Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 13th 22-23
Week – June 27th to July 01st

Quote for the week:

"Either you step forward into growth or step back into safety"

– Abraham Maslow.

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"), International Financial Services Centers Authority ("IFSCA") and critical judgements/orders passed by various authorities like NCLAT & SEBI.

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

- **MCA vide Circular dated June 29, 2022 extended the timeline for filing LLP Form 11 and relaxing additional fee on the same.**

- **IFSCA vide Circular dated June 28th, 2022 states Broker Dealers to be refunded their deposits on surrender of membership.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of June 27th to July 01st, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

MCA

1. **MCA vide Circular dated June 29, 2022 extended the timeline for filing LLP FORM 11 and relaxing additional fee on the same.**

- MCA vide the Circular dated 29th June, 2022 extended the due date for filing e-Form 11 (Annual Return of LLPs) for Financial Year 2021-22 up to July 15, 2022 which was previously dated June 30, 2022.

- Vide this Circular MCA also waived off of the Additional Fees applicable on the late filing of the form till July 15, 2022.

To read the notification in detail, please click here.

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SEBI

1. **SEBI vide Circular dated June 30, 2022 modified the framework of Cyber Security and Cyber Resilience for Stock Brokers and Depository Participants.**

- SEBI vide Circular dated June 30, 2022 modified the Cyber security framework; where in para 52 of Annexure 1 of previous SEBI Circular dated December 03, 2018 was partially modified.

- The summary of modified para 52 as mentioned above is as follows:

  - All Cyber-attacks, threats, cyber-incidents and breaches ("**The Incident**") experienced by Stock Brokers / Depositories Participants ("**The Entities**") shall be reported to Stock Exchanges/ Depositories & SEBI ("**The Authorities**") **within 6 hours** of identifying such incidents or being brought to notice about such incidents.
  - The incident shall also be reported to Indian Computer Emergency Response team (CERT-In) in accordance with the guidelines issued by CERT-In from time to time.
  - Additionally, the authorities, whose systems have been identified as "Protected system" by National Critical Information Infrastructure Protection Centre (NCIIPC) shall also report the incident to NCIIPC.
  - The quarterly reports containing information on the incident experienced by the entities and measures taken to mitigate vulnerabilities, threats and attacks including information on bugs / vulnerabilities, threats that may be useful for other entities and the authorities shall be submitted to Stock Exchanges / Depositories **within 15 days from the quarter ended June, September, December and March of every year**. The above information shall be shared to SEBI through the dedicated e-mail id: sbdp-cyberincidents@sebi.gov.in

- SEBI also mandates Stock exchanges and Depositories to amend the bye-laws and rules in order to better implement the Circular along with educating its members and participants about the same.

To read the Circular in detail, please click here.

2. **SEBI Issues Circular extending the timeline for Execution of 'Demat Debit and Pledge Instruction'("DDPI") for transfer of securities towards deliveries / settlement obligations and pledging / re-pledging of securities'.**

- SEBI vide Circular no. SEBI/HO/MIRSD/DoP/P/CIR/2022/44 dated April 04, 2022 issued guidelines regarding execution of 'Demat Debit and Pledge Instruction' (DDPI) for transfer of securities towards deliveries / settlement obligations and pledging / re-pledging of securities.

- In view of the representation received from Depositories and that the changes to the systems are still under process, SEBI decided to extend the implementation date of the aforesaid Circular to September 01, 2022.

To read the Circular in detail, please click here.

3. **SEBI Vide Circular dated June 28, 2022 amended the previous guidelines issued on Adjustment in derivative contracts for dividend announcements.**

- SEBI vide Circulars SMDRP/DC/CIR-8/01 dated June 21, 2001, SMDRP/DC/CIR-15/02 dated December 18, 2002and CIR/MRD/DoP-1/P/00108/2018dated July 05, 2018, laid down a framework for adjustment in derivative contracts (single stock options and futures) post dividend announcements.

- SEBI on receipt of representations from various stakeholders reviewed the framework for adjustment in derivative contracts for dividend announcements.

