Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 49th 21-22
Week – March 14th to March 18th

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

"If you just work on stuff that you like and you're passionate about, you don't have to have a master plan with how things will play out."

– Mark Zuckerberg"

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**"), Securities and Exchange Board of India ("**SEBI**") and orders passed by the NCLAT, SEBI, High Court and Supreme Court.

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

- **SEBI amends Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2022.**
- **RBI issues Master Direction on Reserve Bank of India (Regulatory Framework for Microfinance Loans) Directions, 2022.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of March 14, 2022 to March 18, 2022.

Thank you,
Swift team

Table of Contents

REGULATORY UPDATES

SEBI

1. **SEBI issues Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2022 vide Notification dated March 16, 2022.**

- SEBI substituted clause (d) of sub-regulation (1) of regulation 15 of SEBI (AIF) Regulations, 2012 with the following clause, namely, -

  "Category III Alternative Investment Funds shall invest not more than ten per cent of the investable funds in an Investee Company, directly or through investment in units of other Alternative Investment Funds and the large value funds for accredited investors of Category III Alternative Investment Funds may invest up to twenty per cent of the investable funds in an Investee Company, directly or through investment in units of other Alternative Investment Funds.

  Provided that for investment in listed equity of an Investee Company, Category III Alternative Investment Funds may calculate the investment limit of ten per cent of either the investable funds or the net asset value of the scheme and large value funds for accredited investors of Category III Alternative Investment Funds may calculate the investment limit of twenty per cent of either the investable funds or the net asset value of the scheme, subject to the conditions specified by the Board from time to time."

To read the Notification in detail, please click here.

2. **SEBI responds to YES Bank Limited (YBL) request for interpretation of provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 of by issuing an informal guidance letter in form of informative letter under SEBI (Informal Guidance) Scheme, 2003.**

- SEBI vide letter dated March 16, 2022 responded to YBL's request for interpretation of the following questions:
  - Whether the units under AIF scheme are covered under definition of securities for purpose of PIT regulations.
  - Whether the employees of the bank are covered under designation persons and their immediate relative in terms of PIT Regulations are allowed to invest in AIF (Category I, II, III).

- Where by the SEBI has responded to the above mentioned questions by concluding the following respectively:
    - As per Section 2(h) of SCRA – securities include units or any other instrument issued by pooled investment vehicle.

      As per regulation 2(1)(b) of AIF regulations AIF's are pooled investment vehicles & in terms of regulation 2(1)(i) of PIT regulations securities means securities as per SCRA excluding mutual fund units,

      Hence units of AIF are under definition of securities under PIT regulations.
    - SEBI referring to regulation 9(1) of PIT regulations - relating to code of conduct, regulation 3 of PIT regulations – relating to prohibition of communication of procurement of UPSI.

      It was concluded that employees covered as Designated persons and their relatives may invest in units of AIF subject to compliance of appropriate regulations of PIT & AIF.

To read the letter in detail, please click here.

[This space is intentionally left blank]

RBI

1. **RBI issues Master Direction on Reserve Bank of India (Regulatory Framework for Microfinance Loans) Directions, 2022 vide Notification dated March 14, 2022.**

- RBI issued Master Direction vide Notification dated March 14, 2022 where in RBI put in place the directions for microfinance loans which were previously issued under para 8 of Statement on Developmental and Regulatory Policies announced as a part of the Bi-monthly Monetary Policy Statement for 2020-21 dated February 5, 2021, regarding review of the regulatory framework for microfinance & a consultative document for public comments dated June 14, 2021.

- This regulatory framework deals with the following as specified below:
  - Definition of Microfinance Loan;
  - Assessment of Household Income;
  - Pricing of Loans;
  - Guidelines on Conduct towards Microfinance Borrowers;
  - Net Owned Fund (NOF) Requirement;
  - Indicative Methodology for Household Income Assessment;

- The Reserve Bank of India (RBI) has also removed caps on the pricing of small loans given by Non-Banking Financial Company-Microfinance Institutions (NBFC-MFIs), bringing them to the same level as other such lenders, including banks. With this, the underwriting of loans will be done on a risk-based analysis, and a risk premium will be charged based on the borrower.

To read the notification in detail, please click here.

