Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 14th 22-23
Week – July 04 to July 08

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

"If people like you, they'll listen to you, but if they trust you, they'll do business with you."
– Zig Ziglar.

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**"), Reserve Bank of India ("**RBI**"), 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:

- **SEBI vide Circular dated July 04, 2022 modified the Investor Grievance Redressal Mechanism and thereby amended its Circular dated 23 February, 2017.**

- **MCA vide Notification released on July 05, 2022 amended the Companies (Removal of Names of Companies from Registrar of Companies) Rules.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of July 04,2022 to July 08, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

MCA

1. **MCA vide Notification released on July 05, 2022 amended the Companies (Removal of Names of Companies from Registrar of Companies) Rules.**

- MCA vide this Notification, after sub rule 3 of Rule 4 of Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 a new sub rule 4 is inserted which is summarized below:

  - In the new sub rule 4 Clause 'a' registrar is allowed to give additional 15 days from date of such information to rectify and resubmit if there is any defect in the Form STK-2 or any document annexed to the Form or complete the Form STK-2 or any document annexed to it.
  - In the new sub rule 4 clause 'b' where after the re-submission of Form STK-2 or document annexed to such form registrar may grant additional 15 days to remove any defect or complete the form or document annexed to.
  - In the new sub rule 4 clause 'c' any re-submission of the application in Form STK-2 made prior to the commencement of the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022 shall not be counted for the purposes of reckoning the maximum number of re-submissions of such Form.

- Accordingly, the Forms SKT-1, SKT-5 and SKT-5A have been substituted vide this Notification.

  To read the Notification in detail, please click here.

2. **MCA vide Notification released on July 05, 2022 amended the Companies (Incorporation) Rules.**

- MCA vide this Notification amended the rules and substituted the Form INC-9 and the format to the same has been given in the Notification.

- MCA in this Notification has inserted the below quoted declaration in Form INC-32 (SPICe+) Part B:

  "I, on behalf of the proposed directors, hereby declare that person seeking appointment is a national of a country which shares a land border with India, necessary security clearance from Ministry of Home Affairs, Government of India shall be attached with the consent."

To read the Notification in detail, please click here.

RBI

1. RBI issued Notification on requirement for obtaining prior approval in case of takeover / acquisition of control of non-bank PSOs and sale / transfer of payment system activity of non-bank PSO.

- RBI vide Notification dated July 04, 2022 lists out the operations for which prior RBI approval is required.

- This Notification mandates the requirement of obtaining prior approval w,r.t to takeover/acquisition of non-Bank PSOs which does not lead to change in management/directors as also sale/transfer of payment system activity of non-Bank PSOs to an unauthorized entity.

- The non-Bank PSOs are mandatorily required to inform within 15 calendar days to RBI in the following cases

  - Change in the management/directors

  - Sale/Transfer of payment activity to an entity authorized for undertaking similar activity.

- ***The said Notification shall become effective from immediate effect.***

- The Annexure -1 to the said Notification details out the directions to be followed to effectively put into practice this Notification.

To read the Notification in detail, please click here.

2. RBI vide its Notification dated July 07, 2022 notified the 'Fully accessible Route' for Investment by non-residents in Government Securities to Foreign Portfolio Investors ("FPIs").

- RBI issued press release on "Liberalization of Forex Flows" dated July 06, 2022 regarding the inclusion of additional "specified Securities" under Fully Accessible Route ("FAR") for investments in Government Securities by nonresidents.

- The Reserve Bank introduced the FAR in pursuance of the announcement made in the Union Budget 2020-21 that certain specified categories of Central Government securities would be opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well.

- The RBI further decided to designate two securities as well i.e 7.10% GS 2029 and 7.54% GS 2036 and all new issuances of Government securities of 7-year and 14-year tenors as 'specified securities' under the FAR. Accordingly, the securities will, henceforth, be eligible for investment under the FAR.

  To read the Notification in detail, please click here.

3. **RBI vide Notification dated July 07, 2022 notified the regulatory relaxation for the authorised dealer category-1 medium term framework for Foreign Portfolio Investors ("FPIs").**

- RBI vide Notification dated July 07, 2022 issued relaxations for Investment by FPI in Debt - Relaxations

- RBI further stated that short-term investments by an FPI in government securities (Central Government securities, including Treasury Bills and State Development Loans) and corporate bonds shall not exceed 30% of the total investment of that FPI in any category. It has been decided that investments by FPIs in government securities and corporate bonds made between July 08, 2022 and October 31, 2022 (both dates included) shall be exempted from the limit on short-term investments till maturity or sale of such investments.

- RBI has also allowed FPIs to invest in commercial papers and non-convertible debentures with an original maturity of up to one year, during the period between July 08, 2022 and October 31, 2022 (both dates included).

- *The said Notification shall become effective from immediate effec*t.

To read the Notification in detail, please click here.

SEBI

1. **SEBI vide Circular dated July 04, 2022 amended Circular no. SEBI/HO/DMS/CIR/P/2017/15 dated February 23, 2017 relating to investor grievance redressal mechanism.**

- SEBI vide Circular dated July 04, 2022 extended the existing concept of investor grievance redressal Platform popularly known as the SCORES and asked all recognized stock exchanges including commodity derivatives exchanges / depositories to implement an in house online based complaint redressal mechanism which will facilitate investors to file complaints and escalate complaints for redressal through Grievance Redressal Committee ("GRC"), arbitration, appellate arbitration etc. in accordance with their respective byelaws, rules and regulations..

