Swift e-Bulletin
Edition 06th 23-24
Week – May 15th to May 19th

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

"There is no shortage of remarkable ideas, what's missing is the will to execute them."

- *Seth Godin*

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 Securities and exchange Board of India ("**SEBI**"), Ministry of Corporate Affairs ("**MCA**") and International Financial Services Center Authority ("**IFSCA**") and orders from SEBI and Supreme Court.

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

- **SEBI Vide Master Circular dated May 17, 2023, issued Master Circular on Stock Brokers**

- **SEBI vide circular dated May 19, 2023 issued the Risk disclosure with respect to trading by individual traders in Equity Futures and Options Segment (F&O Segment).**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of May 15th to May 19th, 2023.

Thank you,
Swift team

REGULATORY UPDATES

SEBI

1. **SEBI Vide Master Circular dated May 17, 2023, issued Master Circular on Stock Brokers**

- SEBI from time to time has been issuing various circulars/directions to Stock Brokers to enable the users to have access to the consolidated provisions of the applicable circulars at one place.

- SEBI on June 01, 2018 had issued a Master Circular with compilation of relevant circulars issued by SEBI.

- Subsequently various guidelines/directions were issued to Stock Brokers by the way of circulars/advisory along with which some of the references to the Statutes/Regulations in the Master Circular dated June 01, 2018, were repealed.

- Considering the same a new Master Circular has been prepared which supersedes Master Circular dated June 01, 2018.

- The said Master Circular shall be applicable to All Recognized Stock Exchanges and Stock Brokers through Recognized Stock Exchanges.

To read the Master Circular in detail, please click here

2. **SEBI vide circular dated May 19, 2023 issued the Risk disclosure with respect to trading by individual traders in Equity Futures and Options Segment (F&O Segment).**

- SEBI vide Circular dated May 19 stipulated the risk disclosure mechanism for the individuals trading in Equity F&O Segment considering the increased participation of investors in the Indian Securities market which includes the derivatives market.

- It is prudent for the investors to make any investment decision after weighing their risk appetite and carrying out a thorough diligence.

- In order to be a helping hand towards the decision making process, SEBI has decided to introduce the "**Risk Disclosure**" Segment with respect to F&O Segment.

- In line with the abovementioned disclosure, the brokers are expected to disclose on their website the risks as per given in Annexure – I in the manner below

    - The risk disclosures window shall pop-up as soon as the User logs into their trading account.

- The User shall be allowed to proceed only after acknowledging the disclosures.
- The disclosures shall be prominent enough to cover a minimum of 50% of the screen area.

- The Qualified Stockbrokers **(QSBs)** shall maintain the Profit and Loss (P&L) data of their clients on continuous basis in the format specified in Annexure – II and the same shall be retained for a period of 5 years.
- The Stock Exchanges are directed to take all the necessary steps in informing the market participants regarding the Circular simultaneously publishing it on their website.
- The said Circular shall come into effect from July 01, 2023.

To read the Circular in detail, please click here.

3. SEBI vide Notification dated May 15, 2023 amends the Securities and Exchange Board of India (Employees' Service) Regulations, 2001.

- Pursuant to the amendment these Regulations will be termed as Securities and Exchange Board of India (Employees' Service) (Amendment) Regulations, 2023.
- In the table mentioned in the Schedule in Column 3, for Grade A/B/C, after the words "Qualification shall be as specified above for Grade 'D', 'E' and 'F'", the following shall be inserted

  "For officers in the Legal Stream in Grade 'A' - In addition to the qualification specified for Legal Stream, two years post qualification experience as an Advocate (including as an associate in an Advocate's or Solicitor's Office or Law Firm) after being enrolled under the Advocates Act, 1961 (25 of 1961) shall be a desirable qualification"

To read the Notification in detail, please click here.

4. SEBI issued Master Circular for Registrars to an Issue and Share Transfer Agents.

- To make it convenient to access all the issued circulars and directions to Registrars to an Issue and Share Transfer Agents (RTA) by SEBI on time to time basis, Master Circular on RTA is issued.
- Relevant and applicable circulars are compiled together and mentioned in the appendix.
- Any action done before the rescinding of the Circulars shall be deemed to have been done or taken under the corresponding provisions of this Master Circular.

- Any action pending under the rescinded circulars will be shall be deemed to have been made under the corresponding provisions of this Master Circular.
- Any action taken under the rescinded circulars shall remain to be in force as if the circulars were not rescinded.
- The Master Circular briefly inter-alia covers the following

    - Registration Matters like prior approval for change in control, process for granting registration, online registration mechanism.
    - Obligations and responsibilities and other submission requirements
    - Investor Service Requests
    - Information security and Cyber Security Matters
    - Publication of Investor Charter and Disclosure Requirements by the RTA
    - Role of RTA w.r.t. Primary Markets

- The Master Circular also provides for the Formats w.r.t. reporting requirements.

