Swift India

CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 39th 22-23
Week – January 09th to January 13th

Quote for the week:

"You're really the only one who needs to acknowledge your effort"

– Kim Seokjin.

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**"), Securities and Exchange Board of India ("**SEBI**") and orders from National Company Law Appellate Tribunal **("NCLAT")**.

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

- MCA vide Circular dated January 09, 2023 set out the procedure for filing e-Form GNL-2 and e-Form MGT-14 in the course of the said forms being unavailable for filing on the MCA portal.

- SEBI vide Circular dated January 10, 2023 laid down certain modification to the comprehensive framework on Offer for Sale (OFS) of shares through Stock Exchange Mechanism.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of January 09th to January 13th, 2023.

Thank you,
Swift team

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REGULATORY UPDATES

MCA

1. **MCA vide Circular dated January 09, 2023 set out the procedure for filing e-Form GNL-2 and e- Form MGT-14 in the course of the said forms being unavailable for filing on the MCA portal.**

- MCA set out an important updated dated December 26, 2022 that a total of 56 company forms will be migrated from the V2 portal to the V3 portal.

- The list of 56 forms contained forms that are critical to be filed on or before the due date of the said form such as Form GNL-2 (filing of prospectus related documents) and Form MGT-14 (filing of resolutions related to prospectus related documents).

- Owing to this MCA received representations regarding filing citing the said reasons to seek clarification on the matter.

- Upon the representations received, MCA vide this Circular clarified that the above mentioned forms relating to prospectus are ought to be filed in a physical mode duly signed by the concerned persons.

- The physical filing to be done without payment of any fees and the acknowledgement to the same has to be taken. The annexure to this Circular provides for the acknowledgement to be provided by the Registrar.

- The company also needs to provide an undertaking stating that once the portal resumes in full functionality the said forms will be filled electronically and the fees on the same shall be paid.

- MCA has vide Circular No 01/2023 dated January 09, 2023 stated that the said forms whose due date falls on the day(s) the portal is non-functional, they will be allowed to be filled within 15 days of the portal being functional without imposition of any additional fees.

To read the Circular in detail, please click here.

2. **MCA vide Circular informed the stakeholders that Ministry is in the process of introducing certain company e-Forms in MCA21 Version 3.0.**

- Therefore, certain e-Forms will not be available in MCA21 Version-2 from January 07,2023 to January 22, 2023.

- Further the Competent Authority has allowed the stakeholders additional time of 15 days, without levying additional fees in case the due dates for filing these e-Forms fall during the said period.

- The unavailable e-Forms are as follows DIR-12, DIR-11, DIR-3, DIR-3C, DIR-5, DIR-6, INC-12, INC-18, INC-20,INC-20A, INC-22, INC-23, INC-24,INC-27, INC-28, INC-4, INC-6, MGT-14,MR-1,MR-2, NDH-4, SH-7, SH-11,SH-8,SH-9, NDH-1,NDH-2,NDH-3,GNL-3, PAS-6, MGT-3, PAS-2, DIR-9, DIR-10, AOC-5, FC-1, FC-2, FC-3, FC-4, GNL-2, GNL-4, MSC-1, MSC-3, MSC-4, RD-1.

To read the Circular in detail, please click here.

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SEBI

1. **SEBI vide Circular dated January 11, 2023 granted permission to the Stock Exchanges to launch multiple contracts on the same commodity in the commodity market segment.**

- SEBI has been making constant efforts to maximise the participation of investors in the commodity derivative market.

- In line with the endeavor of the SEBI, it has received large representations from the Stock Exchanges stating that the one launching the single contract on a particular commodity except gold, silver and precious metal is hampering the participation of investors in the commodity market, thereby proposing to launch multiple contracts on one commodity.

- SEBI post consultation with the Commodity Derivatives Advisory Committee has decided to allow Stock Exchanges to launch multiple contracts in same commodity.

- The Exchanges are advised to take all the necessary steps to ensure proper implementation of the circular and communicate to SEBI the status of implementation of the Circular.

To read the Circular in detail, please click here.

2. **SEBI vide Notification dated January 09, 2023 amended the Alternative Investment Funds ("AIF") Regulations.**

- The said Regulations will be called as the SEBI (Alternative Investment Funds) (Amendment) Regulations, 2023.