- Considering and discussing the same with Secondary Market Advisory Committee (SMAC) of SEBI it was decided that the adjustment in derivative contracts shall be carried out in cases where dividends declared are at or above 2% of the market value of underlying stock.

To read the Circular in detail, please click here.

4. **SEBI vide Circular dated June 30, 2022 partially modified the forms for "Disclosure of holding of specified securities and Holding of specified securities in dematerialized form"**

- SEBI in the interest of providing further clarity and transparency in the disclosure of shareholding pattern to the investors in the securities market, partially modified the forms required to comply with the disclosure requirements under Regulation 31 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations").

- These forms were prescribed Vide Circular No. CIR/CFD/CMD/13/2015 dated November 30, 2015.

- Summary of Major changes made by SEBI to the above mentioned Circular are as follows:

    - Clause 2(d) of the Circular has been amended as under:
        - In the disclosure of public shareholding, names of the shareholders holding 1% or more than 1% of shares of the listed entity is to be disclosed.
        - Names of the shareholders who are persons acting in concert, if available, shall be disclosed separately.

    - The following formats specified in Clause 5 of the Circular have been modified:
        - Table III -Statement showing shareholding pattern of the Public shareholder.
        - Table IV -Statement showing shareholding pattern of the Non Promoter-Non Public shareholder.

To read the Circular in detail, please click here.

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IFSCA

1. **IFSCA vide Circular dated June 28th, 2022 states Broker Dealers to be refunded their deposits on surrender of membership.**

- IFSCA post representation by the market participants; through its Circular dated June 28th, 2022 mandates that the brokers be given back their security deposits.

- This Circular states 2 criteria for the release of the security deposits by the stock exchanges -

  - After 12 months from the approval of the surrender of Broker's registration when the broker deals in the market on behalf of the clients.

  - After 6 months from the approval of surrender of registration if the broker in past 3 years is engaged in the proprietary trading.

To read the Circular in detail, please click here.

2. **IFSCA Circular on committees on Market Infrastructure Institutions.**

- IFSCA vide Circular dated June 28th, 2022 lists out the composition, directions and the meetings of the committees as is listed in the MII Regulations, 2021.

- The annexure given listed out the composition that is committee specific however, this Circular mandates the quorum for all the committees except for the Investor Grievance Redressal Committee (IGRC) and Advisory Committee

  - The number of Public Interest Directors (PID) shall not be less than other participants of the committee (members).
  - PID will be the chairperson of the committee; who will have the casting vote.
  - The resolution passed will be valid only when the votes by PID are more than other members of the committee.
  - The company can invite MDs and other KMPs as an invitee in the committee however, they will not have any right to vote.

- The Circular lists out the directions that need to be adhered by the meeting one of which is if the minimum number of PIDs are not present then induction of the requisite numbers of PIDs should be done.

- The PIDs are required to meet independently every 6 months to review the status of compliance as per IFSCA norms and it is mandatory for all the PIDs to be present in all the PID meetings.

- The MII is required to frame the policies regarding the independent persons with adequate knowledge to form part of the committee stipulating thereunder their tenure.

- The MIIs are required to make every endeavor to put into implementation this Circular along with submitting to the IFSCA its implementation in a Monthly Development Report (MDR).

To read the Circular in detail, please click here.

3. IFSCA issues Circular on the Angel Investor under IFSCA (Fund Management) Regulations, 2022.

- International Financial Services Centers Authority (Authority) vide Circular dated July 01, 2022 specified the framework and working for Angel Schemes launched by the Fund Management Entities (“**FMEs**”) authorised or registered under IFSCA (Fund Management) Regulations, 2022

- In recognition of the crucial role played by angel investors in nurturing entrepreneurship by providing the much-needed early-stage financing to start-ups, the Authority hereby specified IFSCA (Fund Management) Regulations, 2022 (“**Regulation**”) for Angel Funds.

- This regulation regulates the Angel funds in the following aspects:
  - Definitions.
  - Permissible Investments.
  - Investment Approval & Methodology.
  - Filing of Placement Memorandum and subsequent filings
  - Minimum Corpus.
  - Contribution by FME.
  - Participation in subsequent investment rounds Etc.

