Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
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Week – September 12th to September 16th

Quote for the week:

"A satisfied customer is the best business strategy of all"

– Michael LeBoeuf.

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**"), Reserve Bank of India ("**RBI**"), International Financial Services Centres Authority ("**IFSCA**"), Insolvency and Bankruptcy Board of India ("**IBBI**") and orders passed by Supreme Court.

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

- **MCA vide notification dated September 15, 2022 amended Companies (Specification of Definition Details) Rules, 2014.**

- **RBI vide notification dated September 15, 2022 issued the Rupee-Drawing Arrangement to enable the Bharat Bill Payment System (BBPS) to process the Cross Border inbound Bill Payments.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of September 12 to September 16, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

MCA

1. MCA vide notification dated September 15, 2022 amended Companies (Specification of Definition Details) Rules, 2014.

- MCA vide notification dated September 15, 2022 brought in amendment to Rule 2 (1) (t) of the Companies (Specification of Definition Details) Rules, 2014.

- The said notification brought about an amendment in the definition of small companies.

- Pursuant to the notification amending the Rule 2 (1) (t) of the Companies (Specification of Definition Details) Rules, 2014, the Section 2 (85) of the Act has been amended.

- *Section 2(85) of the Act the that defines the small companies reads as follows:*

"**small company''** means a company, other than a public company whose,

- paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than **Four Crore Rupees**; and
- turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than **Forty Crore Rupees;**

Provided that nothing in this clause shall apply to—

- a holding company or a subsidiary company;
- a company registered under section 8; or
- a company or body corporate governed by any special Act;

To read the notification in detail, please click here.

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RBI

1. **RBI vide notification dated September 15, 2022 issued the Rupee-Drawing Arrangement to enable the Bharat Bill Payment System (BBPS) to process the Cross Border inbound Bill Payments.**

- RBI vide notification dated September 15, 2022 issued the Rupee-Drawing Arrangement to enable BBPS to process the Cross Border inbound Bill Payments.

- The said notification stipulates that the foreign inward remittances that are received under the Rupee Drawing Arrangement ("**RDA**") to be transferred through electronic mode to KYC Complaint beneficiary bank accounts in line with the procedure mentioned in the Circular No. 120 A.P. (DIR Series) April 10, 2014.

- Vide the press release dated August 05, 2022 on Statement on Development and Regulatory Policies, the foreign inward remittances can be to the KYC compliant bank account of the biller (beneficiary) through Bharat Bill Payment Systems ("**BBPS**") pursuant to the following of the stipulated process.

To read the notification in detail, please click here.

2. **RBI vide notification dated August 16, 2022 issued the master directions on interest rates on deposits.**

- RBI vide notification dated August 16, 2022 issued the master direction on interest rate deposits,

- RBI directions on Interest rate deposits dated 2016 briefs about the Foreign Currency (Non-resident) Accounts (Banks) Scheme, eligibility of opening a savings account and the reference rates to arrive at the interest rates.

- The said reference rates are put on display on Financial Benchmarks India Pvt. Ltd. ("**FBIL**") and made effective from January 31, 2022.

- The annexure to the said circular contains the reference to 2016 directions.

To read the notification in detail, please click here.

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IFSCA

1. **IFSCA Vide Circular dated September 12, 2022 issued Guidelines for implementation of the IFSCA (FinTech Incentive) Scheme, 2022.**

- Considering the importance of FinTech Entities ("**FE**") in providing innovative solutions to promote safety, inclusiveness, efficiency, choice and competition in the financial services market, IFSCA brought out a framework for authorization of FinTechs vide Circular dated 27th April, 2022 (hereinafter referred to as the "**FE Framework**").

- The FE desirous to avail the incentive under the FE Framework shall follow these guidelines issued by IFSCA, these guidelines majorly cover the following aspects:

  - **Eligibility Criteria**: FE shall meet the requirements as mentioned below to avail the incentive:

    - The FE is part of the Authority's Regulatory or Innovative Sandbox; or
    - The FE is referred to the Authority under a Fintech bridge arrangement with a Counterpart Regulator; or
    - The FE has either participated or is participating in any Accelerator or Cohort or Special Program supported or recognised by the Authority; or
    - The FE is referred to the Authority by an entity(ies) having Memorandum of Understanding (**MOU**) or collaboration or special arrangement with it.

  - **'Fit And Proper' Requirements** for its directors/ partners/ designated partners and its key managerial personnel;

  - **Mechanism for Implementation Of The Scheme**;

    - **Process for sanction of grant** – Application to be made in format as specified in the annexure to this circular.
    - **Formation of Evaluation Committee** – for technical evaluation, business evaluation, market potential, etc., with respect to the applicant before making its recommendations for the grant of incentive.
    - **Formation of Internal Committee** - shall monitor post disbursement compliance, end use of grant, progress, milestone achievements and perform such other functions as may be specified.
    - **Disbursement of Grants** - shall be done on 'reimbursement' basis after submission of necessary documents, invoices, technical reports, etc.