- The above redressal mechanism shall be implemented ***within 6 months from the issuance of this Circular.*** The salient features of the system are enclosed as Annexure to the Circular.

- SEBI has also decided to implement hybrid mode of conducting GRC and arbitration / appellate arbitration and asked the stock exchanges to continue with the hybrid mode (i.e., online and offline) of conducting GRC and arbitration / appellate arbitration process. The depositories shall follow the hybrid mode (i.e. online and offline) of conducting GRC and arbitration / appellate arbitration process.

- To speed up the grievance redressal mechanism clause 1.J.(iii) of SEBI Circular no. SEBI/HO/DMS/CIR/P/2017/15 dated February 23, 2017 stands replaced as under:

  "1.J(iii) A client, who has a claim / counter claim up to Rs.20 lakhs (Rs. Twenty lakh) and files arbitration reference, will be exempted from payment of the fees specified in Clause 1.J.(i)."

To read the Circular in detail, please click here.

2. **SEBI vide Circulars dated July 05, 2022 and July 06, 2022 modified the Cyber Security and Cyber resilience framework of KYC Registration Agencies (KRAs) and Qualified Registrars to an Issue and Share Transfer Agents ("QRTAs").**

- SEBI vide Circular dated July 05, 2022 modified the Cyber Security and Cyber Resilience Framework of KRAs as mandated by it vide Circulars 15th October, 2019 and 30th May, 2022 and QRTAs, vide Circulars dated 08th September, 2017, 15th October, 2019 and 27th May, 2022.

- The 51st Paragraph of the Circulars dated 15 October, 2019 and 08 September, 2017; respectively has been modified to be read as follows

  '*All Cyber-attacks, threats, cyber-incidents and breaches experienced by KRAs shall be reported to SEBI within 6 hours of noticing / detecting such incidents or being brought to notice about such incidents.*"

- Further such incidents shall also be reported to Indian Computer Emergency Response team (CERT-In) in a timely manner. If the said incident is with respect to the KRAs/ QRTAs that are identified as "Protected System" by National Critical Information Infrastructure Protection Centre (NCIIPC) then the said incident needs to be reported to them too.

- KRAs/QRTAs are required to ***submit a quarterly report within 15 days from the end of each quarter*** specifying the incidents of Cyber Attacks faced and the mitigation strategy resorted to; which will be fruitful for other KRAs/QRTAs as a helpful measure in case they face any incidents alike.

- The report shall be mailed to kra@sebi.gov.in / rta@sebi.gov.in and the format for the same is mentioned in the annexure to the Circular.

To read the Circular in detail relating to KRAs, please click here.
To read the Circular in detail relating to QRTAs, please click here.

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JUDGEMENTS AND ORDERS

HIGH COURT

1. Petition filed by Ircon International Limited was dismissed as barred by limitation.

Ircon International Limited	Petitioner
Reacon Engineers (India) Private Limited	Respondent

Date of Judgement: July 04, 2022

- The present petition is being filed by Ircon International Limited, being the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the arbitral award delivered by the Arbitral Tribunal, wherein the it was rendered in the context of the disputes that has arisen between the parties in connection to an agreement.

- However, the present petition was opposed by Reacon Engineers (India) Private Limited, being the respondent, on the ground that it is barred by limitation, stating that the petition has been filed after the expiry of a period of three months from the date of receipt of the challenged award. No application was been filed seeking condonation of delay and thereafter the respondent submitted that the petition initially filed was not accompanied by the challenged award ie., the *Vakalatnama* and the attested statement of truth. Further the petition as filed was also not signed.

- The petition was dismissed as barred by limitation by the Delhi High Court basis the question that arises from the facts of the case that the only question to be determined is whether the initial filing was valid, as the initial filing was not accompanied by a statement of truth which is mandatorily required.

To read the Judgement, please click here.

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SUPREME COURT

1. **Neilan International Co. Limited transfer petition stands dismissed by the Supreme Court**

Neilan International Co. Limited	Petitioner(s)
Powerica Limited & Ors.	Respondent(s)

Date of Judgement: July 06, 2022

- Present Transfer Petition was filed by Neilan International Co. Limited, being the petitioner, seeking the transfer of petition filed by Powerica Limited, being the respondent, under Section 34 of the Arbitration and Conciliation Act, 1996 before the Commercial Court at Bengaluru, Karnataka.

- The Petitioner argued the principle of exclusive jurisdiction to be applied in this case to avoid multiplicity of views arising out of the same agreement between the same parties and urged this Court to determine the jurisdiction of the cases filed in the subject proceedings particularly when these matters are identical in nature as it would be possible for two courts to arrive at conflicting findings and turning the proceedings to an empty formality. Further, the Petitioner also contended that no prejudice will be caused to the Respondent if proceedings under Section 34 of the Act are heard in Mumbai as its head office is in Mumbai and even the promoter is based there. It was also submitted that the Seat of arbitration was in London and the law of Sudan was to be applied.

- The Supreme Court after hearing both the sides, inferred that the primary issue for consideration before this Court at this juncture is whether the plea of territorial jurisdiction or the lack thereof can be entertained by this Court in its jurisdiction under Section 25 of CPC.

- Transfer petition filed by the Petitioner is bereft of any merit and hence dismissed, basis the main argument raised by the Petitioner is bereft of merit, however, in my considered opinion other arguments are also of no substance warranting to exercise the jurisdiction to transfer the case as prayed for.

To read the Judgement, 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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