Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 18th 22-23
Week – August 1th to August 5th

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

"The only way to do great work is to love what you do"

– Steve Jobs.

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 Reserve Bank of India ("**RBI**"), Securities Board of India ("**SEBI**") and orders passed by the SEBI and IBBI.

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

- **RBI issues notification on Liberalization of External Commercial Borrowings (ECB) Policy dated August 01, 2022.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of August 01 to August 05, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

RBI

1. **RBI issued notification on Liberalization of External Commercial Borrowings (ECB) Policy dated August 01, 2022.**

- RBI vide notification dated August 01, 2022 issued Liberalization norms for the External Commercial Borrowings (ECB) Policy.

- RBI vide **Master Directions** dated March 26, 2022 **Para 2.2** states –

  - The eligible borrowers can raise the ECB upto USD 750 Million or equivalent.
  - If the ECBs are Foreign Currency Denominated, then the liability-equity ratio cannot exceed 7:1.
  - The said ratio is not applicable for ECBs upto USD 5 Million.

- RBI vide notification dated August 01, 2022 brings about the change in the said limit of the ECB.

- The eligible borrowers are now allowed to raise the **ECBs upto USD 1.5 Billion** instead of USD 750 Million, **upto December 31, 2022**.

- increase the all-in-cost ceiling for ECBs, by 100 bps. The enhanced all-in-cost ceiling shall be available only to eligible borrowers of investment grade rating from Indian Credit Rating Agencies (CRAs). Other eligible borrowers may raise ECB within the existing all-in-cost ceiling.

- Further it becomes the duty of the AD Category – I Banks to implement the said changes in the best way possible by bringing it to the knowledge of all the participants.

To read the notification in detail, please click here.

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SEBI

1. **SEBI vide circular dated August 04, 2022 issued guidelines for the debenture trustees and the listed issuer companies on security creation and initial due diligence.**

- SEBI at its meeting held on September 28, 2020 approved changes to the regulatory framework relating to debenture trustees (DTs), enhancing their role and resultant amendments were made to the SEBI (Debenture Trustees) Regulations 1993, SEBI (Listing of Obligations and Disclosure Requirements) Regulations 2015.

- Post receiving the feedback from the market participants on aspects of due diligence and security creation it has been decided that certain aspects of the Circular shall be tweaked

- Accordingly the SEBI issued the said circular on August 04, 2022 that deals with:-

  - Manner of change in security/ creation of additional security/ conversion of unsecured to secured in case of already listed non-convertible debt securities.
  - Encumbrance on securities for issuance of listed debt securities.
  - Due Diligence Certificate in case of Shelf Prospectus/ Memorandum.
  - Empanelment of External Agencies by Debenture Trustee(s).
  - Compliance with SEBI Circulars on 'Security & Covenant Monitoring System'.

- This circular also details out the process of the creation of the security post listing

1.	The Listed Company & Debenture Trustee (DT) needs to enter into an Amended Debenture Trust Agreement pursuant to 2020 Circular provisions.
2.	DT will carry out due diligence for - Change in security - Creation of security - Additional security
3.	Post the initial Due Diligence, the DT will issue the No objection certificate (NOC),
4.	The company pursuant to the NOC issuance create the security and charge in DT's favor. Pursuant to which it needs to register it with the regulators in a period of 30 days.

5.	The Company and the DT will need to enter into a Supplementary Debenture Trust Deed.
6.	The Company needs to submit to the Stock Exchanges and the Depository: - NOC - Supplementary Debenture Trust Deed - Undertaking by the DT that the security has been created and duly registered - Other documents in line with the provisions of SEBI (LODR), 2015
7.	The Depository will assign to the issuer company the ISIN

To read the circular in detail, please click here.

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JUDGEMENTS AND ORDERS

SEBI

1. In the matter of Ejecta Marketing Limited the SEBI imposed total of INR 16,00,000/- on Noticees for violation of provisions of SEBI Act, 1992 regulations.