IFSCA shall normally release the disbursement within 30 working days of submission of all the documents.

- <u>Corporate governance and regulatory requimenets</u>:

    - The FE shall develop framework on Corporate Governance and Disclosure Requirements as relevant to its business operations or as may be specified by IFSCA.
    - The FE shall designate a person as its Compliance Officer for ensuring compliance with all applicable laws including these Guidelines.
    - The FE shall ensure that the information provided to stakeholders is timely, accurate, relevant and is not misleading.
    - The FE shall submit relevant data, utilization certificate, business plan, financials (audited/provisional), etc. to IFSCA, as per the format and on such frequency as may be desired by IFSCA.

To Read the Circular in detail please click here.

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IBBI

1. IBBI vide notification dated September 13, 2022 issued Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2022.

- These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2022.

- They shall come into force on the date of their publication in the Official Gazette.

- In the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, in the First Schedule, after clause 26, the following clause shall be inserted, namely:

  "26A. An insolvency professional shall not accept /share any fees or charges from any professional and/or support service provider who are appointed under the processes."

To read the Notification in detail please click here.

2. IBBI vide notification dated September 13, 2022 issued Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022.

- These regulations may be called the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022.

- In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as 'the principal regulations'), the word "Schedule" shall be substituted with the word and mark "Schedule-I", wherever it is appearing.

- In the principal regulations, after regulation 34A, the following regulations shall be inserted, namely: -

  - 34B. Fee to be paid to interim resolution professional and resolution professional.
  - The fee of interim resolution professional or resolution professional, under regulation 33 and 34, shall be decided by the applicant or committee in accordance with this regulation.

- The fee of the interim resolution professional or the resolution professional, appointed on or after 1st October 2022, shall not be less than the fee specified in clause 1 for the period specified in clause 2 of Schedule-II:
- Provided that the applicant or the committee may decide to fix higher amount of fee for the reasons to be recorded, taking into consideration market factors such as size and scale of business operations of corporate debtor, business sector in which corporate debtor operates, level of operating economic activity of corporate debtor and complexity related to process.
- After the expiry of period mentioned in clause 2 of Schedule-II, the fee of the interim resolution professional or resolution professional shall be as decided by the applicant or committee, as the case may be.
- For the resolution plan approved by the committee on or after 1st October 2022, the committee may decide, in its discretion, to pay performance-linked incentive fee, not exceeding five crore rupees, in accordance with clause 3 and clause 4 of Schedule-II or may extend any other performance linked incentive structure as it deems necessary.
- The fee under this regulation may be paid from the funds, available with the corporate debtor, contributed by the applicant or members of the committee and/or raised by way of interim finance and shall be included in the insolvency resolution process cost.

- In the principal regulations, after Schedule-I, Schedule –II is inserted which details out on the following aspects:

  - Minimum Fixed Fee
  - Period for minimum fixed fee.
  - Performance-linked incentive fee for timely resolution.
  - Performance-linked incentive fee for value maximization.

To read the notification in detail Please click here.
To read the press release in details please click here.

3. **IBBI vide Circular dated September 13, 2022 expressed their concern and requested Insolvency Professionals ("IPs)" to share Details of matters pending with Supreme Court of India and various High Courts.**

- IBBI expressed their concern that it has observed that in a few matters Hon'ble Supreme Court and several High Courts have considered and delivered judgements wherein stand of Union of India ("**MCA**") or **IBBI** remained unrepresented since both these institutions were not a party in the concerned proceedings in some of such cases scheme of the Code was in question which required to defended earnestly. While we are trying to retrieve the situation through further legal recourse, our apprehension is that there could be many more such important matters pending or might arise in future.

- Further IPs being the main link with IBBI in relation to processes under the Code wherefrom such litigations arise IBBI advised IPs to inform IBBI without any delay about any important issues relating to vires, interpretation and applicability of the provisions of the Code, Rules and Regulations made thereunder are being contested before the High Courts and the Supreme Court of India, in respect of any assignment handled by them as on date. Further, the information as above shall be submitted by Insolvency Professionals as and when any such case is filed before Supreme Court and High Courts.

To read the circular in detail please click here.

4. IBBI Vide notification dated September16, 2022 issued Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Second Amendment) Regulations, 2022.

- IBBI Vide notification dated September 16, 2022 amended the in the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (hereinafter referred to as "**the principal regulations**"), in regulation 3, after sub-regulation (4), the following sub-regulation shall be inserted, namely: -

  "*(5) The declaration under sub-regulation (1)(a) or under section 59(3)(a) shall provide that the corporate person has made provision for preservation of its records after its dissolution.*"

- In the principal regulations, for regulation 41, the following regulation shall be substituted, namely: -

  "41. Preservation of records.

