Swift e-Bulletin
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Week – March 28th to April 01st

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

"If your ship doesn't come in, swim out to meet it!"

– Jonathan Winters

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 passed by the NCLAT, SEBI, High Court and Supreme Court.

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

- **SEBI issues operational guidelines for 'Security and Covenant Monitoring' using Distributed Ledger Technology ("DLT").**
- **SEBI vide Press Release informed the public at large about the outcomes of board meeting held at Mumbai on March 29, 2022.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of March 28, 2022 to April 01, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

MCA

1. **MCA extends the applicability of proviso to Rule 3(1) & proviso to Rule 12(1B) of the Companies (Accounts) Rules, 2014.**

- MCA vide Notification dated March 31, 2022 extends the date of applicability of the Rule 3(1) & proviso to Rule 12(1B) of the Companies(Accounts) Rules, 2014.

- These extended dates are as follows:

    - For proviso to Rule 3(1) of The Companies (Accounts) Rules, 2014 which deals in "*use of only such accounting software for maintaining its books of account which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled*".

      The date of applicability of this proviso has been extended from the initial **1st day of April, 2022 to 1st day of April, 2023.**

    - For proviso to Rule 12(1B) of the Companies (Accounts) Rules, 2014 which deals in due date for filing Form CSR-2 for financial year (2020-2021) has been extended from the initial **March 31, 2022 to May 31, 2022.**

To read the Notification please click here.

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SEBI

1. **SEBI issues operational guidelines for 'Security and Covenant Monitoring' using Distributed Ledger Technology ("DLT")**

- SEBI vide Circular dated August 13, 2021, specified the manner of recording of charges by issuers and manner of monitoring by Debenture Trustees ("DTs"), Credit Rating Agencies, etc. and responsibilities thereof.

- Accordingly, with effect from **April 01, 2022**, the recording of asset details (and their verification), allotment, listing and payment of interest or redemption shall be available in the system.

- To begin with, the following assets shall be tracked at portfolio level and no specific parameters for the underlying assets would be captured:
  - movable assets viz furniture, equipment, inventory etc.
  - current assets viz portfolio of advances/ receivables, etc.
  - any other asset of similar nature.

- SEBI in the Circular has explained on how the system will identify the duplicate asset by allocating a 12-digit unique ID to each asset and alerting the issuer when a duplication is found.

  This Circular also vastly covers various aspects of operations of DLT, like:
  - Monitoring/Trigger events;
  - Applicability of DLT etc.

To read the Circular in detail, please click here.

2. **SEBI issues Circular clarifying the applicability of Regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in relation to Related Party Transactions.**

- SEBI has clarified that for a Related Party Transaction ("RPT") that has been approved by the audit committee and shareholders **prior to April 1, 2022**, there shall be no requirement to seek fresh approval from the shareholders.

- The RPT that has been approved by the audit committee prior to April 1, 2022 which continues beyond such date and becomes material as per the revised materiality threshold shall be placed before the shareholders in the first General Meeting held **after April 1, 2022**.

- Further, provided that the explanatory statement contained in the notice sent to the shareholders for seeking approval for an RPT shall provide relevant information so as to enable the shareholders to take a view whether the terms and conditions of the proposed RPT are not unfavorable to the listed entity, compared to the terms and conditions, had similar transaction been entered into between two unrelated parties.

To read the Circular in detail, please click here.

3. **SEBI issues Circular with timelines for rebalancing of portfolios of Mutual Fund Schemes to bring uniformity across Mutual Funds with respect to timelines for rebalancing of portfolio.**

- In order to bring uniformity across Mutual Funds with respect to timelines for rebalancing of portfolio, the following has been decided:

  In the event of deviation from mandated asset allocation mentioned in the Scheme Information Document ("SID") due to passive breaches (occurrence of instances not arising out of omission and commission of AMCs), rebalancing period across schemes shall be as follows:

  - All schemes other than Index Funds and Exchange Traded Funds Thirty (30) business days.
  - Rebalancing of Portfolio of Mutual fund is not applicable to Overnight funds.

