Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 25th 22-23
Week – September 19th to September 23rd

Quote for the week:

"Every problem is a gift — without problems we would not grow."
– Anthony Robbins.

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 Finance ("**MCA**"), Securities and Exchange Board of India ("**SEBI**") and Insolvency and Bankruptcy Board of India ("**IBBI**") and order passed by Supreme Court.

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

- **MCA vide Notification dated September 20, 2022 amended Companies (Corporate Social Responsibility Policy) Rules, 2014.**

- **SEBI vide Circular dated September 22, 2022 issued the issue and listing of commercial papers by Infrastructure Investment Trust ("InvIT") and Real Estate Investment Trust ("REIT").**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of September 19 to September 23, 2022.

Thank you,
Swift team

Table of Contents

REGULATORY UPDATES

MCA

1. MCA vide Notification dated September 20, 2022 amended Companies (Corporate Social Responsibility Policy) Rules, 2014.

- MCA vide Notification dated September 20, 2022 brought in the following amendments in the Corporate Social Responsibility Policy Rules, 2014.

- The said Notification brought about an insertion in the Rule 3

  "Provided further that a company having any amount in its Unspent Corporate Social Responsibility Account as per sub-section (6) of section 135 shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section."

- The said Notification also amended Rule 4 (1) in the following manner:

  - A Sec 8 company or registered public trust or a registered society that is exempted under the sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961 either on its own or through other company.

  - Sec 8 company or a registered trust or a registered society established by Central or State Government.

  - Entity established under Act of Parliament or a State legislature.

- The annexure to the said Notification also details out the amended format for CSR activities to be incorporated in the Board Report.

To read the Notification in detail, please click here.

[This space is intentionally left blank]

SEBI

1. **SEBI vide Circular dated September 22, 2022 issued the issue and listing of commercial papers by Infrastructure Investment Trust ("InvIT") and Real Estate Investment Trust ("REIT").**

- SEBI vide Circular dated September 22, 2022 issued the Circular on listing and issuing of the Commercial papers by Infrastructure Investment Trusts ("InvIT") and Real Estate Investment Trust ("REIT").

- Pursuant to the said SEBI Circulars and in line with the RBI Commercial Paper Directions dated August 10, 2017 an InvIT or REIT having net worth of INR 100 crore becomes eligible to issue commercial paper.

- The Circulars respectively, stipulates the conditions applicable to the InvIT and REIT wanting to issue listed commercial papers:

  - InvIT and REIT shall be compliant with the RBI norms.
  - InvIT and REIT shall be compliant with the SEBI ((Issue and Listing of Non-Convertible Securities) Regulations, 2021.
  - Issue shall be within the overall debt limit as is specified by the SEBI (Infrastructure Investment Trusts) Regulations, 2014 and SEBI (Real Estate Investment Trusts) Regulations, 2014, respectively.

To read the Circular regarding InvIT in detail, please click here.

To read the Circular regarding REIT in detail, please click here.

2. **SEBI vide Circular dated September 19, 2022 issued the framework on Social Stock Exchange ("SSE")**

- SEBI vide Circular dated September 19, 2022 amended various regulations to incorporate **SSE Framework**.

- The following Regulations were amended to accommodate the SSE Framework:

  - Securities and Exchange Board of India (**Issue of Capital and Disclosure Requirements**) Regulations, 2018.
  - Securities and Exchange Board of India **(Listing Obligations and Disclosure Requirements**) Regulations, 2015.
  - Securities and Exchange Board of India (**Alternative Investment Funds**) Regulations, 2012.

- The Circular details out the requirements to be met by Non-Profit Organizations to be registered with SSE and minimum initial disclosure requirements in line with ICDR Regulations. The documents should contain the following minimum disclosures:

  - Vision: As is stated in the its constitution;
  - Target segment: Clear identification of target segment;
  - Strategy: Consider capabilities and challenges; and
  - Governance: Organization must have governing body in place

- The said Circular also details the Annual compliances by NPOs and Disclosure of Annual Impact Report by all Social Enterprises in line with SEBI (LODR).

To read the Circular in detail, please click here.

[This space is intentionally left blank]

IBBI

1. **IBBI vide Notification dated September 20, 2022 issued the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2022.**

- IBBI vide Notification dated September 20, 2022 issued the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2022.

