Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 5^{th} 22-23
Week –May 2^{nd} to May 6^{th}

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

"I owe my success to having listened respectfully to the very best advice, and then going away and doing the exact opposite"

– G.K. Chesterton

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**") and Securities and Exchange 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:

- MCA issues notification amending Companies (Prospectus and allotment of securities) Rules
- SEBI issues guidelines on System and Network Audit of Market Infrastructure Institutions (MIIs).

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of May 2nd to May 6th, 2022.

Thank you,
Swift team.

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REGULATORY UPDATES

MCA

1. **MCA issues notification amending Companies (Prospectus and allotment of securities) Rules vide circular dated May 05th, 2022.**

- MCA amends Companies (Prospectus and allotment of securities) Rules where in after the fourth proviso to sub-rule 1 of rule 14, the following proviso is added:

  "Provided also that no offer or invitation of any securities under this rule shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate or the national, as the case may be, have obtained Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and attached the same with the private placement offer cum application letter."

- Further to bring in line with the amendment, PAS-4 is also amended with the appropriate disclosures.

- A similar notification is issued on Companies (Share Capital and Debentures) Rules dated May 04th, 2022 where in it has specified the declarations that is to be entered in the Form SH-4.

To read the Notification regarding the need to seek the Government approval along with changes in PAS-4 in detail please click here.

To read the Notification regarding declaration in SH-4 please click here.

2. **MCA issues clarification on the conduct of Annual General Meeting (AGM) and Extra Ordinary General Meeting (EOGM) through audio visual means.**

- MCA vide its circular dated May 05th, 2022 extends the time line up till December 31, 2022 to conduct the Annual General Meeting (AGM) and Extra Ordinary General Meeting (EOGM) through audio visual means or through postal ballot in accordance with the existing framework as issued by Ministry under various circulars dated 14/2020 dated 08.04.2020, General Circular 17/2020 dated 13/04/2020.

- Ministry has also clarified that this notification does not provide for the extension to conduct the Annual General Meeting to the companies.

- All the timelines as prescribed in the Companies Act 2013 pertaining to the conduct of Annual General Meeting of the Companies should be followed while being in conformity with the said notification

To read the Circular in detail for conduct of AGM through audio visual means please here.
To read the Circular in detail for conduct of EOGM through audio visual means please here

SEBI

1. **SEBI guidelines on System and Network Audit of Market Infrastructure Institutions (MIIs).**

- SEBI vide its circular dated May 02, 2022 issued guidelines that every Stock Exchanges, Clearing Corporations, Depositories shall inform major and minor non-compliances found out in the system and networks audit particularly highlighting the observations found in the stipulated format.

- The observations shall include the current ones and that are ongoing.

- Compliance with SEBI circulars/ guidelines and exceptional observation format along with compliance status of previous year observations shall be placed before the Governing Board of the MII and the same should be submitted in a period of 1 month of audit completion.

- MIIs are required to conduct System and Network Audit as per the framework enclosed and Terms of Reference (TOR) enclosed as Annexures to this Circular. MIIs are also required to maintain a list of all the relevant SEBI circulars/ directions/ advices, etc. pertaining to technology and compliance Securities and Exchange Board of India thereof, as per format enclosed as Annexure and the same shall be included under the scope of System and Network Audit.

- SEBI has also included the following as annexures to the circular;

  - System and Network Audit Framework
  - Terms of Reference (TOR) for System and Network Audit Program
  - Format for monitoring compliance with SEBI circulars/guidelines/advisories related to Technology
  - Exception Observation Reporting Format

To read the Circular in detail please click here.

2. **SEBI constitutes advisory committee on Environmental, Social and Governance (ESG) matters.**

- SEBI has constituted a committee for advising on ESG- related matters in the securities market.

- This committee is going to advise in the following aspects:
  - Enhancements in Business Responsibility and Sustainability Report (BRSR);
  - ESG Ratings;
  - ESG Investing.

To read the press release in details please click here.

SEBI Order

1. **In the matter of Dishman Pharmaceutical and Chemicals Limited the violations alleged against Noticee was disposed of.**

- Securities and Exchange Board of India ("**SEBI**") initiated adjudication proceedings against Mr. Janmejay Rajnikant Vyas, promoter ("**Noticee**") for alleged violation of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ("**Takeover Regulations"**), SEBI (Prevention of Insider Trading) Regulations, 1992 ("**PIT Regulations, 1992"**) read with SEBI (Prevention of Insider Trading) Regulations, 2015 ("**PIT Regulations, 2015"**) in the aforesaid matter.