- This Circular also covers the reporting & disclosure requirements and penal provisions for not rebalancing the portfolio.

To read the Circular in detail, please click here.

4. **SEBI issues Circular on calculation of investment concentration norm for Category III AIFs.**

- SEBI has been amended Regulation 15(1)(d)of SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations"), and notified on March 16, 2022, to provide flexibility to Category-III AIFs, including large value funds for accredited investors of Category III AIFs, to calculate investment concentration norm based either on investable funds or Net Asset Value("NAV") of the scheme while investing in listed equity of an investee company, subject to the conditions specified by the Board from time to time.

- SEBI Specified the following norms and reporting requirements:

  - Existing Category III AIFs may opt for calculating investment concentration norm based on investable funds with the approval of their trustees or board of directors or designated partners, as the case may be, and inform the same to their investors within 30 days from the date of the issuance of this Circular.
  - All Category III AIFs shall disclose the basis for calculation of investment concentration norm in the placement memorandum of their schemes.
  - The basis for calculating investment concentration norm shall not be changed during the term of the scheme.

To read the Circular in detail, please click here.

5. **SEBI issues Circular on product specifications pertaining to the Electronic Gold Receipts ("EGR") segment in India.**

- SEBI vide Circular dated March 28, 2022 issues framework, inter-alia, states that the entire transaction in EGR segment has been divided into three tranches.
  - In tranche 1, physical gold will be converted into EGR;
  - In tranche 2, EGR shall be traded on stock exchanges; and
  - In tranche 3, EGR can be converted into physical gold.

- The framework also states that stock exchanges may launch contracts with different denomination for trading and / or conversion of EGR into gold.3. In this regard, the stock exchanges may launch products / contracts subject to complying with the following guidelines as mentioned in the below linked Circular.

To read the Circular in detail, please click here.

6. **SEBI vide Press Release informed the public at large about the outcomes of board meeting held at Mumbai on March 29, 2022.**

SEBI Board met in Mumbai and inter-alia, took the following decisions:

- Amendment to Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 for simplification of procedure for transmission of securities.

  Few of the amendments to LODR are below:
  - The existing threshold limit for simplified documents has been revised from **Rupees Two Lakhs to Rupees Five Lakhs** for securities held in physical mode per listed issuer and **Rupees Five Lakhs to Rupees Fifteen Lakhs** for securities held in dematerialized mode for each beneficiary account.
  - **Legal Heirship Certificate** or its equivalent certificate issued by competent Government authority will be an acceptable document for transmission of securities.

- Amendments to SEBI (Collective Investment Schemes) Regulations, 1999.

  Few of the amendments are below:
  - Enhancement of net-worth criteria and requirement of having track record in relevant field as an eligibility requirement for registration as a Collective Investment Management Company (CIMC).
  - CIMC and its group/ associates/ shareholders are restricted to 10% shareholding or representation on board of another CIMC to avoid conflict of interest.

- Enabling Custodians to provide custodial services in respect of silver exchange traded fund schemes of mutual funds (‘Silver ETFs’)

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

JUDGEMENTS AND ORDERS

SEBI Order

1. In the matter of Mindtree Ltd.

- SEBI received letter October 26, 2018 for **Mindtree Ltd.** (hereinafter referred to as "Company") informing on violation of regulation 7(2)(a) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the "PIT Regulations") by two (2) of its employees and also action taken by Company.

- In this regard, SEBI conducted separate investigation with regard to the transactions of promoters, directors and employees of the Company during the Investigation Period. It was observed that **Mr. Bilmudi Krishnappa Sachin** (hereinafter referred to as "Noticee") employee of the Company has done transactions in company scrip aggregating to a traded value in excess of Rs 10,00,000 over a calendar quarter and filed to make necessary disclosure under regulation 7(2)(a) of the PIT Regulations. The Adjudicating Officer issued the Show Cause Notice ("SCN") 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.

- Adjudicating officer ("AO") considered the facts, circumstances and violation committed by the Noticee which was repetitive in nature, passed Adjudication order in respect of **Mr. Bilmudi Krishnappa Sachin** (hereinafter referred to as "Noticee") by imposing monetary penalty of Rs.1,00,000/- (Rupees One Lakh only) under Section 15A(b) of the SEBI Act upon Noticee for violations of regulation 7(2)(a) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the "PIT Regulations").