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

5. **SEBI issued Master Circular on Mutual Funds**

- SEBI from time to time has been issuing various circulars from time to time for effective regulation of Mutual Fund Industry.
- To ensure that stakeholders have access to all applicable regulatory requirements at one place, consolidated provisions of the circulars issued till March 31, 2023 are incorporated in the said Master Circular.
- With respect to the directions or other guidance issued by SEBI, as specifically applicable to Mutual Funds, the same shall continue to remain in force in addition to the provisions of any other law for the time being in force.
- Pursuant to issuance of this Master Circular, the entities which are required to ensure compliance with various provisions shall submit necessary reports as envisaged in this Master Circular on a periodic/ continuous basis.
- The said Master Circular shall come into force from the date of issuance.
- The Master Circular shall be applicable to Mutual Funds, Assets Management Companies, Trustee Companies/ Boards of Trustees of Mutual Fund, Registrar to an Issue and Share Transfer Agents, Association of Mutual Funds in India, Recognized Stock Exchanges & Clearing Corporations, Stock Brokers, Depositories, Custodians.

To read the circular in detail, please click here.

MCA

1. **MCA vide Circular dated May 15, 2023, introduced the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023**

- MCA Vide the said Circular has further amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

- The Rule 25 sub-rules (5) and (6) has been substituted as follows:-

  - In case where no objection or suggestion is received within a period of 30 days of receipt of copy of scheme under Section 233 (2) from the Registrar of Companies and Official liquidator by the Central Government and the Central Government is of opinion that the scheme is in the public interest or in the interest of the creditors, it may with 15 days after the expiry of thirty days issue a confirmation order of such scheme of merger or amalgamation in **Form No. CAA.12**

  - Further if the Central Government does not issue a confirmation order within sixty days of receipt of the scheme, under Section 233 (2), it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.

  - In case where objection is received within a period of sixty days of the receipt of the scheme, from the Registrar of Companies and Official liquidator by the Central Government and the Central Government is of opinion that the scheme is in the public interest or in the interest of the creditors, it may within thirty days issue a confirmation order of such scheme of merger or amalgamation **Form No. CAA.12**

  - Further if Central Government is of the opinion, whether on the basis of such objection that the scheme is not in the public interest or in the interest of creditors, it may within sixty days of the receipt of the scheme file an application before the Tribunal in **Form No. CAA.13** stating the objections or opinion and requesting that Tribunal may consider the scheme under section 232 of the Act.

  - If the Central Government does not issue a confirmation order or does not file any application within a period of sixty days of the receipt of the scheme it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.

To read the amendment in detail, please click here

IFSCA

1. **IFSCA vide Circular dated May 17, 2023 issued the Fee structure for the entities undertaking or intending to undertake permissible activities in IFSC**

- Pursuant to the powers given under Section 12 and 13 International Financial Services Centres Authority Act, 2019, IFSCA has laid down consolidated fee structure w.r.t. getting licence, registration, recognition or authorisation or availing of any permitted financial service in the IFSCfor desirous entities.

- The entire fee structure has been bifurcated into 4 broad categories

  - Application fees and Licence/Registration/Recognition/Authorisation fees
  - Recurring fees
  - Activity based fees
  - Processing fees

- Where the fee is a part of the application/request that is to be paid to the Authority, for the application/request to be considered "submitted" there should be full payment of the fees.

- The Circular contains detailed coverage of the following

  - <u>Fees payable during the application process</u>: It details about the specifics of application with timelines thereto. It specifies how mere grant of in-principle or provisional approval will not make the grant of final licence, registration, recognition or authorisation.

  - <u>Fees payable after grant of licence, registration, recognition, or authorisation:</u> This details about the various recurring fees that are to be paid by the FIs, the rates for which are specified in the Schedule.

  - <u>Multiple applications</u>: The applications for rendering different financial services by single entity shall be treated as separate applications under the respective statutory provisions.

  - <u>Fees payable based on the nature and volume of activity carried out by the FIs:</u> The FIs will need to pay "**activity-based**" fees, if desirous of rendering specific activities listed out in the Schedule.

- **<u>Fees payable for handling specific requests such as modification of terms of licence, waiver of regulations etc.:</u>** Schedule II specifies the fees payable when Res request on relaxation of provisions applicable to them or for change in the terms of the granted object.