To read the Circular in detail, please click here.

4. IFSCA vide Press Release dated July 01, 2022 details out the Regulatory Framework on investments to be made in the startups by the Angel Funds.

- IFSCA vide the said press release states that Angel Fund is the driving force to bridge the gap between the Angel Funds and the star ups requiring the funding in their early stage.

- The Fund Management Entity (FME) shall launch the scheme pursuant to the filing of the placement memorandum.

- The investors of Angel Funds will be the ones at least contributing USD 40,000 over a span of 5 years who will further invest the sums received from investors into startups and other regulated angel schemes.

- The investment cap on the Angel fund is USD 15,00,000 however they are allowed to invest in further rounds of fund raising.

To read the Circular in detail, please click here.

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SEBI

1. **In the matter of Bharti Infratel Ltd (now known as Indus Towers Limited). SEBI imposed a penalty of INR.1,00,000/- on ("Noticee") for violation of provisions of SEBI (Share Based Employee Benefits) Regulations, 2014 ("SBEB Regulations").**

- SEBI received application letter October 23, 2019 that the Employee Stock Option Trust **("ESOP Trust")** created by Noticee was having a surplus of 5,32,862 shares of the Company, which could not be appropriated by them till March 31, 2017.

- Basis which SEBI carried out examination and issued Show Cause Notice **("SCN")** by alleging that Noticee has violated the provisions of Regulation 3(12) of the SBEB Regulations by, prima facie, not appropriating the excess 5,32,862 shares of the Company within the stipulated timeline viz. by March 31, 2017. Further stated that the excess shares were without backing of options since FY 2015-16 and such shares should have been appropriated by the end of subsequent financial year, viz. by March 31, 2017. Reference were made to the provisions of Regulation 3(15) of the SBEB Regulations which prescribes the sale of such unappropriated inventory of shares in the secondary market.

- Pursuant to above, Noticee filed the written replies to SCN as submission to above allegations and further was provided with an opportunity of personal hearing to make additional submissions to the allegation made against the Noticee in this matter.

- Finally, adjudicating officer **("AO")** considered all the facts, circumstances and violation made by the Noticee, passed an order by imposing a monetary penalty of INR.1,00,000/- (Indian Rupees One Lakh only) under Section 15HB of the SEBI Act on the Noticee for violation of provisions of Regulation 3(12) of the SBEB Regulations.

To read the order in detail, please click here.

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NCLT

1. **NCLAT retain the stay order passed by Adjudicating authority and disposed the appeal.**

- As per Appellant / Liquidator, the Appellant had a good prima facie case on merits, in view of the fact that the Impugned Order passed by the (National Company Law Tribunal, Division Bench – II, Chennai) **('Adjudicating Authority'),** was without due consideration of the relevant material facts and against the 'objectives' of the Insolvency & Bankruptcy Code, 2016. The Liquidator pointed out that the Adjudicating Authority has not taken into consideration the Hon'ble High Court of Orissa's 'Order', at the time of passing the 'Interim Stay', which resulted in 'jeopardizing' the Liquidation Process. The Liquidator submitted that the Impugned provided for stay taking into account of the Liquidator's interest to prevent an 'aberration of Justice' and in furtherance of substantial cause of Justice.

- The Learned Senior Counsel appearing for the Respondent Nos.1 and 2 submitted that the Liquidator was directed not to interfere with any of the 'Assets' of the Corporate Debtor, till disposal and further in the Interim Order passed by the Adjudicating Authority the 12th Respondent was restrained from proceeding with lifting any kind of 'machinery' or 'scrap' till the disposal of the present Application and the said order is a fair, just, valid and a balanced one, based on the fact circumstances of the Case. Moreover, if the Interim Order passed by the Adjudicating Authority is vacated by the Tribunal then, it will be against the interest of the Corporate Debtor.

- Basis the detailed facts of present by counsel's both parties the Tribunal ordered that order passed by Adjudicating Authority shall remain stay and appeal was disposed.

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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