Swift e-Bulletin
Edition 17th 22-23
Week – June 25th to July 29th

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

"A business starts small"

– Richard Branson.

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**"), Reserve Bank of India ("**RBI**") and orders passed by the MCA, NCLAT, High Court and Supreme Court.

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

- ❖ MCA vide circular dated July 26, 2022 issued a clarification on spending CSR funds on Har Ghar Tiranga Campaign.

- ❖ SEBI vide circular dated July 27, 2022 issued further extension for certain clauses of amendment the Know Your Client (KYC) Registration Agency Regulations, 2011.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of July 25 to July 29, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

MCA

1. MCA vide Circular dated July 26, 2022 issued a clarification on spending CSR funds on Har Ghar Tiranga Campaign.

- MCA vide the Circular dated July 26, 2022 issued a clarification regarding the entities spending their CSR funds on Har Ghar Tiranga Campaign.

- On July 20, 2022, the Centre amended the Flag Code of India, allowing the national flag to be flown both in the day and at night if it is displayed in the open or on the house of a member of the public. Earlier, the Tricolour could be hoisted only between sunrise and sunset.

- Har Ghar Tiranga is an effort to invoke patriotism into Indians thereby promoting the awareness of the National Flag in line with the said amendment.

- The activities related to the Har Ghar Tiranga Campaign are classified as CSR activities under **item (ii) of schedule VII of The Companies Act, 2013** pertaining to **promotion of education relating to culture**, the following activities will be allowed under this item:
  - Mass production of the Flag
  - Supply of the Flag
  - Outreach & amplification efforts
  - Other related activities.

- The said circular **permits the companies liable to spend on above mentioned activities** in line with the provisions of the CSR and subject to the company (CSR policy) Rules, 2014 as applicable to the company given in the Act and the Rules.

To read the notification in detail, please click here.

2. MCA publishes the CBDT notification dated July 26,2022 on the process of PAN application and allotment for Limited Liability Partnerships (LLPs).

- MCA publishes the CBDT **(Central Board of Direct Taxation)** notification dated July 26, 2022 briefing out the procedure to apply for and get the allotment of PAN for the LLPs through simplified Proforma through Form FiLLiP.

- The Proviso to the Income Tax Rule notified via notification dated February 09, 2017 stated that the application for the allotment of the PAN can be made through the

Common Application Form (CAF) and the concerned authorities will prescribe the format and the classes of persons along with the procedure for its smooth functioning.

- MCA vide notification number G.S.R. 173(E) dated March 03, 2022 notified CAF for incorporation of LLPs (Form FiLLiP).

- Pursuant to the powers bestowed by the CBDT; the Director General laid down the classes, procedure and the forms for PAN.
  - **Form:** Form FiLLiP
  - **Procedure:** PAN application will be filed in FiLLiP form with duly affixed DSC of the supplicant. Post allotment of the LLP Number MCA will forward to the Income Tax Authority the data under its DSC.
  - **Format:** Xml

To read the notification in detail, please click here.

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SEBI

1. **SEBI vide press release dated July 25, 2022 informs the signing of the MoU with Financial Regulatory Commission, Mongolia (FRC).**

- SEBI vide press release dated July 25, 2022 intimates that it has signed the **bilateral MoU** with the FRC in relation to mutual co-operation and technical assistance.

- The said MoU has been signed by the respective Chairman of both the bodies and will foster the **exchange of the technical knowhow** and also strengthen the **cross border co-operation**.

- SEBI has been a party to multiple such MoUs like the Multilateral MoU and the Enhanced Multilateral MoU of International Organization of Securities Commission.

To read the circular in detail, please click here.

2. **SEBI vide circular dated July 27, 2022 issued further extension amending the certain clauses of the Know Your Client (KYC) Registration Agency Regulations, 2011.**

- SEBI vide circular No SEBI/HO/MIRSD/DoP/P/CIR/2022/46 dated April 06, 2022 issued certain guidelines in line with the KYC Registration Agency Regulations.

- However, 2 clauses as mentioned below were to be made applicable from July 01, 2022 viz
    - KYC records of all existing clients (who have used Aadhaar as an OVD) shall be validated within a period of 180 days from July 01, 2022.
    - Commencement of validation of all KYC records (new and existing).

- Subsequently SEBI vide circular No SEBI/HO/MIRSD/DOP/P/CIR/2022/8 dated June 24, 2022 extended the due date till **August 01, 2022.**

- In regard to the said clauses another **extension is granted** vide the circular dated July 27, 2022; which makes it mandatory to adhere to the **norms not later than November 01, 2022**.

To read the circular in detail, please click here.

3. **SEBI vide circular dated July 27, 2022 modified the previous circular issued by it w.r.t. Settlement of Running Accounts of Clients Funds.**

- Pursuant to the circular no MIRSD/SE/Cir-19/2009 dated **December 03, 2009** along with circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated **September 26, 2016**, SEBI issued the Guidelines for the Settlement of running accounts of the clients' **funds and securities**.