[This space is intentionally left blank]

DPIIT

1. **DPIIT permits Foreign Investment in Life Insurance Corporation of India (“LIC”) and other modifications for further clarity in existing FDI policy vide Press Note dated March 14, 2022.**

सत्यमेव जयते
Department of Industrial Policy and Promotion
Ministry of Commerce and Industry
Government of India

- DPIIT released a Press Note on March 14, 2022 where in the government of india after reviewing the extant FDI policy for permitting the foreign investment in LIC and also issuing further clarity relating to existing policy the following amendments were made to the FDI policy.

- Few of the amendments are specified below:
  <u>Amendments to existing Paras’ under the FDI Policy:</u>

  - Para 2.1.5 of FDI policy i.e. relating to definition of Capital.
  - Para 2.1.9 of FDI policy i.e. relating to definition of Convertible Note.
  - Para 2.1.17 of FDI policy i.e. relating to definition of Foreign Investment.
  - Para 2.1.27 of FDI policy i.e. relating to definition of Indian Company.

  <u>Insertion of new Paras’ under the FDI policy:</u>

  - Para 2.1.47A is inserted in FDI policy i.e. relating to definition of Share Based Employee Benefits.
  - Para 2.1.48A is inserted in FDI policy i.e. relating to definition of Subsidiary.

- A new Para 5.2.22.1A is specifically inserted under 5.2.22.1 to for capping the FDI inflow in LIC to 20% of Equity under automatic route.

- Insertion of Para 5.2.22.1A led to bifurcate the para 5.2.22.3 on “Other Conditions” into two parts by inserting 5.2.22.3.1 containing clauses (a) to (k) applicable to Indian insurance companies, Insurance intermediaries & & 5.2.22.3.2 containing new clauses (a) to (c) applicable to LIC.

To read the Press Note in detail, please click here.

<u>[This space is intentionally left blank]</u>

JUDGEMENT/ORDERS

NCLAT

1. NCLAT Delhi directs the appellant to file an application under Section 12A of the Code for settlement with the Operational Creditor

- An appeal was filed against the order passed by Adjudicating authority. By which Order, Application was filed by the Respondent under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC in short) had been admitted. The Appellant submitted a settlement dated March 05, 2022 with Operational Creditor for the purpose of recording and pass order as it deems fit.

- The Learned Counsel for the parties submitted that CoC was already constituted in February 22, 2022. The Operational Debt as claimed by the Operational Creditor, part of which was clearly admitted and submissions were raised with regard to another part. In view of the Judgment of the Hon'ble Apex Court as which was quoted by Counsel, it was clear case of an Operational Debt hence no error was committed in admitting the Application under Section 9 of the Code. However, Settlement had been entered into between the parties on 05th March, 2022 and the CoC has been constituted prior to 05th March, 2022 i.e. on 22.02.2022 and also liberty was granted to the Appellant to file an appropriate Application before the Adjudicating Authority under Section 12A in the proceedings and Adjudicating Authority may consider the Application under Section 12A of the IBC and take appropriate steps in accordance with law.

- Basis the Hon'ble Supreme Court judgment, NCLAT ordered the Appellant to approach the NCLT by filing an Application under Section 12A of the Code for settlement with the Operational Creditor and the appeal was disposed.

To read the Order in detail, please click here.

[This space is intentionally left blank]

SEBI Order

1. **SEBI imposes penalty for contravention of 'PIT Regulations.**

   In the case of TITAN Company Limited

- Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), received an intimation by way of letter from Titan Company Limited (hereinafter referred to as '**Company/Titan/TCL**') about the contravention of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**') and Company's Code of Conduct for Prevention of Insider Trading by some of its designated persons/employees.

- In this regard, SEBI conducted investigation in the scrip of Titan and observed several non-compliance of PIT Regulations during the Investigation Period from April 01, 2018 to March 31, 2019 by employees and designated persons of TCL including Ms. Asha Prakash Shetty (hereinafter referred to as '**Noticee/by name**'). Therefore, SEBI initiated adjudication proceedings against Noticee under the provisions of Section 15A(b) of '**SEBI Act**' for alleged violation of Regulation 7(2)(a) of PIT Regulations by Noticee. The Adjudicating Officer issued the Show Cause Notice to Noticee and alleged that Noticee has traded in the securities which were in excess of the limit specified in Regulation 7(2)(a) of PIT Regulations and the necessary/ any disclosures was not made with regards to the aforesaid regulations.

