Swift e-Bulletin
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Week – August 8 to August 12

Quote for the week:

"Everybody is clever, just in their own ways"

– Matt Groening.

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"), IFSCA and orders passed by the IBBI and Supreme Court.

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

- IFSCA vide Circular dated August 5, 2022 issued Standard Operating Procedure for Qualified Jewelers importing gold through India International Bullion Exchange.

- IFSCA vide Press Release dated August 4, 2022 published that IFSCA has become a signatory to the International Organization of Securities Commissions ("IOSCO") MMoU.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of August 08 to August 12, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

RBI

1. RBI vide Circular dated August 11, 2022 notified the Amendments to the Prudential Guidelines on Bilateral Netting of Qualified Financial Contracts

- RBI vide Circular dated August 11, 2022 notified certain clarifications pursuant to the Bilateral Netting Guidelines in line with previous circulars no DOR.CAP.51/21.06.201/2020-21 dated March 30, 2021 and DOR.CAP.REC.No.97/21.06.201/2021-22 dated March 31, 2022.

- The present Circular sets out a clarification with respect to:

  - Foreign exchange contracts (except gold).
  - Sold options.
  - Credit default Swap transactions.

- The said modifications have been duly amended in the annexure.

- The clarifications that the RBI has set out are as follows:

  - The exemption for the foreign exchange contracts is having maturity of upto 14 days is available only to Regional Rural Banks, Local Area Banks and Co-operative Banks calculating the counterparty credit risk under Original Exposure Method without taking the benefit of bilateral netting.

  - Sold Options provided they do not form a part of the netting and margin agreements.

  - Credit Default swap outside of the netting agreement, the exposure is to be capped at the amount of unpaid premium where the bank is the protection seller.

To read the Circular in detail, please click here.

IFSCA

1. **IFSCA vide Circular dated August 5, 2022 issued Standard Operating Procedure for Qualified Jewelers importing gold through India International Bullion Exchange.**

- The Directorate General of Foreign Trade (DGFT), Ministry of Commerce & Industry vide Notification No.49/2015-2020 dated January 05, 2022, had specified that Qualified Jewelers notified by IFSCA shall be permitted to import gold under Indian Trade Clarification based on Harmonized System of Coding {"ITC(HS)"} Codes 71081200 and 71189000, through India International Bullion Exchange ("IIBX").

- Subsequently, IFSCA had issued a Circular 329/IFSCA/DPM/TS/QJ/2021-22/1 dated January 19, 2022 enabling Qualified Jewelers to import gold under ITC(HS) codes 7108, 7113, 7114 and 7118 under Chapter 71 of ITC(HS) through IIBX, subject to terms and conditions.

- This Circular deals with the detailed process to be followed for being notified as a Qualified Jeweler and other conditions as applicable to such Qualified Jeweler.

- Broadly this Circular contains the following:

  - Process for notification of Qualified Jeweler.
  - Process of import of gold by a Qualified Jeweler through IIBX.
    - Mode of participation by Qualified Jeweler on IIBX.
    - Advance remittance for purchase of ("BDR") on IIBX for import of gold.
    - Purchase of BDR for import of gold.
    - Movement of Gold from IFSC for import to India-Domestic Tariff Area.

To read the Circular in detail, please click here.

2. **IFSCA vide Press Release dated August 4, 2022 published that IFSCA has become a signatory to the International Organization of Securities Commissions ("IOSCO") MMoU.**

- IFSCA has signed the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information ("IOSCO MMoU") on August 3, 2022.The IOSCO MMoU represents a common understanding amongst its signatories regarding consultation, cooperation and exchange information for the purpose of regulatory enforcement regarding securities markets.

- IFSCA becoming a signatory to the IOSCO MMoU is a significant milestone. IFSCA will now be able to exchange information with the regulators of securities markets of more than 125 jurisdictions for enforcement purposes and ensuring compliance with the securities laws. Further, it will also play an important role for implementing various cross-border initiatives of IFSC, India with international financial centers.