- The Notification brings about the following changes

  - **Regulation 2**: Clause (ha) shall be inserted to state that "Credit default swaps: shall have the meaning assigned to it in the RBI Master Directions. The earlier Clause (ha) shall be numbered as (hb).
  - **Regulation 16**: Category I AIF to engage in hedging, including credit default swaps on terms laid down by SEBI.
  - **Regulation 17**: Category II AIF may buy or sell credit default swaps on terms laid down by SEBI.
  - **Regulation 18**: Category III AIF may buy or sell credit default swaps on terms laid down by SEBI.

- **Regulation 20**: Sponsor or Manager of Category I and Category II AIF will need to appoint custodian registered with SEBI and must be in compliance to the conditions laid down by SEBI in order to transact in credit default swap.

To read the Notification in detail, please click here.

3. SEBI vide Circular dated January 10, 2023 laid down certain modification to the comprehensive framework on Offer for Sale (OFS) of shares through Stock Exchange Mechanism.

- SEBI based on the feedbacks received from the market participants and discussions with the Stock Exchanges decided to modify the OFS Framework through Stock Exchange Mechanism.

- The Circular briefs out as below:

  - Definitions on various topics relevant to the subject;
  - Eligibility of various market participants like the Exchanges, sellers and buyers;
  - Size of the OFS of shares: Minimum INR 25 Crore, however, the offer size can be less than the stipulated amount of the offer is given by the promoter(s) or promoter group entities to achieve minimum public shareholding;
  - Advertisement and offer;
  - Operational Requirements: Appointment of Broker, announcement or notice of the OFS of shares, floor price, discount by the seller, timelines, etc;
  - Risk Management: Clearing corporation shall collect 100% margin in cash from NIIs. However, from Institutional Investors placing bids with 100% margin, it will seek custodian confirmation within the trading hours;
  - Allocation: The reservations to be made to specific categories of investors is stipulated under this heading;
  - Settlement: The allocation and basis of settlement are discussed under this heading;
  - Cancellation/withdrawals of offer: The withdrawal can be made before the proposed opening and followed by a cooling off period of 10 days from the date of withdrawal. On the other hand, cancellation is prohibited during the bidding period. However, in the case of insufficient demand from the Non-Retail Investors, the sellers may choose to cancel the offer.

To read the Circular in detail, please click here.

4. **SEBI vide Notification on January 09, 2023 notified the SEBI (Registrars to an Issue and Share Transfer Agents) (Amendment) Regulations, 2023.**

- SEBI vide the said Notification has substituted paragraph 1AA of Schedule II which deal with Fees for registration.

- The newly substituted paragraph states that an registrar to an issue and share transfer agent who has been granted a certificate of registration and aims to keep its registration in force , shall pay registration fees, every three years form the sixth year, from the date of grant of certificate of registration, or from the date of grants of certificate of initial registration granted prior to the commencement of the Securities and Exchange Board of India (Change in Conditions of Registration of Certain Intermediaries)(Amendment)Regulations, 2016 as the case may be, as specified below:

- A registrar to an issue and share transfer agent falling under ***category-I shall pay a fee of two lakh and seventy thousand rupees***.

- A registrar to an issue or share transfer agent falling under ***category II, shall pay a fee of ninety thousand rupees.***

To read the Notification in detail, click here

5. **SEBI vide Circular on January 10, 2023 issued Introduction of future contracts on Corporate Bonds Indices.**

- SEBI had constituted a working group with representatives of NSE, BSE and MSEI to make recommendations on the matter of "Derivatives on Bonds Indices" to enhance liquidity in the bond market and also to provide investors an opportunity to hedge their positions.

- Based on the recommendations of Secondary Market Advisory Committee of SEBI, it has been decided to permit Stock Exchanges to introduce derivative contracts on indices of corporate debt securities rated AA+ and above.

- Stock Exchanges are permitted to launch future contracts on corporate bond indices.

- The Stock Exchanges desirous of introducing such contracts shall submit a detailed proposal to SEBI for approval, inter alia providing details relating to underlying corporate bond index, the index methodology, contract specifications, applicable trading, clearing & settlement mechanism, risk management framework, the safeguards to ensure market integrity, investor protection, surveillance systems, etc.

- The details regarding index composition, contract specifications, position limits, risk management framework, etc. for introduction of future contracts on corporate bond indices are given at Annexure A of the said circular.

- To implement the same, SEBI has advised the Stock Exchanges and Clearing Corporations to take necessary steps and put in place necessary systems, make necessary and relevant by-laws and regulation, to bring the provision of the circular to the notice of the member.

