to be modified and accordingly, the same is modified to the extent that instead of bank guarantee for a sum of INR 344.07 Crores which has been furnished by the applicant/Respondent No. 5, in terms of Order, the applicant/Respondent No. 5 shall now furnish bank guarantee for a sum of INR 100 Crores and it shall further furnish a corporate guarantee to the extent of INR 300 Crores. Further it was again clarified that any observation made in this order shall not affect the merit of the case and the appeals will be heard on merit.

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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