- Wherein it was specified that the settlement can be done either on a **monthly or a quarterly basis** as per client's discretion; however, the maximum gap between the same should be **90/30 days** (as per the choice of client viz. Quarterly / Monthly) between two settlements of running account

- Later SEBI vide the circular no CIR/HO/MIRSD/DOP/CIR/P/2019/75 dated June 20, 2019 discontinued the settlement **of the securities** owing to which only **settlement of funds** via the running account is permitted i.e. SEBI Circulars dated **December 03, 2009** & **September 26, 2016** are now applicable only for Funds available in running account.

- SEBI vide circular no SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021 partially modified the afore mentioned circulars and the same circular is further modified and will continue to be applicable vide circular dated July 27, 2022.
  Below mentioned are the modifications:

  - <u>Quarterly settlement</u>: Settlement of the Funds (post consideration of EOD obligations) shall be done on first Friday of every Quarter.
  - <u>Monthly Settlement</u>: Settlement has to be done on first Friday of every month.

  [***Note***: *If First Friday is a trading holiday then on the previous trading day*.]

- The Stock Exchanges shall make every endeavor to put into implementation the said circular(s) and thereby send a Monthly Report setting out the status of the implementation.

To read the circular in detail, please click here.

4. **SEBI issued an operational circular on the Non-Convertible Securities, Securitized Debt Instruments and/ or Commercial Paper with respect to the SEBI (LODR) Regulations, 2015**

- SEBI on July 29, 2022 issued an operational circular on the listing and disclosure obligations w.r.t. Non-convertible Securities, Securitized Debt Instruments and/ or Commercial Paper.

- This circular is a compilation of all the previous circulars on the said topic with changes made thereto in order to facilitate the smooth functioning of the Corporate bond market.

- The circular covers:

  - The formats for filing the Financial Statements and Audit Report for the issuers of Non-Convertible securities (NCS).
  - The disclosures that are needed to be made by the issuers
  - Disclosures relating to the Related Party Transactions.
  - Provisions of non-compliance and so on.

To read the circular in detail, please click here.

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RBI

1. **RBI vide circular dated July 28, 2022 reviewed the timeline for submission of application to seek authorization under the Payment and Settlement Systems Act, 2007.**

- RBI vide circular no DPSS.CO. PD. No.1810/ 02.14.008/2019-20 dated March 17,2020 and CO. DPSS. POLC. No. S33/ 02-14-008/ 2020-2021 dated March 31, 2021; invited applications from online non-bank Payment Aggregators (PAs) (existing as on March 17, 2020) for seeking authorization under the PSS Act ("**Payment and Settlement Systems Act, 2007**").

- RBI observed that some PAs have not met the eligibility criteria like having Net worth of Rs. 15 Cr. by March 31, 2021 if not their application was rejected and they would have to cease their operations **within 6 months'** form rejection of application.

- Considering the disruption caused by the COVID-19 pandemic, and to ensure smooth functioning of the payments ecosystem, it has since been decided to allow another window to all such PAs (existing as on March 17, 2020) to apply to RBI by September 20, 2022 and shall have a **net worth of ₹15 crores as on March 31, 2022**. They shall be permitted to continue their operations till they receive communication from RBI regarding the fate of their application.

- The initial mandate to have **the net worth of Rs. 25 Cr. as on March 31, 2023** still persists.

To read the circular in detail, please click here.

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JUDGEMENTS AND ORDERS

MCA

1. **In the case of M/S Landomus Realty Private Limited MCA imposed on for the use of the designation CEO without being in compliance with the Section 203 of the Companies Act, 2013 ("the Act").**

- In the case of M/S Landomus Realty Private Limited (subsidiary of Landomus Realty Venture Inc.) the Adjudicating Authority imposed a **penalty of INR 1,00,000/-** on the Company along with the officer in default u/s 454 of the Companies Act, 2013 for contravention of Sec 170 of the said Act.

- Reading the Section 170 and Sec 203 of the act, wherein sub-section 2 of section 170 of the act mandates the filing with the RoC the particulars backed by the relevant documents **within 30 days** of the appointment/any change of the KMP (Key Managerial Personnel) and Section 203 of the act says every company as falling in the threshold **to have a whole time KMP**.

- In the course of the inspection carried out against the company it was held that Mr. Sathya Prakash Pradeep Kumar the then Chairman and CEO ("**as designated by the company**") has in that capacity signed the replies with the authority, owing to inspection carried out made it clear that no Board Resolution was passed to appoint him neither Form DIR-12 was filed.

- The company did not fall in the prescribed limit u/s 203 of the said Act, still was penalized since Mr. Sathya Prakash Pradeep Kumar **was designated as CEO** without complying to the requisite provisions needed to use the said designation.

- Thus, the company was declared non-complaint owing to which it was charged a **penalty of INR 50,000** and **the Officer in default** Mr. SathyaPrakash was charged a **penalty of INR 50,000**. The payment should be succeeded by the company filing Form INC-28.

- The company was represented by their Company Secretary, Shri Thirupal K. Gorige who prayed to lower the penalty by presentation of the balance sheet to the court that the company was a small company and the court concluded that the company does not fall in the category of a small company and thereby the penalty imposed cannot be lowered to as been mentioned u/s 446B.