  - The liquidator shall preserve copies of all such records which are required to give a complete account of the voluntary liquidation process.

  - Without prejudice to the generality of the obligations under sub-regulation (1), the liquidator shall preserve copies of records relating to or forming the basis of: -

    - His appointment as liquidator, including the terms of appointment;
    - Handing over / taking over of the assignment;
    - Initiation of voluntary liquidation process;
    - Public announcement;
    - Claims, verification of claims, and list of stakeholders;
    - Engagement of professionals, registered valuers, etc. Including work done, reports etc., submitted by them;
    - All filings with the adjudicating authority, appellate authority, high courts, supreme court, whichever applicable and their orders;

- Statutory filings with board and insolvency professional agencies;
- Correspondence during the voluntary liquidation process;
- Cost of voluntary liquidation process;
- All reports, registers, documents such as preliminary report, annual status report, final report prior to dissolution, various registers and books, etc. Mentioned in regulation 8 and 10 of principal regulations; and
- Any other records, which is required to give a complete account of the process.

- The liquidator shall preserve:

  - Electronic copy of all records (physical and electronic) for a minimum period of eight years; and
  - A physical copy of records for a minimum period of three years; from the date of dissolution of the corporate person, before the board, the adjudicating authority, appellate authority or any court, whichever is later.

- In case of replacement of liquidator during the process, the outgoing liquidator shall handover the records under sub-regulation (1) and (2) to the new liquidator.

- The liquidator shall preserve the records at a secure place and shall be obliged to produce records as may be required under the Code and the principal regulations.

- The liquidator shall, along with the application filed under sub-section of section 59 to the Adjudicating Authority, provide the details and manner of preservation of records under sub regulation (1) and (2).

- **Explanation** - The records referred to in this regulation includes records pertaining to the period of a liquidation process during which the liquidator acted as such, irrespective of the fact that he did not take up the assignment from its commencement or continue the assignment till its conclusion.”

To read the Notification in details please click here.

5. **IBBI Vide notification dated September 16, 2022 issued “Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022” and “Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022”.**

- These amended regulations bring the concept of

- Process Email Id: To be opened by Interim Resolution Professional ("IRP") and incase of liquidation such email id as created by IRP be handed over to Liquidator and in the event of his/her replacement, the credentials of such email ID shall be handed over to the new IRP or Liquidator.

- *In Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022* following new insertion of regulations are made:

    - FORM AA i.e. the format written consent to act as liquidator is introduced.
    - New Regulation 32B is inserted after regulation 32A: Conduct of meetings of the consultation committee.
    - New Regulation 44A is inserted after regulation 44: Treatment of avoidance of transaction.
    - New Regulation 45A is inserted after regulation 45: Preservation of records.

- *In Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022 following new insertion of regulations are made:*

    - New Regulation 6A is inserted after regulation 6: Communication to creditors.
    - New Regulation 36C is inserted after regulation 36B: Strategy for marketing of assets of the corporate debtor.
    - New Regulation 39BA is inserted after regulation 39B: Assessment of Compromise or Arrangement.

- Apart from the abovementioned insertions and substitutions of regulations this amendment brings much more alterations to the prevailing regulations.

To read the notifications in details please click below:

- *Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022*.

- *Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2022*.

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JUDGEMENTS AND ORDERS

SUPREME COURT

1. **In the matter of K. Paramasivam Vs. The Karur Vysya Bank Ltd. & Anr. [Civil Appeal No. 9286 of 2019] Hon'ble Supreme Court vide its order dated September 06, 2022, held that the liability of the guarantor is co-extensive with that of the principal borrower.**

- In the matter of K. Paramasivam Vs. The Karur Vysya Bank Ltd. & Anr the issue or the subject of the case was,

  "*Whether an action under section 7 of the Code can be initiated by a financial creditor, against a corporate person, in relation to a corporate guarantee, given in respect of a loan advanced to the principal borrower, who is not a corporate person.*"

- The Hon'ble Supreme Court during the proceedings of the case made some important findings and observations:

  - Under section 7 of the IBC, CIRP can be initiated against a corporate entity who has given a guarantee to secure the dues of a non-corporate entity as a financial debt accrues to the corporate person, in respect of the guarantee given by it once the borrower commits default. The guarantor is then, the corporate debtor.

  - Relying on its decision in Laxmi Pat Surana vs. Union Bank of India and Another, held that the liability of the guarantor is co-extensive with that of the Principal Borrower. It is open to the financial creditor to proceed against the guarantor without first suing the Principal Borrower.

  And The Hon'ble Supreme Court vide its order dated September 06, 2022, held that the liability of the guarantor is co-extensive with that of the principal borrower and, it is open to the financial creditor to proceed against the guarantor without first proceeding against the principal borrower.

To read the summary of order in detail please click here.

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About Swift

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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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