Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 22nd 22-23
Week – August 29th to September 02nd

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

"Never say never, limits like fears are often just illusions"

– Michael Jordan.

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**") and orders passed by the NCLAT and Supreme Court.

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

- ❖ **MCA vide notification dated August 29, 2022 issued the Companies (Acceptance of Deposit) Amendment Rules, 2022**

- ❖ **MCA vide notification dated August 29, 2022 issued the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of August 29 to September 02, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

MCA

1. MCA vide notification dated August 29, 2022 issued the Companies (Acceptance of Deposit) Amendment Rules, 2022.

- MCA vide notification dated August 29, 2022 amended the Deposit rules which will now be referred to as the Companies (Acceptance of Deposit) Amendment Rules, 2022.
- The Rule 16 has been amended where every company on or before **June 30** of every financial year, submit to the Registrar the return of the deposits in **Form DPT-3**.
- The information that is to be provided in the said form shall be as audited by the auditor as on **March 31** of the respective financial year.
- The amendment makes it mandatory for every auditor of the respective company to submit the "**declaration by the auditor**" along with the Form DPT-3.
- The annexure to the notification also provides the substituted forms for Form DPT-3 & DPT-4.
- The said amendment to the notification came to effect from immediate effect.

To read the notification in detail, please click here.

2. MCA vide notification dated August 29, 2022 issued the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022.

- MCA vide notification dated August 29, 2022 amended the Appointment and qualification rules for directors which will now be referred to as the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2014.
- The annexure to the said notification contains the substituted forms for the following forms:
  - DIR 3 KYC (e-form)
  - DIR 3 KYC Web
- The Income tax PAN will be mandatory for Indian Nationals, irrespective of whether or not any change in it.

- If the details are incorrect in the PAN, the Directors/DPs are to first correct it before filing the KYC.

- The said amendment to the notification came to effective from immediate effect.

To read the notification in detail, please click here.

3. MCA vide notification dated August 29, 2022 issued Companies (Registration of Charges) Second Amendment Rule, 2022.

- MCA vide notification dated August 29, 2022 amended the Registration of Charges Rules which will now be referred to as the Companies (Registration of Charges) Second Amendment Rule.

- This notification added a provision after Rule 12:

  "Signing of charge e-forms by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation"

- The following forms will be required to be **signed by the professional or liquidator**:

  - Form CHG – 1
  - Form CHG – 4
  - Form CHG – 8
  - Form CHG - - 9

- The following are required to sign the forms before submitting it to the Registrar

  - Company – Insolvency Professional or Resolution Professional
  - Company under liquidation – Liquidator duly appointed for the purpose of liquidation.

To read the notification in detail, please click here.

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JUDGEMENTS AND ORDERS

NCLAT

1. **NCLAT disposed the appeal on grounds that application made by Operational Creditor under section 9 of IBC is not time barred under Limitations Act**

- This appeal was preferred by the Corporate Debtor against the order passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) by which an application was filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code') by the Operational Creditor.

- The Applicant/Respondent filed the application under Section 9 of the Code in respect of an operational debt of Rs. 4,82,98,924/- accrued on account of supply of Iron, Steel Goods and Raw material to the Corporate Debtor. Admittedly, the Operational Creditor has claimed the aforesaid operational debt occurred in terms of 41 invoices, starting from 22.04.2011 to 08.05.2012. However, the Operational Creditor had pleaded that the Corporate Debtor, was referred to as a sick unit on 09.11.2005 by BIFR and the amount of Operational Debt became recoverable only when the Sick Industrial Companies (Special Provisions) Repeal Act, 1985 was brought into force w.e.f. 01.12.2016. The Corporate Debtor raised the issue of limitation before the Adjudicating Authority on the ground that the default is of the year 2011-12 whereas the application under Section 9 of the Code was filed in the year 2017, therefore, it was barred by limitation having been filed after three years. But the contention of the Corporate Debtor was rejected on the ground that the Corporate Debtor was referred to as a Sick unit on 09.11.2005 by BIFR and till the Sick Industrial Companies (Special Provisions) Act, 1985(for short 'SICA') was repealed on 01.12.2016, the Operational Creditor was deprived of taking legal recourse in view of Section 22 of the SICA. 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 both parties the Tribunal said that It is needless to mention that the law is now well settled that the limitation for filing an application either under Section 7 or 9 of the Code is three years in view of Article 137 of the Limitation Act, 1961 which has to be seen from the date of default.

- Thus, in view of the facts and circumstances, right to apply under Section 9 of the Code accrued to the Respondent after SICA Act was repealed on 01.12.2016 and also when the Insolvency and Bankruptcy Code, 2016 came into force. Hence, in our considered opinion the application filed under Section 9 of the Code by the

Respondent is well within the period of three years and as such the application is not barred by limitation and the appeal was dismissed.

To read the order in detail, please click here.

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SUPREME COURT

1. **Supreme Court held that arbitrator has the discretion to award post-award interest on a part of the 'sum'**

Morgan Securities and Credits Private Limited	Appellant
Videocon Industries Limited	Respondent

Date of Judgement: September 01, 2022

- Morgan Securities and Credits Private Limited makes the present appeal which arises from a judgement of the Delhi High Court, wherein an appeal was made under Section 37 of the Arbitration and Conciliation Act, 1996 which was filed against a judgement wherein at the core, the issue was whether the arbitrator has the discretion to grant post-award, interest on the principle sum due under Section 31(7) (b) of the Act.

- The issue before the Supreme Court is whether the phrase 'unless the award otherwise directs' in Section 31(7)(b) of the Act only provides the arbitrator the discretion to determine the rate of interest or both the rate of interest and the 'sum' it must be paid against. Both clauses (a) and (b) of Section 31(7) are qualified, where clause (a) is qualified by the arbitration agreement, clause (b) is qualified by the arbitration award. However, the placement of the phrases is crucial to their interpretation. The words, "unless otherwise agreed by the parties" occurs at the beginning of clause (a) qualifying the entire provision. However, in clause (b), the words, "unless the award otherwise directs" occurs after the words 'a sum directed to be paid by an arbitral award shall' and before the words 'carry interest at the rate of eighteen per cent". Thereby, those words only qualify the rate of post-award interest.

- Section 31(7)(a) confers a wide discretion upon the arbitrator in regard to the grant of pre-award interest. The arbitrator has the discretion to grant post-award interest. Clause (b) does not fetter the discretion of the arbitrator to grant post-award interest. It only contemplates a situation in which the discretion is not exercised by the arbitrator. The purpose of granting post-award interest is to ensure that the award debtor does not delay the payment of the award.

- Basis the facts and in view of the discussions, the findings of the Supreme Court summarizes that the phrase 'unless the award otherwise directs' in Section 31(7)(b) only qualifies the rate of interest; and according to Section 31(7)(b), if the arbitrator does not grant post-award interest, the award holder is entitled to post-award interest at eighteen percent; In view of the Supreme Court, the arbitrator has the discretion to award post-award interest on a part of the 'sum'; the 'sum' as interpreted in Hyder Consulting (supra). Thus, the award of the arbitrator granting post award interest on the principal amount does not suffer from an error apparent.

To read the complete 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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