- Securities and Exchange Board of India ("**SEBI**") received a complaint from M/s. ICICI Securities Limited alleging that SMSs were circulated in recommending the purchase of scrip of Ejecta Marketing Limited ("**Ejecta/Company/ EML**"), during the period December 28, 2017 to February 20, 2018 ("Investigation Period/IP").

- SEBI conducted investigation to ascertain the violations of provisions of Securities and Exchange Board of India Act, 1992 during the period December 28, 2017 to February 20, 2018 by Sandesh Kumar Pandey Director (Noticee -1), Mobonair Wireless Technology (Noticee -2), Abhishek Kumar Pratik (Noticee -3), and Sanjay Bhai Patel (Noticee -4), collectively ("**Noticees**"). The SCN was issued and in the interest of natural justice, an opportunity of personal hearing was granted to all Noticees between April to June 2022. But Noticess neither filed any reply nor availed an opportunity of personal hearing.

- Further, SEBI during the course of investigation observed that the Noticee -2 was SMS aggregator and Noticee-1 was Director of Noticee-2 and on further investigation found that the Mobile Number belongs to Noticee-3. In this regard, additional information's were sought in form of summons and extra timeline was granted to Noticee to reply to summons.

- Basis the documents available on records and since AO received no responses for allegations made form Noticees even after sufficient opportunities was given, AO imposed monetary penalty of **INR. 16,00,000/-** (Indian Rupees Sixteen Lakh) on Noticees, INR. 4,00,000 each for aforesaid violation of provisions of Section11(2)(i) and 11C(3) of SEBI Act,1992 Regulations.

To read the order in detail, please click here.

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IBBI

1. **In the case of Asset Reconstruction Company (India) Limited Vs. Tulip Star Hotels Limited & Ors. [Civil Appeal Nos. 84-85 of 2020] supreme court observed that NCLAT has erred the law in holding that the books of account of a company could not be treated as acknowledgement of liability in respect of debt payable to a Financial Creditor (FC)**

- The Hon'ble Supreme Court in its judgment dated August 01, 2022 while allowing the appeal observed that the NCLAT erred in law in holding that the books of account of a company could not be treated as acknowledgement of liability in respect of debt payable to a Financial Creditor (FC).

- The Hon'ble Court has decided that as the Corporate Debtor (CD) had acknowledged its liabilities in its financial statements from 2008-09 till 2016-17 and the application under Section 7(2) of the IBC was filed on 3rd April 2018, same is well **within the extended period of limitation**.

- During the Proceedings of the case Supreme Court has made following important observations regarding:

  - <u>Objective and interpretation of the Code:</u>
    - The Insolvency Code aims at reviving the Corporate Debtor unable to pay the debts by appointing an RP rather than aiming at liquidation; thus striving towards the continuation of the commercial activities of the CD.
    - The Code keeps all the creditors on an equal footing except those involved in the management/promoter group owing to whose failure of repaying the debts the CD has landed in such a tough spot.
    - It is, therefore, imperative that the provisions of the IBC and the Rules and Regulations framed thereunder **be construed liberally**, in a purposive manner to further the objects of enactment of the statute.
  - <u>Application under section 7</u>
    - The Act when read with the IBBI Rules, 2016 does not specify the bar for filing the documents to the Adjudicating Authority. The time as stipulated u/s 7(4); 14 days for AA to ascertain the existence of default is discretionary in nature.
    - Similarly, the time given to the applicant of 7 days by AA to make good the default is discretionary, AA may entertain the application if the it deems fit.
  - <u>Limitation vis-à-vis IBC</u>
    - Limitation Act, 1963 does not provide for the IIBI application to AA, thus we resort to the residuary Section that stipulates 3 years. The Section 14 of the Limitation Act states the exclusion of the time in case of any pending civil

proceeding while computing the limitation time. Whereas Section 18 talks about acknowledgement of debt in writing; both these sections mutatis mutandis apply to Section 7&9 of the Insolvency Code. If the applicant has acknowledged the existence of the debt within the period of 3 years then the application will not be time barred u/s 7 of Insolvency Code and thus the time period will be further extended by a period of 3 more years.

To read the notification in detail, please click here.

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Call us toll free to explore a topic or let us answer your questions

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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