Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
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Week – June 12th to June 16th

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

“Success isn’t overnight. It’s when every day you get a little better than before, it adds up.”

- *Dwayne Johnson*

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 order from NCLAT.

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

- SEBI issued Master Circular dated June 15, 2023 for Research Analysts.

- MCA vide notification dated June 14, 2023 notified the exclusion of Corporate Debtor entering into certain transaction from the applicability of Section 14(1) of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016).

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of June 12th to June 16th, 2023.

Thank you,
Swift team

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REGULATORY UPDATES

SEBI

1. **SEBI issued Master Circular dated June 15, 2023 for Research Analysts.**

- SEBI has from time to time issued Circulars detailing the framework for EGRs, risk management, Standard Operating Guidelines for Vault Managers & Depositories, etc.

- To facilitate the stakeholders to have easy access to all the Circulars at one place the Master Circular has been issued having a compilation of all the Circulars in Annexure – A.

- The Master Circular contains the following

  - Procedural Guidelines for the Proxy Advisors
  - Investor Complaints
  - Advisory for Financial Sector Organizations regarding Software as a Service (SaaS) based solutions.
  - Framework for Regulatory Sandbox
  - Procedure for the approval for change in control: The format for the same has been clearly given in Annexure D to the Master Circular.
  - Guidelines on intermediaries outsourcing the activities
  - Reporting requirements under Foreign Account Tax Compliance Act (FATCA)

- The Complaint data to be displayed by the RAs is also provided for in Annexure B.

To read the Circular in detail, please click here.

2. **SEBI vide Circular dated June 13, 2023 issued the Regulatory Framework for the Execution Only Platforms ("EOP") for facilitating transactions in direct plans of schemes of Mutual Funds.**

- SEBI registered Investment Advisors Stockbrokers through technology/digital platforms provide execution services in direct plans of Mutual Fund schemes, majorly availed by non-clients in terms of SEBI (Investment Advisers) Regulations, 2013 or SEBI (Stock Brokers) Regulations, 1992.

- However, there is no specific framework present as to provide execution-only services in direct plans of Mutual Fund schemes and to obtain data feed in relation to these transactions.

- Non-client had no recourse or more risk exposure with respect to these transactions and thus, a need was felt to strike a balance between investors convenience and investor protection.

- Pursuant to discussions and public consultation it has now been decided to prescribe a framework for EOPs for transacting in direct plans of Mutual Funds.

- Owing to this SEBI (Stockbrokers) Regulations have been duly amended on January 17, 2023.

- The detailed framework for EOPs is specified in Annexure A to include inter-alia the following

  - Scope and applicability
  - Categories of EOPs
  - On-boarding and integration
  - Transaction and boarding fees
  - Handling conflict of interest

- The Circular also provides for list of requirements under the framework that shall not be applicable to category 2 EOP.

- Stock Exchanges desirous of providing EOPs segment are directed to do make necessary arrangements for the implementation of the relevant byelaws, rules and regulations and send report to SEBI on a monthly basis along with monitoring the operations of EOPs.

- AMFI is directed to make amendments for the implementation of the Circular and provide the status to SEBI on a monthly basis.

- AMFI is also directed to issue necessary guidelines for category 1 EOP before the issuing of this Circular and monitor the operations carried out by EOPs.

- The Circular shall take effect from September 01, 2023.

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

3. **SEBI vide Circular dated June 16, 2023 amends Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT).**

- The Government of India through gazette notification S.O. 1074(E) dated March 07, 2023 (PML eGazette dated March 07,2023) has amended the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 with immediate effect.

- To bring this effect in the securities market SEBI has amends the existing Master Circular having reference number SEBI/ HO/ MIRSD/ MIRSD-SEC-5/ P/ CIR/ 2023/ 022 dated February 03, 2023.

- SEBI has bought the following amendments to enhance the effectiveness of AML/CFT framework, summary of certain provisions of the aforesaid Master Circular are mentioned below:

  – Insertion of Paragraph 7A defining the word “Group”.

  – Paragraph 8, Sub Paragraph (i) is substituted with the following “*issue a statement of policies and procedures and implement, on a group basis where applicable, for dealing with ML and TF reflecting the current statutory and regulatory requirements*”.

- Paragraph 11, sub-paragraph (viii), the following sub-paragraph (ix) & (x) shall be inserted "*(ix) Every registered intermediary shall register the details of a client, in case of client being a non-profit organisation, on the DARPAN Portal of NITI Aayog, if not already registered, and maintain such registration records for a period of five years after the business relationship between a client and the registered intermediary has ended or the account has been closed, whichever is later.*

  (x) Where registered intermediary is suspicious that transactions relate to money laundering or terrorist financing, and reasonably believes that performing the CDD process will tip-off the client, the registered intermediary shall not pursue the CDD process, and shall instead file a STR with FIU-IND."

To read the Circular in Detail please click here.

4. **SEBI vide Circular dated June 16, 2023 asks Online Bond Platform Providers to adhere provisions of regulation 51A of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021.**

- To control the Online Bond Platforms ("OBPs") SEBI defined OBP under Regulation 51Aof SEBI (Issue and Listing of Non-Convertible Securities) Regulations,2021(NCS Regulations).

- SEBI Circular SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2022/154 dated November 14, 2022 ('OBP Circular') provides for the registration and regulatory framework for OBPs.

