Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
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Week – April 17th to April 22nd

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

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

- Jack Dorsey

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 International Financial Services Centres Authority ("**IFSCA**") and Reserve Bank Bank of India (**"RBI"**) and

Securities and Exchange Board of India (**“SEBI”**) and Ministry of Corporate Affairs (**“MCA”**) and orders/judgements from Supreme Court and SEBI.

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

- SEBI vide circular dated April 17, 2023 issued circular on Dispute Resolution Mechanism for Limited Purpose Clearing Corporation (“LPCC”)

- Reserve Bank of India (“RBI”) vide press release dated April 10, 2023 simplified the application process for registration of Core Investments Companies (“CIC”).

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of April 17th to April 22nd, 2023.

Thank you,
Swift team

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REGULATORY UPDATES

SEBI

1. **SEBI vide Circular dated April 17, 2023, issued Circular on Dispute Resolution Mechanism for Limited Purpose Clearing Corporation ("LPCC")**

- As per the regulation 22F of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 it is mandatory for a recognized LPCC to put in place a dispute resolution mechanism, for settlement of disputes or claims arising out of transactions cleared and settled by them, in accordance with the manner specified by Reserve Bank of India ("**RBI**")

- SEBI vide the said Circular has laid down certain dispute resolution mechanism for LPCC as below: -

  - The dispute arising between LPCC, and the Clearing Members shall be settled by conciliation and/or by an arbitration panel consisting of three Clearing Members other than the Clearing Member(s) who are party to the dispute. The decision from the arbitration panel shall be final and binding on the parties.

  - Further, in case of non- satisfaction by the decision of the arbitration panel, may follow the procedure laid down in the Payment and Settlement Systems Act, 2007 and rule/directions notified thereunder.

  - All the disputes between a client of a clearing member and the LPCC shall be resolved as per the dispute resolution mechanism prescribed by SEBI from time to time. In case of not being satisfied the dispute shall be resolved in accordance with the procedure laid down in the Payment and Settlement Systems Act, 2007 and rule/directions notified thereunder.

  - Any dispute arising between Clearing Members and their clients arising out of any transaction cleared and settled or intended to be cleared and/or settled by LPCC shall be resolved as per the mechanism prescribed by SEBI from time to time.

  - Similarly, the disputes arising between the LPCC and its vendors/suppliers/service providers shall be resolved as per the dispute resolution mechanism prescribed by SEBI from time to time.

- The Circular shall be applicable to Recognized Limited Purpose Clearing Corporations and Recognized Stock Exchanges and shall come into force with immediate effect.

To read the Circular in details, please click here.

2. **SEBI vide circular dated April 20, 2023 issued instructions for the issue of master circular by stock Exchanges, clearing corporations and Depositories.**

- SEBI stock exchanges, clearing corporations and Depositories collectively known as Market Infrastructure Institutions (MIIs) through various circular, notifications, etc communicate with market participants with regards to regular compliances. This has led to plethora of guidelines on various subjects.

- Pursuant to receiving representations from market participants along with ensuring all applicable provisions are accessible at a specified subject place the MIIs shall ensure the following

  - issue of respective master circulars consolidating all guidelines issued and applicable as on March 31 of every year, segregated subject-wise.

  - Ensuring the Master circular includes only relevant guidelines

  - Not to include the following in the Master circular

    i. by-laws, rules and regulations issued

    ii. Compliance status of a market participant

    iii. Actions against an entity

- Master circular shall contain list of all guidelines incorporated in it along with provision rescinding all such guidelines with effect from the date of implementation of the Master Circular. The rescinded guidelines shall be archived on respective websites of the MIIs.

- The master circular shall contain the savings clause as detailed in the circular.

- The first Master Circular incorporating guidelines applicable as in March 31, 2023 shall be issued on or before June 30, 2023.

- MIIs must ensure to update the Master Circular incorporating all guidelines issued during the relevant Financial Year and issue the same on or before April 30 on a yearly basis.

- Pursuant to this circular, the MIIs are directed to make necessary amendments to the relevant byelaws, rules and regulations and to disseminate each Master Circular on its website to bring it to the notice of all its stakeholders and market participants.

To read the Circular in detail, please click here.

3. **SEBI vide Notification dated April 21, 2023 issued Procedure for seeking prior approval for change in control of Vault Managers.**

- Pursuant to amendment dated January 17, 2023 in Regulation 8(b) of SEBI (Vault Managers) Regulations, 2021 SEBI required Vault Managers to obtain prior approval of the Board in case of change in control.

- Referring the above-mentioned amendment SEBI has issued this notification dated April 21, 2023 detailing out the procedure to apply/intimate the change in control of vault managers.

- Further after following the procedure as mentioned in the notification SEBI issues a prior approval which is valid for 6 months and a fresh registration is required to be made by the vault manager within the said period.

- Further this notification also deals with the matters which involve scheme(s) of arrangement and need sanction of the National Company Law Tribunal ("**NCLT**").

- The provisions of this Circular shall be applicable with immediate effect to all applications seeking approval for change in control of Vault Managers.

To read the Notification in detail, please click here.

