Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 20th 22-23
Week – August 15th to August 19th

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

"A successful business requires one simple thing: Passion"

– Teresa Collins.

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 and Exchange Board of India ("**SEBI**") and orders passed by the SEBI and Supreme Court.

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

- **MCA vide notification dated August 18, 2022 issued the Companies (Incorporation) Third Amendment Rules, 2022.**

- **SEBI vide circular dated August 17, 2022 details out the guidelines for overseas investments by Alternative Investment Funds (AIFs)/ Venture Capital Funds (VCFs).**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of August 15 to August 19, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

MCA

1. MCA vide notification dated August 18, 2022 issued the Companies (Incorporation) Third amendment rules 2022.

- MCA vide notification dated August 18, 2022 issued the Companies (Incorporation) Third Amendment Rules, 2022 by way of amendment to the existing Companies (Incorporation) Rules 2014.

- Pursuant to the said notification, the registrar based on the information or documents available in the Ministry records shall physically visit at the registered office address of the Company and may cause the physical verification of the registered office in the presence of two (2) independent witnesses of the locality in which the said registered office of the Company is situated.

- The Registrar will carry all the documents as are filled with Ministry in support of the registered office address while carrying out physical verification at the registered office.

- The Registrar shall take photographs of the registered office and prepare the report on the physical verification of the registered office of the Company in the format stated in the notification.

- If Registrar finds that the registered office of the Company is incapable of fulfilling the purpose of receiving and acknowledging the notices, documents , communications then Registrar shall send notice to the Company and all Directors of the Company stating that the name of the company will be removed from registrar and requesting them to send their representations along with the copies of relevant documents if any within the period of thirty (30) days from the date of notice before taking any further action in pursuance of section 248 of the Companies Act 2013.

To read the Circular in detail, please click here.

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SEBI

1. **SEBI vide circular dated August 17, 2022 details out the guidelines for overseas investments by Alternative Investment Funds (AIFs)/ Venture Capital Funds (VCFs)**

- SEBI vide circular dated August 17, 2022 detailed out the guidelines on investments that can be made by AIF/VCFs in the companies incorporated outside India in line with the guidelines issued by RBI & SEBI.

- The AIF/VCF intending to invest shall file an application to SEBI in the format as specified in the annexure A of the said notification for allocation of the limit overseas investment limit.

- AIFs/VCFs shall invest in an overseas investee company, which is incorporated in a country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding(Appendix A Signatories)or a signatory to the bilateral Memorandum of Understanding with SEBI.

- AIFs/VCFs shall not invest in an overseas investee company, which is incorporated in a country identified in the public statement of Financial Action Task Force(FATF).

- If an AIF/VCF liquidates investment made in an overseas investee company previously, the sale proceeds received from such liquidation, to the extent of investment made in the said overseas investee company, shall be available to all AIFs/VCFs (including the selling AIF/VCF) for reinvestment.

- AIFs/VCFs shall furnish the sale/divestment details of the overseas investments to SEBI in the format given at Annexure B till date within three (3) working days of the divestment by way of email to SEBI for updating the overall limit of investment by AIFs/VCFs.

To read the Circular in detail, please click here.

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JUDGEMENTS AND ORDERS

SEBI

In the matter of Titan Company Limited, the SEBI imposed penalty of INR.1,00,000/- on Noticee for violation of provisions of PIT regulations.

SEBI received letter from **Titan Company Limited** (hereinafter referred to as "Company") informing on contravention of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the "PIT Regulations") and Company's Code of Conduct for Prevention of Insider Trading by some of its designated persons/employees.

In this regard, SEBI conducted separate investigation in the scrip of Titan and observed several non-compliances of PIT Regulations during the period April 01, 2018 to March 31, 2019 ((hereinafter referred to as "Investigation Period"). It was observed that **Mr. Jayprakash Kumar** (hereinafter referred to as "Noticee") has done transactions in company scrip aggregating to a traded value in excess of Rs 10,00,000 over a calendar quarter and failed to make necessary disclosure under regulation 7(2)(a) of the PIT Regulations. The Adjudicating Officer issued the Show Cause Notice ("SCN") to Noticee and alleged that in 6 occasions Noticee has traded in the securities which were in excess of the limit specified in Regulation 7(2)(a) of PIT Regulations without making necessary disclosures as per the aforesaid regulations.

Adjudicating officer **("AO")** considered the facts, circumstances and violation committed by the Noticee which was repetitive in nature, passed Adjudication order in respect of **Mr. Jayprakash Kumar ("Noticee")** by imposing monetary penalty of Rs.1,00,000/- (Rupees One Lakh only), under Section 15A(b) of the SEBI Act, for violations of regulation 7(2)(a) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the "PIT Regulations").

To read the order in detail, please click here

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SUPREME COURT

Section 12A of the Commercial Courts Act, 2015 was considered mandatory by the Supreme Court in case of question whether the Statutory pre-litigation mediation be contemplated

M/s. Patil Automation Private Limited and ORS.	Appellant(s)
Rakheja Engineers Private Limited	Respondent(s)

Date of Judgement: August 17, 2022

The inspiring question which arises for consideration in the present appeal filed by M/s. Patil Automation Private Limited, is whether the statutory pre-litigation mediation contemplated under Section 12A of the Commercial Courts Act, 2015 2 (hereinafter referred to as 'Act') as amended by the Amendment Act of 2018 is mandatory and whether the Courts below have erred in not allowing the applications filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC'), to reject the plaints filed by the respondents in these appeals without complying with the procedure under Section 12A of the Act.

Supreme Court declared that Section 12A of the Commercial Courts Act, 2015 is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even suo moto by the court as explained earlier in the judgment. The Supreme Court, however, make this declaration effective from 20.08.2022 so that concerned stakeholders become sufficiently informed. Still further, it was however be directed that in case plaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff. Finally, if the plaint is filed violating Section 12A after the jurisdictional High Court has declared Section 12A mandatory also, the plaintiff will not be entitled to the relief.

To read the complete judgement, please click here.

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This newsletter provides general information existing at the time of preparation. The newsletter is intended as a news update and Swift India Corporate Services LLP neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this newsletter. It is recommended that professional advice be taken based on the specific facts and circumstances. This newsletter does not substitute the need to refer to the original pronouncements.

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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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