To read the notification in detail, please click here.

NCLAT

1. **NCLAT disposed the appeal on grounds that resolution should be submitted within the timeline prescribed in IBC, 2016**

- This appeal arises from the order passed by National Company Law Tribunal, Indore Bench (Adjudicating Authority) filed by the Appellant seeking consideration of his resolution plan submitted which was rejected. The Appellant's case was of Corporate Insolvency Resolution Process (CIRP) was initiated against the corporate debtor M/s. Sanwaria Consumer Limited. Thereafter, on invitation of Expressions of Interest (EOI) for submitting resolution plan for insolvency resolution of the corporate debtor, the Appellant submitted a resolution plan and it was repeatedly got rejected in the meeting of the Committee of Creditors ('CoC'). Thereafter, the Appellant filed an application before the Adjudicating Authority seeking indulgence for consideration of his revised resolution plan, and the Appellant was permitted to submit the latest revised plan within 3 days to the Resolution Professional, which was to be thereafter considered by the CoC. Consequently, the revised resolution plan got rejected again. Since CIRP period of 330 days was over and application for liquidation is already filed before the Adjudicating Authority. Therefore, the Adjudicating Authority declined to direct the CoC to further consider any resolution plan.

- After hearing from the both parties the honorable NCLAT said looking at the total circumstances of the case, including the views of joint lenders and also at the fact that the CoC did not wish to consider any further revised resolution plan as Appellant had failed to provide required comfort to the lender banks by submitting/revising the resolution plan despite being provided with enough opportunities to do so, we are of the clear opinion that such decision is within the ambit of commercial wisdom of the CoC and find no merit in the appeal and accordingly dismissed it.

To read the order in detail, please click here.

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HIGH COURT

1. **Unicon Engineers files petition seeking execution of an order passed by the Micro & Small Enterprises Facilitation Council, Coimbatore Region.**

M/s. Unicon Engineers	Petitioner
M/s. Jindal Steel and Power Limited	Respondents

Date of Judgement: July 26, 2022

- M/s. Unicon Engineers, being the petitioner is a "small enterprise" within the meaning of the Micro, Small & Medium Enterprises Development Act, 2006 (MSMED Act), has filed the present petition seeking execution of an order passed by the Micro & Small Enterprises Facilitation Council, Coimbatore Region ("the Council"). The proceedings have been filed on the premise that the said order is an arbitral award capable of execution under Section 36 of the Arbitration and Conciliation Act, 1996.

- Work order was issued in favour of the petitioner by the respondent, for erection of pollution control equipment, wherein the value of the work awarded was to the tune of INR 6.47 Crores. However, the claim of the petitioner was that the respondent failed in making timely payment on account of which, a sum of ₹1,76,45,947/- became due from the respondent. The petitioner thereafter proceeded under Section 18 of the MSMED Act by making a complaint before the Council constituted under Section 20 thereof.

- Basis the proceedings of the case, the Delhi High Court was of the view that the present order sought to be executed by the petitioner suffers from the same vice, as held by the Supreme Court in Jharkhand Urja Vikas Nigam Limited case. It was further informed that the petitioner will approach the arbitrator in the pending arbitration proceedings for an amendment of its claims to include the aforesaid amount. In the event the petitioner does so, the learned Arbitral Tribunal may consider the petitioner's request in accordance with law.

To read the complete judgement, please click here.

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SUPREME COURT

1. **To avoid further delay in arbitration, Supreme Court appoints a Sole Arbitrator to adjudicate the dispute between the parties in connection to a contract/agreement.**

M/s. Continental India Private Limit ed	Appellant(s)
General Manager Northern Railway	Respondent (s)

Date of Judgement: July 27, 2022

- M/s. Continental India Private Limited (Appellant) and General Manager Northern Railway (Respondent) had entered into a contract/agreement which contains the arbitration clause. Feeling aggrieved and dissatisfied with the challenged judgement and order passed by the High Court of Judicature at Allahabad in Arbitration Application by which, while allowing the application under Section 11(6) of the Arbitration and Conciliation Act, 1996 filed by the appellant herein – original applicant, the High Court has directed respondent herein to send a fresh panel of four retired officers in terms of clause 64(3)(b) of the General Conditions of Contract.

- As per clause 32 of the agreement, in the event of any question, dispute or difference arising under or in connection with agreement, the same shall be referred to the sole arbitration of a person appointed to be the arbitrator, by the General Manager of the Railway. A request/prayer was made by the appellant herein – original applicant to appoint an arbitrator in terms of clause 32 of the agreement. However, the General Manager/Railway failed to appoint an arbitrator and therefore the appellant – the original applicant filed the application before the High Court under Section 11 (6) of the Act and requested to appoint a Sole Arbitrator.

- The challenged judgement and order passed by the High Court to the extent directing to constitute an Arbitral Tribunal in terms of clause 64(3)(b) of the GCC is unsustainable and deserves to be quashed and set aside. Thereafter, instead of remanding the matter to the High Court and to avoid any further delay, a sole arbitrator to adjudicate and resolve the dispute between the parties was appointed and the present appeal was accordingly allowed.

To read the complete judgement, please click here.

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