RBI

1. **Reserve Bank of India ("RBI") vide press release dated April 10, 2023, simplified the application process for registration of Core Investments Companies ("CIC").**

- RBI undertook a comprehensive review of the system of processing applications for registration as Core Investment Companies to make the registration process smoother and hassle free.

- RBI has accordingly revamped the application and aligned with the extant CIC regulations.

- To make the registration process user friendly the existing set of 52 documents have been reduced to 18 documents.

- The documents to be furnished along with the application are indicative and not exhaustive.

- The Reserve Bank, may, if necessary, call for further document/s to satisfy itself on the eligibility of the company seeking registration as a CIC. In the event of the Reserve Bank calling for further documents in addition to those mentioned in the list, the applicant company must respond within a stipulated time of one month.

To read the press release, in detail please click here.

MCA

1. **MCA vide notification dated April 17, 2023 amended and bought in the new "*The Companies (Removal of Name of Companies from the Register of Companies) Amendment Rules, 2023*"**

- MCA vide notification dated March 17, 2023 has established Centre for Processing Accelerated Corporate Exit ("**C-PACE**").

- To bring in effect the functioning of C-PACE, MCA vide notification dated April 17, 2023 has amended The Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016 and substituted the **e-Form STK-2, e-Form STK-7 and e-Form STK-8**

- Below is the comparison of changes brought in by MCA vide this amendment:

Sr. No	Section / Rule	Existing Provision	Amended Provision	Remarks
1	Sub rule (1) of Rule (4)	An application for removal of name of the company under sub-section (2) of section 248 shall be made in 4[Form STK-2] along with the fee of ten thousand rupees:	An application for removal of name of a company under sub-section (2) of section 248 shall be made to the registrar, C-PACE in Form No. STK-2 along with fee of ten thousand rupees	Earlier the application is made to Registrar, vide this amendment application in form STK-2 shall be made to C-PACE.
2	Clause (iv) of Sub rule (3) of Rule (4)	A copy of the special resolution duly certified by each of the directors of the company or consent of seventy-five per cent of the members of the company in terms of paid up share capital as on the date of application;	"**OMITTED**"	As per the amended provision, now the copy of special resolution as prescribed in the existing provision is no longer required to be attached to Form STK-2 filed with C-PACE.
3	New	-	The Registrar, C-PACE established	-

	Sub rule (3A) of Rule (4) has been inserted		under subsection (1) of section 396 shall be Registrar of Companies for the purpose of exercising functional jurisdiction of processing and disposal of applications made in From STK-2 and all matters related thereto under section 248 having territorial jurisdiction all over India	
4	Changes in Form STK-2			New form STK-2 has been introduced and following are the major visible changes in the form as attached in the notification: 1. Confirmation of any notice is received under \section 248(1). 2. A drop-down menu is added asking for reason of closure of the company. 3. If and special resolution is passed, then SRN of MGT -14 is mandatory. 4. Brief description of main business last carried out by the company has been

		removed from the form STK-2. 5. In signatory details part of the form, the Director/MD signing the form STK-2 **to declare that consent of Seventy-Five percent of members in terms of paid-up capital has been obtained.**

To read the Notification related to introduction of C-PACE in detail please click here.

To read the Notification related to amendment in rules of Strike-Off in detail please click here.

IFSCA

1. **IFSCA vide Circular dated April 20, 2023 issued clarification on Guidance framework on Sustainable and Sustainability linked lending by financial institutions.**

- Referring to "**Para-1**" of the Circular dated April 26, 2022 ("**said Circular**") where in IFSCA has directed IFSC Banking Units ("**IBU**") and Finance Company/ Finance Units ("**FC/FUs**") to develop a comprehensive Board approved policy on green/ social/ sustainable/ sustainability-linked lending by March 31, 2023.

- IFSCA in the said Circular has directed such companies undertaking lending as one of the permitted activities shall have **at least five per cent** of their gross loans and advances directed towards green/ social/ sustainable/ sustainability-linked sectors/ facilities.

- Further IFSCA issued FAQs on the said Circular on February 22, 2023. In **Question No. 06** of the FAQ, IFSCA has clarified the computation mechanism for 5% of target.

- Owing to the difference in computation methods as described in said Circular and FAQs, IFSCA has received multiple queries and has issued a Circular on April 20, 2023 clarifying the computation of 5% of Target with an example.

- Below is the extract of the illustration as mentioned in the Circular:

  "An IBU 'X' has disbursed total loans and advances of USD 2000 mn during the year 2023-24 of which the outstanding amount as on March 31, 2024 is USD 1500 mn; then the target of 5% for year 2024-25, shall be computed on USD 1500 mn. Thus, the required target for IBU 'X' shall be USD 75 mn".

To read the Circular, in detail please click here.

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

To read the FAQs on the said Circular, in detail please click here.