- **<u>Late payment of any outstanding dues/fees or delay in submission of periodic returns:</u>** In case of failure to pay fees as and when due, late fees will be levied.

- **<u>Additional /Supplementary fees:</u>** The Authority if deems fit may levy the additional fees for going through with the application.

- **<u>Request for approval of key managerial personnel/directors/trustee etc.:</u>** Change of composition of Board in RE will be accompanied with additional fees.

- **<u>Waiver of fees:</u>** The Authority may suo moto or on an application made by RE waive off the fees in entirety or partially.

- **<u>Manner of payment:</u>** This part of the circular briefs on the manner of payment of fees w.r.t. Schedule I and Schedule II fees and applicants (Other than GIFT-City) desirous of getting registration/licence.

- The Circular in detail annexes to it Schedules prescribing the relevant fee rates.

To read the amendment in detail, please click here.

JUDGEMENTS/ ORDERS

SEBI ORDER

1. Adjudicating Officer slaps penallty on Individual for trading in illiquid Stock Options on BSE.

- Securities Exchange Board of India ("**SEBI**") conducted an investigation into the trading activities of certain entities in illiquid stock at Bombay Stock Exchange ("**BSE**") and observed large scale reversal trades in stock options which led to creation of artificial volume at BSE.

- During the investigation, it was observed that Nemichand Kasturchand Jain ("**Noticee**") was one of various entities who indulged in execution of reversal trades in stock options segment of BSE during investigation period which were non-genuine in nature and create false or misleading appearance of trading in terms of artificial volume in stock options and therefore were alleged to be manipulative, deceptive in nature.

- In view of the above, Adjudicating Proceedings were initiated against the Noticee and a Show cause notice ("**SCN**") was issued to the Noticees, requiring the Noticee to show cause as to why and inquiry should not be held, and penalty be not imposed. However, the Noticee has neither filed any reply nor has availed the opportunity of personal hearing.

- Considering the above, the Adjudicating Officer ("AO") was of the view that since, the Noticee did not file any reply to SCN, it can be presumed that it has admitted the charges levelled against them and accordingly this matter is being proceeded ex-parte in its regard on the basis of material available on record.

- In view of the above, AO imposed penalty of INR 5,00,000/- on Noticee for violation of provisions of various Regulations of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003.

To read the order in detail, please click here.

SUPREME COURT

1. **Supreme Court sets aside that part of the judgment and order passed by the High Court by which the decision of BEST to accept the tender of EVEY which was set aside.**

Tata Motors Limited	Appellant(s)
The Brihan Mumbai Electric Supply & Transport Undertaking (Best) and Others	Respondent(s)

Date of Judgement: May 19, 2023

The Brihan Mumbai Electric Supply & Transport Undertaking **("BEST")** floated a tender for the supply, operation and maintenance of 1400 (+50% variation) Single Decker AC Electric Buses with driver, for the purpose of public transport service within the city of Mumbai along with other civil infrastructure development at the BEST depots for a period of 12 years. The bidders under the tender document provided for Technical specifications as stipulated under Clause 3.5(e) and Clause 12 of Section 2 of Schedule IX, were required to provide Single Decker Buses which can run 200 Kms in single charge without interruption in actual conditions for the relevant Gross Vehicle Weight (GVW) with air conditioning with not more than 80% battery being consumed.

Aggrieved by the technical suitability evaluation issued by BEST by which it rejected the bid of TATA Motors, the latter approached the High Court of Judicature at Bombay by way of a writ petition on May 10, 2022. During the pendency of the aforesaid writ petition BEST awarded the Tender in favour of EVEY with the Letter of Acceptance dated May 20, 2022. EVEY accordingly submitted the required Performance Bank Guarantee. An agreement for operation of Stage Carriage Services for public transport of Single Decker AC Electric Buses with Driver in the city of Mumbai and its extended suburbs on Gross Contract Cost (GCC) model for 12 years was entered into between the EVEY and BEST on May 26, 2023.

The High Court vide its challenged order and judgment on July 07, 2022, took the view that the requirement for the operating range to be more than 200 Kms in a single charge in "actual conditions" was unambiguous. Accordingly, the High Court upheld the disqualification of TATA Motors and rejected their claim from being considered as an eligible bidder as they failed to comply with the technical requirements of the Tender.

The Supreme Court observed that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. Further held that, in such circumstances referred to above, we set aside that part of the judgment and order passed by the High Court by which the decision of BEST to accept the tender of EVEY was set aside and it was left to the discretion of BEST to undertake a fresh tender process and the Appeal filed by TATA Motors accordingly fails and is hereby dismissed. Whereas the Appeals filed by EVEY and BEST are allowed to the aforesaid extent.

To read the notification 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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