- On consideration of facts of the case, material records, replies and submissions made by the Noticee, the order was passed and penalty of Rs. 1,00,000/- (Rupees One Lakh only) was imposed on the Noticee i.e. Ms. Asha Prakash Shetty, under the provisions of Section 15A(b) of SEBI Act.

To read the Order in detail, please click here.

[This space is intentionally left blank]

HIGH COURT

1. **Delhi High Court dismisses the Appeal filed by 'India Bulls' stating that, there was no illegality and perversity in the challenged order passed by the Learned Arbitrator.**

INDIABULLS HOUSING FINANCE Limited	**Appellant**
GNEX PROJECTS PRIVATE LIMITED & ORS.	**Respondents**

<u>Date of Judgement</u>: March 14, 2022

- Interim order was passed by the learned Arbitrator vide which application filed by the appellant (claimant therein) under the provisions of Section 17 of the Arbitration and Conciliation Act, 1996 praying to restrain respondent from going ahead with its Scheme of Arrangement with Sony Pictures Networks India Private Limited and Bangla Entertainment Private Limited, which was rejected. In this respect, the present appeal has been preferred under the provisions of Section 37(2) (b) of the Arbitration and Conciliation Act, 1996.

- Appellant, M/s. Indiabulls Housing Finance Limited is a Public Limited Company incorporated under the Companies Act, 1956 and is engaged primarily into the leading business especially home loan, loan against property, etc. One of the respondent, being Zee Entertainment Enterprise Limited is a company incorporated under the Companies Act, 1956 and is an Indian mass media company owned by Essel Group (being the other respondent in the present appeal) and it has interests in television, print, internet, film, mobile content and allied businesses.

- The institution of the appeal rests upon four Agreements executed between appellant and respondents, referred to as the borrowing respondents, as they were co-borrowers in each of the agreement for the loan amount of INR.726 Crores. For the said loan, there were certain documents entered into between the appellant and the respondents, other than the Borrowing respondent, such as Pledge Agreement, Deed of Hypothecation, Deed of Guarantee, Declaration and Acknowledgement Agreements.

- Considering the facts and circumstances in view of the Delhi High Court, the Court was of the considered opinion that there is no illegality and perversity in the impugned order passed by the learned arbitrator and the appeal was dismissed.

To read the Judgement in detail, please click here.

SUPREME COURT

1. **Appeal filed by India Power Corporation Limited stands rejected, as the Delhi High Court had also not agree with the submission of the respondent-applicant and the award finally decided the dispute which was subject matter of the reference.**

India Power Corporation Limited	Appellant
Eastern Coalfields Limited	Respondent / Applicant

Date of Judgement: March 15, 2022

- Justice S.S Nijjar, a former Judge of Supreme Court was appointed as sole Arbitrator to arbitrate upon the disputes between the parties, wherein the Civil appeal was allowed. The sole Arbitrator had given the award after considering the claims and counter claims of the parties. However, the only ground raised for seeking a fresh appointment of Arbitrator is for the reason that the present application has been filed for appointment of Sole Arbitrator.

- Request was made for appointment of Arbitrator with respect to the contents of the paragraph 160 of the award but raised a further issue relating to Section 33 of the Arbitration and Conciliation Act, 1996 for requiring correction in the computation of the rent payable to the applicant 'Eastern Coalfields Limited' ("ECL") for the period March 2016 till October 2016 which was inadvertently left out by the learned Arbitrator while giving the award.

- The ECL had claimed that the power plant should be put into running condition before handing over its possession. There was another aspect of the matter which disentitles the applicant from any relief in this application. A perusal of the judgment of the Delhi High Court in Section 34 of the 1996 Act proceedings clearly reveals that the point which is being raised here was raised before the Delhi High Court. The Delhi High Court also did not agree with the submission of the respondent-applicant and the award finally decided the dispute which was subject matter of the reference and the application was rejected.

To read the Judgement in detail, please click here.

DISCLAIMER The contents of this newsletter should not be construed as legal opinion. View detailed disclaimer.

This newsletter provides general information existing at the time of preparation. The newsletter is intended as a news update and Swift India Corporate Services LLP neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this newsletter. It is recommended that professional advice be taken based on the specific facts and circumstances. This newsletter does not substitute the need to refer to the original pronouncements.

+91 22 6669 5000

Call us toll free to explore a topic or let us answer your questions

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.

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