Swift e-Bulletin
Edition 11th 22-23
Week – June 13th to June 17th

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

"Always deliver more than expected"

– Larry Page.

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 Board of India ("SEBI") and orders passed by the SEBI, and High Court.

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

- ❖ **MCA vide notification dated June 10, 2022 amended the Companies (Appointment and Qualification of Directors) Rules 2014**

- ❖ **SEBI vide circular dated June 15, 2022 issued guidelines on Nomination for mutual fund unit holders.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of June 13th to June 17th, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

MCA

1. **MCA vide notification dated June 10, 2022 amended the Companies (Appointment and Qualification of Directors) Rules 2014**

- MCA vide this amendment inserted Sub Rule 5 in Rule 6 of Appointment and Qualification of Directors) Rules, 2014.

- This amendment sets out the procedure for restoration of the name in data bank of the Independent Director after the removal of his/her name from the data bank.

- Brief summary of the procedure to be followed for restoration of name by Independent Directors is as follows: -

    - The affected person whose name is removed shall apply for restoration of his name on payment of fees of INR 1000 (One Thousand rupees).

    - On receipt of aforesaid application, the institute shall allow such restoration subject to following conditions as follows: -

        - The name shall be shown in separate restored category for a period of one year from the date of restoration within which he shall be required to pass the online proficiency self-assessment test and thereafter his name shall be included in the databank, only, if he passes the said online proficiency self-assessment test

        - In such case, the fees paid by him at the time of initial registration shall continue to be valid for the period for which the same was initially paid

        - In case he fails to pass the online proficiency self-assessment test within one year from the date of restoration, his name shall be removed from the data bank and he shall be required to apply afresh under sub-rule (1) for inclusion of his name in the databank

To read the notification in detail, please click here.

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SEBI

1. SEBI vide circular dated June 15th, 2022 issued guidelines on Nomination for mutual fund unit holders.

- In order to bring uniformity in practices across all constituents in securities market, the following is decided in case of nomination for eligible Mutual Fund Unit Holders:

- Investors subscribing to mutual fund units on or after August 1, 2022, shall have the choice of:

  - Providing nomination in the format specified in fourth schedule of SEBI (Mutual Funds) Regulations, 1996 (or)

  - Opting out of nomination through a signed Declaration form as provided in Annexure to this circular.

- Asset Management Companies **("AMC")** shall provide an option to the unit holder(s) to submit either the nomination form or the declaration form for opting out of nomination in physical or online as per the choice of the unit holder(s). In case of physical option, the forms shall carry the wet signature of all the unit holder(s) and in case of online option, the forms shall be using e-Sign facility recognized under Information Technology Act, 2000, instead of wet signature(s) of all the unit holder(s).

- All AMCs shall ensure that adequate systems are in place for providing the e- Sign facility and take all necessary steps to maintain confidentiality and safety of client records.

- All the AMCs are advised to set deadline as March 31, 2023 for nomination /opting out of nomination for all the existing individual unit holder(s) holding mutual fund units either solely or jointly, failing which the folios shall be frozen for debits.

To read the circular in detail, please click here.

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JUDGEMENTS AND ORDERS

SEBI

1. **In the matter of Tirupati Fincorp Limited, the Adjudication proceedings by SEBI against the Noticee was disposed of.**

- Securities and Exchange Board of India ("**SEBI**") initiated adjudication proceedings against Mr. Nilesh J Dhamecha, Partner of KPND & Co ('**Noticee**') for alleged violation of the Regulation of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred as '**PFUTP Regulations**') in the aforesaid matter.

- In this regard, SEBI issued Show Cause Notice (hereinafter referred as '**SCN'**) to Noticee for abovementioned violations. On receipt of SCN, Noticee made necessary submissions stating that he is an independent auditor and have no association with Tirupati Fincorp Ltd (hereinafter referred as '**TFL'**) in any manner and his engagement was only for the limited purpose of providing the certificate. He also stated that the SCN doesn't make any reference that Noticee has induced a person to deal in securities.

- Noticee further made submission that the charges referred in SCN may be professional lapse while conducting audit and any action taken shall be by ICAI and not by SEBI as SEBI lacks inherent jurisdiction to inquire into the conduct of a Chartered Accountant.

- On consideration of various submissions, evidences and findings, AO found that the TFL had not utilized the proceeds of preferential issue for the purposes approved by the shareholders but the Noticee had issued certificate with a contradictory statement that there was no misutilization of funds raised under preferential basis. Further there was noncompliance with "Guidance Note on Audit Reports and Certificates for Special Purposes" and few instances on due diligence violations too.

- Basis various observations mentioned above, AO noted that the act of Noticee in issuance of Certificate does not fall under the definition of fraud under Regulation 2(1)(c) of PFUTP Regulations and the Adjudication proceedings against the Noticee i.e. Mr. Nilesh J Dhamecha initiated vide SCN dated September 29, 2021, stands disposed of without imposition of any penalty.

To read the order in detail, please click here.

HIGH COURT

1. **Delhi high court disposed of the petition by not expressing any opinion on the merits of the case given by the trial court.**

Phenomenon Agents Ltd. & ANR.	Petitioners
Powereye Electronics & ANR.	Respondents

- Present petition was filed challenging the order was related to:
  "Fresh suit under Trademark and Copyright Act for permanent injunction and passing off etc. was received on 04.06.2022 when presiding officer was on training and hence the matter was adjourned for today. It be checked and registered.

- *Put up for consideration of all applications on 27.07.2022."*

- The Delhi High was of the view that, it does not find any reason to interfere in the order as the Trial Court has not adjudicated upon the rights of the parties and has only adjourned the matter for consideration. There was no interference called for in the challenged order.

- Since the Petitioners have filed applications under Order 39 Rules 1 and 2 CPC seeking interim injunction and appointment of a Local Commissioner, it was held that the petitioner submits that it would suffice if the Trial Court be directed to take up the matter at an early date. The Delhi High Court had found merit in the submission made by the petitioner and the Trial Court was requested to take up the matter for consideration.

- The Delhi High Court was clear on above and hence not expressed any opinion on the merits of the case and accordingly the present petition was disposed off.

To read the order 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).

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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