To read the Press Release in detail, please click here.

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JUDGEMENTS AND ORDERS

IBBI

1. **In the case of Kotak Mahindra Bank Limited Vs. Kew Precision Parts Private Limited & Ors. [Civil Appeal No. 2176 of 2020].**

- The Hon'ble Supreme court ("SC") vide its Order dated August 5, 2022, held that an appeal being the continuation of original proceedings, the provision of section 7(5)(b) of the Code, for intimating the Financial Creditor ("FC") before rejection of a claim, would be attracted.

- <u>Facts of the case:</u> NCLAT in an appeal before it concluded that the debt is barred by the limitation owing to no acknowledgement made within the stipulated time and put an end to the CIRP proceeding without focusing on the applicability of Sec 5 of Limitation Act. During the Proceedings of the case Supreme Court has made following important observations regarding:

  - <u>Distinction between acknowledgement under the Limitation Act and promise under the Contract Act</u>

    - The main essence of the limitation act states that the "acknowledgement of debt" must be within the time of limitation and not the promise to pay. The Contract Act provisions of Sec 25(3) are only attracted when an express promise is made to pay a time barred debt.

  - <u>Application under section 7 of the code</u>

  - The AA needs to give reasons in writing if it did not conclude the existence of the default within the period of 14 days; however, the said period is discretionary. <u>Limitation vis-à-vis Sec 7 of IBC</u>

    - Sec 5 of the Limitation Act states that mere acknowledgement of a debt is the conclusive evidence.

    - The signing by the parties of the written arrangement is enough of a proof to conclude as an acknowledgement in the Court and a fresh period of limitation will commence from the date of the signing such an arrangement.

    - The court can condone the delay under unforeseen circumstances.

  - <u>Inference</u>

- The case thus puts light on the fact that if the if an appeal made w.r.t. the original proceeding then Sec 7(5) provision will get attracted thereby an FC has to be informed about the rejection of an application on grounds of non-acknowledgement of a default, in writing.

- Also we must not turn a blind eye to the power of the Authority to condone the delay in the certain circumstances

- And thus, here an appeal must lie with the FC to rectify any defect made in the application before the Authority.

To read the Order in detail, please click here.

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SUPREME COURT

1. **Appeal filed by Bank of Baroda was allowed by setting aside the interim order_passed by the High Court of Judicature at Allahabad, Lucknow Bench**

Bank of Baroda & ANR	Appellant(s)
M/s. Parasaadilal Tursiram Sheetgrah Private Limited & ORS.	Respondent(s)

Date of Judgement: August 8, 2022

Bank of Baroda files an appeal against an Interlocutory Order of stay passed by the High Court of Judicature at Allahabad, Lucknow Bench pending disposal of a Writ Petition. The first Respondent Company had availed certain credit facilities for which the Directors of the Company gave personal guarantees along with an equitable mortgage of immovable property. As the Company defaulted in repayment of the loan, the Bank issued notice under Section 13(2) of the Act demanding an amount of Rs. 2,34,15,456/- from the Company and its Directors. For non-payment, a notice under Section 13(4) of the Act demanding actual physical possession was also issued.

The Writ Petition filed by the Respondent Company against the order in appeal by the Debt Recovery Appellate Tribunal, wherein by this order the challenge laid to the Sale Certificate issued in favour of the Auction Purchaser under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 20022 was dismissed on the ground of limitation.

Thereafter the Company along with one of its Directors filed a Civil Writ Petition challenging the issuance of the notices under Sections 13(2) and 13(4) of the Act and sought a writ of mandamus restraining the Bank from taking any coercive action for the recovery of the amount.

The Supreme Court on hearing both the parties to the appeal, concluded by allowing the appeal and set aside the impugned interim order passed by the High Court of Judicature at Allahabad, Lucknow Bench 6 and request the High Court to dispose of the Writ Petition expeditiously, preferably within a period of three months from the date of receipt of this order.

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).

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