- Vide the Notification Regulation 31 (ba) has been inserted to be read as:

  "(ba) fee payable to the Board under regulation 31A"

- The said Notification inserted the Regulation 31A pertaining to Regulatory Fees to be read as

  - A regulatory fee calculated at the rate of 0.25 per cent of the realisable value to creditors under the resolution plan approved under Section 31, shall be payable to the Board, where such realisable value is more than the liquidation value. The said insertion will be effective from **October 01, 2022.**

  - A regulatory fee calculated at the rate of one per cent of the cost being booked in insolvency resolution process costs in respect of hiring any professional or other services by the interim resolution professional or resolution professional, as the case may be, for assistance in a corporate insolvency resolution process, shall be payable to the Board, in the manner as specified in clause (cb) of sub-regulation (2) of regulation (7) of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

To read the notification in detail, please click here.

2. **IBBI vide Notification dated September 20, 2022 issued Insolvency and Bankruptcy Board of India (Information Utilities) (Second Amendment) Regulations, 2022.**

- Vide this amendment, IBBI in Fegulation 4, in sub-regulation (1) and sub regulation (2), substituted the words **"five lakhs"**, the words **"ten lakhs"**.

- In Regulation 6, in sub-regulation (2),
  (a) in clause (d), for the words "**fifty lakhs**", the words "**one crore**" shall be substituted.
  (b)for clause (e), the following shall be substituted, namely: -

"(e) pay to the Board, a fee calculated at the rate of ten per cent. of the turnover from the services as an information utility rendered in the preceding financial year, on or before 30th April every year:

Provided that without prejudice to any other action which the Board may take as it deems fit, any delay in payment of fee by an information utility shall attract simple interest at the rate of twelve percent per annum.

For explaining the implication of above amendments IBBI has given the following illustration:

"*Where an information utility generates turnover amounting to Rs. 75 crores in the financial year 2022-23, it is liable to pay fee of Rs. 7.50 crore to the Board on or before 30th April 2023*".

To read the Notification in detail, please click here.

3. **IBBI Vide Notification dated September 20, 2022 issued Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Third Amendment) Regulations, 2022.**

- Vide this amendment, IBBI in regulation 7, in sub-regulation (2), for clause (c), the following shall be substituted, namely: -

  "(c) pay to the Board, a fee of twenty thousand rupees, in case the insolvency professional is an individual or a fee of two lakh rupees, in case the insolvency professional is an insolvency professional entity, every five years after the year in which the certificate is granted and such fee shall be paid on or before the 30th April of the year it falls due."

  For explaining the implication of above amendment IBBI has given the following illustration:

  "*Where registration is granted on 2nd February, 2022 in the year 2021-22, the fee shall become due on 1st April, 2027, after five years (2022-23, 2023-24, 2024-25, 2025-26 and 2026-27) and it shall be paid on or before the 30th April, 2027."*

- Apart from the above changes, IBBI in this notification has also made alteration in few regulations and sub regulations along with insertion of new **FORM EA** after Form E in Second Schedule.

  To read the Notification in detail, please click here.

JUDGEMENTS AND ORDERS

SUPREME COURT

1. **In the matter of Maitreya Doshi Vs. Anand Rathi Global Finance Ltd. And Anr. [Civil Appeal No. 6613 of 2021]**

   Date of Judgement: September 22, 2022

- The Hon'ble Supreme Court vide its Judgement dated September 22, 2022 while dismissing the appeal held that the approval of a resolution in respect of one borrower cannot certainly discharge a co-borrower under the Insolvency and Bankruptcy Code, 2016 (the Code). The Hon'ble SC made some important findings and observations as under.

  - Relying on the ration of ***Lalit Kumar Jain Vs. Union of India***, SC held that the approval of a resolution in respect of one borrower cannot certainly discharge a co-borrower.

  - If there are two borrowers or if two corporate bodies fall within the ambit of corporate debtors, there is no reason why proceedings under Section 7 of the Code cannot be initiated against both the corporate debtors.

  - The same amount cannot be realised from both the corporate debtors. If the dues are realised in part from one corporate debtor, the balance may be realised from the other corporate debtor being the co-borrower.

  - Once the claim of the financial creditor is discharged, there can be no question of recovery of the claim twice over". 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.

- The mere fact that corporate debtor is a pledger is wholly irrelevant and does not in any manner disentitle the financial creditor to initiate proceedings under section 7 of the Code against such a co-borrower.

To read the complete Judgement, please click here.

DISCLAIMER The contents of this newsletter should not be construed as legal opinion. View detailed disclaimer.

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.

+91 22 6669 5000

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.

Swift India Corporate Services LLP

Regd. Office: 91-92 B, Mittal Court, Nariman Point, Mumbai 400 021, India
LLPIN: AAH-4705, registered under the Limited Liability Partnership Act, 2008
Tel +91 22 6669 5000, Fax +91 22 6669 5001

www.swiftindiallp.com