To read the Order in detail, please click here

NCLAT

1. **NCLAT dismissed the appeal stating that there cannot be equality between class of Operational Creditors and class of Financial Creditors**

- An appeal was filed against the order passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court No. IV dated 28.10.2021 by which the Resolution Plan was approved. The Appellant, an Operational Creditor aggrieved by the order challenged it.

- Learned counsel for the Appellant submits that there is great disparity between the amount offered to the Operational Creditors as compared to payment of dues offered to the Financial Creditors. Further he submitted that there has to be equality in the payment of dues which is to be made between the different stakeholders and present is the case of clear inequality and arbitrariness where the Operational Creditors have been provided with only with less percentage. Learned counsel for the Respondent submitted that submission regarding arbitrariness is wholly misconceived. He submitted that in the CoC there are 95% Unsecured Financial Creditors and only 5% of the Voting share is of the Secured Financial Creditors still the Unsecured Financial Creditors has accepted less than 1% payment. Therefore, there is neither any inequality nor any arbitrariness. It is further submitted that there is no case of the Appellant that Appellant is receiving less than the liquidation value to which it is entitled under Section 53.
- The Hon'ble Supreme Court in (2020) 8 SCC 531, 'Essar Steel India Ltd. Committee of Creditors vs. Satish Kumar Gupta' has occasion to consider this very issue and held that equality should be looked into with regard to same class of creditors. It was also held that there cannot be equality between class of Operational Creditors and class of Financial Creditors. The Appellant cannot claim any parity in payment offered to the Financial Creditors. The tribunal did not find any arbitrariness and inequality vitiating the order passed by the Adjudicating Authority and do not find any ground to interfere with the Resolution Plan. Hence appeal was dismissed.

To read the Order in detail, please click here.

HIGH COURT

1. **Petition filed by BSNL challenging the Arbitral Award was dismissed by the Delhi High Court.**

Bharat Sanchar Nigam Limited	**Petitioner**
Teracom Limited	**Respondent**

<u>Date of Judgement</u>: March 28, 2022

- Bharat Sanchar Nigam Limited ("BSNL"), being the Petitioner in the present case, had issued a Notice Inviting Tenders ("NIT"), for purchase of 9,80,000 units of Integrated Fixed Wireless Terminal Devices (IFWT), CDMA Terminals. Teracom Limited, respondent in the present case, participated in the said tender and was declared as the successful bidder.

- Accordingly, BSNL issued an Advance Purchase Order ("APO" in favour of Teracom for purchase of 3,75,000 units. In terms of the APO, Teracom furnished a Performance Bank Guarantee for an amount of INR 2,12,97,000/-, which was valid for a period of three years.

- Thereafter BSNL placed a Purchase Order for procurement of 3,75,000 units from the respondent. There delay in payment of 80% of the total payment due under the Contract, Teracom informed BSNL that even though it had provided complete supply of the IFWT equipment, several State Telecom Circles of BSNL had failed to release 80% of the payment due to it.

- The Performance Bank Guarantee was initially for a term of three years but Teracom had extended the same from time to time, at the instance of BSNL. Teracom resisted to extend the Performance Bank Guarantee when called upon by BSNL and thereafter in its letter stated it had met all its obligations under the Contract and requested that the Performance Bank Guarantee be released. BSNL did not do so and invoked the Performance Bank Guarantee.

- In view of the disputes between the parties, Teracom issued a notice to the Chairman and Managing Director, BSNL, invoking the Arbitration Agreement and seeking reference of the disputes to arbitration and by the impugned award, the Arbitral Tribunal has awarded an amount of ₹2,12,97,000/- in favor of Teracom, which was the amount recovered by BSNL by encashing the Performance Bank Guarantee. This led the petitioner to file the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenging an arbitral award delivered by an Arbitral Tribunal constituted by a Sole Arbitrator. However, the Court found no ground to fault the challenged award and the petition was unmerited and 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).

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