Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 10th 22-23
Week – June 06th to June 10th

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

"Risk more than others think is safe. Dream more than others think is practical."

- Howard Schultz

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 Ministry of Corporate Affairs ("MCA") and Securities and Exchange Board of India ("SEBI"). Reserve Bank of India ("RBI") and orders from National Company Law Appellate Tribunal ("NCLAT").

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

- MCA has amended the Companies (Removal of names of Companies from the Registrar of Companies) Amendment Rules 2016.

- SEBI has issued a Circular modifying Cyber Security and Cyber Resilience Framework of Mutual Funds/ Asset Management Companies (AMCs), Stockbrokers and Depository Participants.

We have prepared a comprehensive summary for quick reference of the aforesaid updates issued during the week of June 06th to June 10th 2022.

Thank you,
Swift team

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REGULATORY UPDATES

MCA

1. **MCA has amended the Companies (Removal of names of Companies from the Registrar of Companies) Amendment Rules 2016.**

- MCA vide Notification dated June 09, 2022 amended the Companies (Removal of names of Companies from Registrar of companies) Amendment Rules 2016 and introduced Companies (Removal of names of Companies from Registrar of companies) Amendment Rules 2022.

- MCA vide these amendment have inserted sub-rule 4(a) after Rule (4) stating that where the Registrar on examining the e-form STK-2 (Application for the Removal of name of the Company with ROC) finds such application defective or any document attached to form is defective or incomplete in any respect, it shall inform to the applicant to remove the defects and re-submit the complete form **within 15 days** from the date of such information, failing which the Registrar shall treat the e-form invalid in the electronic record and shall inform the applicant.

- After resubmission of the e-form, if the Registrar finds that the e-form is incomplete or defective or documents attached therein are defective or incomplete then further time of **15 days** shall be allowed to applicant to resubmit the application.

- The Ministry has further substituted the forms STK-1, Form No. STK-5, Form No. STK-5A in order to give effect to these amendments.

To read the Notification in detail, please click here.

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SEBI

1. **SEBI has issued Circular modifying Cyber Security and Cyber Resilience Framework of Mutual Funds/ Asset Management Companies (AMCs), Stock Brokers and Depository Participants.**

- SEBI vide Circular No. SEBI/HO/IMD/DF2/CIR/P/2019/12 dated January 10, 2019 (hereafter referred as "the circular") prescribed framework for Cyber Security and Cyber Resilience for Mutual Funds / Asset Management Companies (AMCs) and by vide circular SEBI/HO/MIRSD/CIR/PB/2018/147 dated December 03, 2018 for stock brokers and Depository participants.

- SEBI has modified the Circular dated January 10, 2019 and Circular dated December 03, 2018 to have uniformity for identifying and classifying critical assets across the industry for Mutual Funds /AMC, stockbrokers, Depository.

- SEBI has prescribed that Mutual Funds/ AMCs, Stockbrokers and Depository shall identify and classify critical assets based on their sensitivity and criticality for business operations, services and data Management.

- SEBI has also prescribed to adopt "audit the auditor approach" for conducting the Vulnerability Assessment and Penetration Testing (VAPT) of the intermediaries, on section "Vulnerability Assessment and Penetration Testing (VAPT)".

- SEBI has mandated for Mutual Funds/ AMCs to conduct comprehensive cyber audit at least 2 times in a financial year. Along with the cyber audit reports, henceforth, all Mutual Funds/ AMCs are directed to submit a declaration from the Managing Director (MD)/ Chief Executive Officer (CEO) certifying compliance by the Mutual Funds/ AMCs with all SEBI Circulars and advisories related to cyber security from time to time.

- SEBI has mandated for Stock Brokers / Depository Participants to conduct comprehensive cyber audit at least once in a financial year. All Stock Brokers / Depository Participants shall submit with Stock Exchange/Depository declaration from the MD/ CEO/ Partners/ Proprietors certifying compliance by the Stock Brokers / Depository Participants with all SEBI Circulars and advisories related to Cyber security from time to time, along with the Cyber audit report.

- The provisions of the Circular for Mutual Funds/ AMCs shall come into force with effect **from July 15, 2022**.

- The provisions of Circular for stockbrokers and Depositories shall come into force with immediate effect.

To read the General Circular in detail for Mutual Funds /AMC, please click **here**

To read the General Circular in detail for stock brokers/Depository, please click **here**

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RBI

1. RBI issues Notification for Discontinuation of Return under Foreign Exchange Management Act, 1999

- RBI vide Circular A.P. (DIR Series) Circular No. 05 dated June 09, 2022 notified the discontinuation of Returns under Foreign Exchange Management Act 1999.

- RBI vide Circular (A.P. (DIR series) Circular No 26, dated February 18, 2022) provided Authorised Persons about the discontinuation of returns for" Details of guarantee availed and invoked from non-resident entities" to be filed under Master Direction – External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019 and Master Direction – Reporting under Foreign Exchange Management Act 1999 dated January 01, 2016 as amended from time to time.

- RBI vide Circular A.P. (DIR Series) Circular No. 05 dated June 09, 2022 has notified that Statement for reporting of non-resident guarantees issued and invoked in respect of fund and non-fund based facilities between two person's resident in India shall now be discontinued with effect from the quarter ending June 2022.

To read the Notification in detail, please click here.

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ORDERS

NCLAT

1. NCLAT set aside the relief granted by NCLT, Chennai on grounds of Principles of Natural Justice.

- According to the Learned Senior Counsel for the Appellant, the 'impugned order' dated 23.02.2022 in was passed by the National Company Law Tribunal, Division Bench II, Chennai in granting relief a) appointing an independent forensic auditor to conduct the forensic audit on and submit report to tribunal b) direction was issued by the 'Tribunal' that the Respondent Company shall not conduct Statutory Meetings. In this regard the Learned Senior Counsel for the Appellant submits that the aforesaid order is not valid, in the eye of Law, because no tangible / substantial reasons were assigned by the 'Tribunal'.

- The Appellants Counsel took the tribunal the relevant pages of the 'Appeal Paper Book' in the instant Company Appeal and stated that the relief were passed in a non-speaking manner, bereft of reasons, being assigned thereto. On this simple ground alone, the 'Tribunal', considered that the said order as mentioned 'supra' suffers from 'legal infirmity', which cannot stand all 'moments scrutiny' in law. It must be borne in mind that 'Reasons' found in an order are the 'Heart' and 'Soul' of any 'Order' passed by the 'Tribunal' in a given case and that is the essence of 'Fair Play' action. If the 'Tribunal' / 'Court' of Law passes an 'Order' at least with some kind of reasons being assigned therein and not arriving at a conclusion, then it will enable the 'Superior Forum' to examine the 'Validity' and 'Legality' of the 'Order' passed by it in a 'qualitative' and 'quantitative' manner. The principles of 'Natural Justice' are not the edicts of a 'Statute'. It is to be remembered that absence of furnishing reasons will give an individual a sense of feeling of 'injustice', whether it be an 'Administrative' / 'Judicial' / 'Quasi-Judicial Forum' which passes it as opined by this 'Tribunal'.

- Basis the detailed facts of the impugned order the Appellate Tribunal, without traversing upon the merits of the matter, set aside the same and allowed the instant Company Appeal in furtherance of substantial cause of justice. Whereas relief as provided in relation to forensic audit remits back the matter to the National Company Law Tribunal, Division Bench II, Chennai.

To read the order in detail, please click here

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+91 22 6669 5000

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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.

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