- Considering the applicability of NCS Regulations on OBPs SEBI has made the following observations:

  - Certain Online Bond Platform Providers continue to offer products other than listed debt securities and debt securities proposed to be listed through a public offering on their Online Bond platform;

  - Certain Online Bond Platform Providers are offering unlisted bonds/other products on a separate platform/website and have not divested of such offerings in terms of clause 5.2 of the OBP circular; and

  - Certain Online Bond Platform Providers have a link on the online bond platform/website to another platform/website for transacting in unlisted bonds/ other products.

- Considering the observations made by SEBI, this Circular bring restrictions and limitations on the products offered on an OBP.

- This Circular shall come in force with immediate effect.

To read the Circular in detail, please click here.

5. **SEBI issued Master Circular dated June 15, 2023 for Investment Advisors.**

- SEBI has from time to time issued Circulars to facilitate the stakeholders to have easy access to all the Circulars at one place the Master Circular has been issued having a compilation of all the Circulars in Appendix.

- The Master Circular contains the following Circulars:

  - Guidelines for Investment Advisers;
  - Measures to strengthen the conduct of investment advisers;
  - Administration and supervision of investment advisers;
  - Circulars related to technology; Investor complaints & miscellaneous;

To read the Circular in detail, please click here.

6. **SEBI vide Circular dated June 13, 2023 issued Corrigendum to Circular on Participation of Mutual funds in repo transactions on Corporate Debt Securities dated June 8, 2023.**

- Referring SEBI Circular SEBI/HO/IMD/IMD PoD-2/P/CIR/2023/85 dated June 8, 2023 on "*Circular on Participation of Mutual funds in repo transactions on Corporate Debt Securities*".

- Clause 1 of the abovementioned circular shall be replaced as follows: "*Para 12.18 of SEBI Master Circular on Mutual Funds dated May 19, 2023 allows Mutual funds to participate in repos in corporate bond securities.*"

To read the Circular in detail, please click here.

7. **SEBI vide Circular dated June 14, 2023 amended and issued SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023.**

- SEBI vide this Circular amended the following regulation of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

- Summary of few amendments made by SEBI are below:

  - Insertion of new Regulation 2 Sub Regulation (1) (ra) which defined "Mainstream Media".;

  - Insertion of new regulation 6 (1A) which requires vacancy of a Compliance Officer to be filled by the listed entity at earliest but not later than Three Months.;

  - Insertion of Regulation 17 (1D) which required Continuing Director to take shareholders' approval in Annual General meeting at least once in every Five Years.;

  - Insertion of Regulation 26A which is related to "Vacancies in respect of certain Key Managerial Personnel**";**

- Insertion of Regulation 30A which is related to "Disclosure requirements for certain types of agreements binding listed entities";
- Insertion of Regulation 31A which is related to "Special rights to shareholders**".**

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

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MCA

1. **MCA vide notification dated June 14, 2023 notified the exclusion of Corporate Debtor entering into certain transaction from the applicability of Section 14(1) of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016).**

- Section 14(1) of the IBC, 2016 from clause a to d states the list of the actions prohibited when the Corporate Debtor is under Moratorium.

- Vide this notification the said section's applicability has been done with from the Corporate Debtor who enters in any of the following transactions, arrangements or agreements

  - The Production Sharing Contracts, Revenue Sharing Contracts, Exploration Licenses and Mining Leases made under the Oilfields (Regulation and Development) Act, 1948 (53 of 1948) and rules made thereunder

  - any transactions, arrangements or agreements, including Joint Operating Agreement, connected or ancillary to the transactions, arrangements or agreements referred to in clause (i).

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

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ORDERS

NCLAT

1. <u>National Company Law Appellate Tribunal ("NCLAT") upheld the strike off order for non-filing of annual accounts by the Company</u>.

M/s Sanmati Agrizone Private Limited - Appellant

<u>Versus</u>

Registrar of Companies - Respondent No.1

Assessing Officer - Respondent No.2

- The appeal was filed by the Appellant for restoration of the name of the Company in the Register maintained by Registrar of Companies ("ROC"), Mumbai after being aggrieved by the order of National Company Law Tribunal ("NCLT").

Facts of the case are as follows:

- The appellant company was not able to file its financial statements and annual returns with Respondent No. 1 after the financial year ending on 31.03.2016, due to financial instability of the management.
- The appellant company got to know that their name has been strike off by the Respondent no. 1 w.e.f. 08.08.2018 under section 248 of the Companies Act, 2013.
- The appellant contended that the strike off decision was arbitrary and against the principles of natural justice as the Respondent no. 1 has not sent any notice under section 248 of the Companies Act, 2013 to the appellant.
- The appellant filed the appeal before NCLT against the action taken by the Respondent no. 1 and after hearing the parties, NCLT passed the order in favour of Respondent no. 1 which led to filing of this appeal.
- The respondent no. 1 contended that the action taken was legal and justified as the Company was not carrying on any operations for a period of two immediately preceding financial years.

After considering the above facts, NCLAT upheld the order passed by NCLT and the appeal was dismissed.

Critical Analysis:

Sec 248 empowers ROC to strike off name when there is no business carried out by the company for two preceding financial years. The law expressly does not clarify that '*non-filing of accounts for last two financial years should be treated as non-carrying of business operations for those two financial years*. Further, the ROC is obligated under Sec 248 to send notice to the company and provide a chance of being heard. In the present case, it is evident that ROC without sending any notice assumed that no business is being carried out for two preceding financial years and basis which, he stuck off the name. This act is arbitrary and against the principles of natural justice. NCLAT should have considered the right of being heard provision reserved for the company under Sec 248 before upholding the order of NCLT.

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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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