JUDGEMENTS/ ORDERS

Supreme Court

1. **Supreme Court in the present case, gave opinion that, the concurrent view taken by the CERC & APTEL cannot be said to be a view taken in ignorance of the mandatory statutory provisions nor can it be said that it is based on extraneous consideration.**

Uttar Haryana Bijli Vitran Nigam Limited and Another	Appellant(S)
Adani Power (Mundra) Limited and Another	Respondent(S)

Date of Judgement: April 20, 2023

Haryana Utilities had entered into two Power Purchase Agreements **("PPA")** dated 7th August 2008 with the first respondent-Adani Power (Mundra) Limited **("AP(M)L")** for a contracted capacity of 1424 MW from the generating Units 7, 8 and 9 established by AP(M)L in the State of Gujarat on the terms and conditions contained in the said PPAs. The said PPAs were entered into between Haryana Utilities and AP(M)L in pursuance to a Tariff Based Competitive Bidding Process initiated by the Haryana Utilities under Section 63 of the Electricity Act, 2003 as per the guidelines notified by the Central Government.

The Appellate Tribunal for Electricity, New Delhi **("APTEL")** had passed the judgement and order dated June 30, 2021 which has been challenged in the present appeal, reason being dismissing the appeal filed by the Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Ltd, being the appellant.

AP(M)L filed a petition, before the Central Electricity Regulatory Commission **("CERC"),** claiming relief on the ground of Change in Law, wherein CERC vide Order dated May 31, 2018, allowed the said petition in terms of Change in Law. A review petition was also filed by the Haryana Utilities before the CERC, which was rejected. Being aggrieved thereby, the appellants filed an appeal before the APTEL. The APTEL, vide judgment and order dated 3rd November 2020, dismissed the said appeal. Challenging the same, Civil Appeal No. 4143 of 2020 came to be filed before this Court. By an order of even date, this Court dismissed the said appeal.

the Ministry of Coal, Government of India, in the meantime brought into effect a new regime for allocation of coal under SHAKTI Policy. Under the SHAKTI Policy, the projects, which were approved under the old regime, were entitled to continue to get supply of 75% of the Assured Coal Quantity **("ACQ")** even beyond March 31, 2017.

Contending that there was a shortfall from 75% ACQ, AP(M)L filed a petition claiming relief for shortfall on account of Change in Law.

Three basic grounds, along with other grounds, were raised before the APTEL. The first ground was that the SHAKTI Policy could not be considered to be Change in Law. The second ground was that the AP(M)L had not given a Notice of Change in Law and, as such, was not entitled to the benefit on the ground of Change in Law. The third ground was with regard to award of Carrying Cost. The APTEL, vide impugned judgment and order dated 30th June 2021, dismissed the said appeal.

The Supreme Court held that, in their opinion, the concurrent view taken by the CERC & APTEL cannot be said to be a view taken in ignorance of the mandatory statutory provisions nor can it be said that it is based on extraneous consideration. Further, the Supreme Court held in its view that, it also cannot be said to be ex-facie arbitrary or illegal and concluded that, no interference would be warranted in the present appeal.

To read the Judgement in detail, please click here.

SEBI ORDER

1. Adjudication order in the matter of CG Power and Industrial Solutions Limited.

- CG Power and Industrial Solutions Ltd **("the Company")** had filed a corporate announcement with Bombay Stock Exchange **("BSE")** and National Stock Exchange **("NSE")** to disclose the outcome of its Board meeting held on August 19, 2019. It was observed from the said disclosures that the total liabilities and advances to related and related parties of the Company and the Group might have been understated as on March 31, 2018 and April 1, 2017.

- In view of the above, Securities and Exchange Board of India ("SEBI") sought information to examine the violations of the provisions of securities laws by the Company and its Directors/Promoters and passed an order to conduct the forensic audit of books of account of the Company as well as to examine the role of MD & CEO, Risk and Audit Committee (RAC), Board and other employees of the Company and of the Managing Partner of Statutory Auditors of the Company.

- During the investigation, it was observed that M/s Chaturvedi & Shah ("Noticee 1") and M/s. K.K. Mankeshwar and Co. ("Noticee 2") who was the Statutory Auditors of the Company had been acting against the fiduciary capacity and facilitated the scheme of cleaning up the books of accounts of the Company, despite being aware of the irregularities and misstatements in the financial statement of the Company.

- Based on findings of above investigation, Adjudicating Proceedings were initiated against the Noticees and a common Show cause notice was served upon the Noticees, advising to show cause as to why and inquiry should not be held, and penalty be not imposed.

- After considering all the facts, material available on records and the submissions made by the Noticees, Adjudicating Officer ("AO") is of the view that disclosure of true and fair information is crucial for investor protection and to maintain their confidence in the securities market. The false and misleading disclosures in the audit report as found in the case is detrimental to the interest of investors and endanger integrity of the securities markets.

- In view of above, after considering all the facts and circumstances, the AO imposed penalty of INR 5,00,000 (Indian Rupees Five Lakhs) on both the Noticees.

To read the order in detail, please click here.

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+91 22 6669 5000

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About Swift

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Swift India Corporate Services LLP

Regd. Office: 91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
LLPIN: AAH-4705, registered under the Limited Liability Partnership Act, 2008
Tel +91 22 6669 5000, Fax +91 22 6669 5001

www.swiftindiallp.com