- Show Cause Notice **("SCN")** dated July 22, 2021 was issued to Noticee for aforesaid violations. The allegations against Noticees summarized as below:

  - SEBI has received complaint against NBFC and DP for allegedly transferring pledged shares in a fraudulent manner, during pendency of loan facility provided to Noticee without his authorization; and
  - On examination of shareholding statement of Noticee provided by CDSL it was observed that the Noticee has undertaken transactions and acquired shares by increasing his aggregate shareholding from 31.32% to 33.88% which led to violation of regulation 29(2) read with 29(3) of the Takeover Regulations.

- Further, BSE and NSE informed that they have not received any disclosures from Noticee for change in shareholding for the period April 01, 2014 to October 30, 2015 and alleged that Noticee has violated Regulation 13 (4) and 13 (4A) read with 13(5) of PIT Regulations,1992 and Regulation 7(2) a of PIT Regulations, 2015.

- On consideration of various facts and materials on record, it was found that there was no sale or purchase transactions and similarly observed that there was no change in shareholding by the Noticee. Hence, disclosure requirements were not triggered.

- In view of above, it was found that charges against Noticee does not stand established and adjudication proceedings initiated against the Noticee vide SCN dated July 22, 2021 are disposed of by AO.

To read the order in detail, please click here.

HIGH COURT

1. **Delhi High allows petition filed by Sudhir Power Limited on being satisfied that all efforts were made to initiate pre-arbitration steps.**

Sudhir Power Limited	Petitioner
Simplex Infrastructures Limited	Respondent

Date of Judgement: May 04, 2022

- Sudhir Power Limited, being the petitioner had filed the present petition with reference to the dispute that has arisen between the parties pursuant to a work order. In this respect, Simplex Infrastructures Limited, being the respondent had submitted that the petitioner had not followed the pre-arbitration steps as the arbitration clause and it was informed that the petitioner had not approached the respondent for amicable/ mutual discussion and had only made demands for payment of his amount.

- The arbitration clause clearly provides that all disputes and differences are to be resolved through direct and mutual discussion at site level and thereafter referred to the regional heads of both the companies and that the pre arbitration steps stipulated by the agreement are merely facilitative steps for amicable resolution of the disputes.

- The petitioner has placed on record several correspondences in the shape of e-mails and notices sent to the respondent making demand of the alleged due amount and raising grievance with regards to non-payment of the same. However, none of the e-mails or replies have been responded to by the respondent. Even the notice invoking arbitration has not been responded to.

- The Delhi High Court after hearing to both the parties to the dispute held that, in its view, the petitioner has made all efforts to initiate pre-arbitration steps, however, the resolution has not been possible. The petition was allowed, as it is a fit case where an Arbitral Tribunal should be constituted to adjudicate the claims and counterclaims, if any, of the parties.

- Thereby the Court appoints a former member of the Intellectual Property Appellate Board as the Arbitral Tribunal to adjudicate the claims and counter-claims, if any of the parties.

To read the Judgement in detail, please click here.

SUPREME COURT

1. **Supreme Court finds no errors in the observations made by Delhi High Court in view of the Concession Agreement between Delhi Airport Metro Express and Delhi Metro Rail Corporation**

Delhi Airport Metro Express Private Limited	Appellant (S)
Delhi Metro Rail Corporation	Respondent (S)

Date of Judgement: May 05, 2022

- A dispute has arisen between Delhi Airport Metro Express Private Limited **("DAMEPL")** and Delhi Metro Rail Corporation **("DMRC"),** during the courses of operations of the project. A Concession Agreement was entered into between DAMEPL and DMRC, wherein as per the agreement, the DMRC, being the respondent in the present case was to carry out the civil works (excluding the Depot) and the balance works (including the Depot civil works and the project systems works) were to be executed by the DAMEPL.

- As per Article 29 of the Concession Agreement, in the event of termination, it was the respondent, DMRC which was liable to make Termination Payment, as defined in the Concession Agreement. On termination of the Concession Agreement by DAMEPL by issuance of Termination Notice. Since, DMRC was aggrieved by the Award, it filed a Petition under Section 34 of the Arbitration and Conciliation Act, 1996 in Delhi High Court, challenging the Arbitral Award.

- The Supreme Court stated that, there were on errors in the observations made by the Delhi High Court. Further the Supreme Court considered the view of the specific agreement between the parties, the interest prior to the date of the award so also after the date of award will be governed by Article 29.8 of the Concession Agreement, as has been directed by the Arbitral Tribunal. The Court finds no merit in the present appeal filed and was accordingly dismissed.

- 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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