To read the Circular in detail, please click here

6. **SEBI vide Circular dated January 10, 2023 issued Change in Control of Portfolio Managers providing Co-investment services.**

- SEBI vide Circular dated June 02, 2022 had specified the procedure for seeking prior approval in case of change in control of Portfolio Managers. ("**the circular**").

- SEBI vide the said Circular partially modifies para 2 (iv) of the circular.

- Portfolio manager is now required to inform its existing investors/clients about the proposed change prior to effecting the same and give an option to exit without any exit load, within a period of not less than 30 calendar days, from the date of such intimation.

- However, the Portfolio Manager in case of the clients under co-investment portfolio management services is required to ensure that the agreement between the portfolio manager and the client includes all the details as mentioned under the regulation.

- All other requirements, terms and conditions specified in the Circular shall remain unchanged.

To read the Circular in detail, please click here

7. **SEBI vide Circular dated January 09, 2023 issued Standard Operating Procedure for handling of Stock Exchange Outage and extension of trading hours thereof**

- SEBI has issued the said Circular with a view to ensure that any outrage at stock exchange is handled in an harmonized and consistent manner as If due to any technical reason or otherwise, continuous trading on stock exchanges is disrupted, it is of paramount importance that not only all market participants including other Market Infrastructure Institutions ("MIIs"), are promptly informed about the outage but also the trading hours are extended.

- Thus, SEBI has issued a Standard Operating Procedure with regard to handling of such stock exchange outage in Cash Market and Equity Derivatives segment.

- SEBI vide the said Circular has defined Stock Exchange Outage, laid down reporting requirement for outage, trading on unaffected segment and resumption of trading on affected stock exchange etc.

- Few of the important points from the Circular are as given below:-

  - Stoppage of continuous trading, either suo moto by exchange or by virtue of reasons beyond control of stock exchange. Further, stoppage of continuous trading shall not include trading halt on account of index-based market-wide circuit breaker is been defined as Stock Exchange Outage.
  - The outage affected stock exchange shall intimate the market participants/Trading Members/Others MIIs with 15 minutes of occurrence of outage and shall inform SEBI Immediately via dedicated email-id
  - Trading in other unaffected segments of the affected exchange shall continue and all other unaffected exchanges shall continue to trade in all of their market segments.
  - A pre-opening session similar to normal pre-opening session would be conducted for effective price discovery, before resumption of trading. Further, there shall be an advance intimation of at least 15 minutes to various market participants with regard to resumption of trading or start of pre-opening session, as applicable.
  - If the trading on the affected stock exchange does not resume to normalcy even one hour (excluding 15 minutes of pre-opening session, if applicable) before the scheduled market closure, trading hours for all stock exchanges would automatically get extended for additional one and half hours for that day.
  - If the trading on the affected stock exchange does not resume to normalcy even 45 minutes (excluding 15 minutes of pre-opening session, if applicable) post normal scheduled market closure, in the case of extension of trading hours, no further trading would be allowed on the affected stock exchange for that day and other stock exchanges would continue to operate till the extended time.

- The MIIs are required to update their Business Continuity Planning document subsequent to the instant circular and submit the same to SEBI ssubsequent to approval of their Governing Boards within 2 months of the date of this circular

To read the Circular in detail, please click here

JUDGEMENTS/ ORDERS

NCLAT

NCLAT upholds appeal filed by the Company for restoration of the name under the Companies Act, 2013

An appeal was filed to challenge impugned order passed by the National Company Law Tribunal, Cuttack Bench (NCLT) had dismissed the appeal preferred by the Company M/s O.M. Builders and Developers Pvt. Ltd., consequent to which order the name of the Company was struck off from the Register.

After hearing the counsels of both parties, the tribunal said that the material on record shows that Lease Hold Rights of the property is still prevalent, and the financial statements upto 2018- 19 has been filed along with the Petition before the NCLT, the loan taken from LIC Housing Finance Ltd. and the amount of the sundry creditors. Further considered that the Company being in the Real Estate Development and Construction and having regard to the fact that the Company in this Appeal has come out with the plea that in the event of revival of the Company and the restoration of name of the Company in the Register maintained by the ROC, it shall file all outstanding statutory documents namely, the financial statements for the financial years and also the annual returns along with the file fees and the additional fees as applicable on the date of the actual filing.

Further on a careful consideration of the contentions advanced by both sides, the Tribunal exercised sound discretion and deemed it just and proper to restore the name of the Company.

To read the Order 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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