Swift e-Bulletin
Edition 26th 22-23
Week – September 26th to September 30th

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

"To me, job titles don't matter. Everyone is in sales. It's the only way we stay in business"

– Harvey Mackay.

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**") Reserve

Bank of India (**"RBI"**) 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 Circular dated September 28, 2022 issued an extension for filing the Form DIR-3 KYC and DIR-3 KYC Web without levy of additional fees.**

- **SEBI vide circular dated September 28, 2022 amended the guidelines for preferential issue and institutional placement of units listed 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 26 to September 30, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

MCA

1. **MCA vide Circular dated September 28, 2022 issued an extension for filing the Form DIR-3 KYC and DIR-3 KYC Web without levy of additional fees.**

- MCA vide notification dated September 28, 2022 brought in an extension w.r.t. due date of filing Form DIR-3 and DIR-3 KYC.

- The due date of filing the Form DIR-3 KYC and Form DIR-3 KYC Web was September 30, 2022; MCA had received representations from stakeholders to extend the deadlines. The MCA considered the same and has extended the due date vide notification dated September 28, 2022

- The aforesaid forms DIR-3 KYC and DIR-3 KYC Web will now be allowed to be filled until **October 15, 2022** without any levy of any additional fees for not filing the form(s) within the original time frame provided.

To read the notification in detail, please click here.

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RBI

1. **RBI vide notification dated September 30, 2022 issued the late submission fees in reporting delays under Foreign Exchange Management Act, 1999.**

- RBI vide notification dated September 30, 2022 issued late submission fees in reporting delays under foreign Exchange Management Act (FEMA), 1999.

- Initially the late submission fees were introduced separately on Foreign Investment (FI), External Commercial Borrowings (ECBs) and Overseas Investment related transactions; however, vide the notification it is aimed at bringing the uniformity in late submission fees.

- The late submission fees are divided into two parts as follows.

    - evidence of investment or any other return which does not capture flows or any other periodical reporting. – **LSF amount is INR 7500/-**

    - any other return which captures flows or returns and reporting of non-fund transactions or any other transactional reporting – **LSF amount is INR ([7,500 + (0.025% *Amount involved in delayed Reporting *Number of years of delay].**

- The said notification has been made applicable on delays on and after the issue of the notification.

To read the notification in detail, please click here.

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SEBI

1. **SEBI vide circular dated September 28, 2022 amended the guidelines for preferential issue and institutional placement of units listed by Infrastructure Investment Trust (InvIT) and Real Estate Investment Trust (REIT).**

- SEBI vide circular dated September 28, 2022 issued the circular on amended the guidelines for preferential issue and institutional placement of units listed by Infrastructure Investment trusts (InvIT) and Real Estate Investment Trust (REIT).

- The said circulars modified the circular no. SEBI/HO/DDHS/DDHS/CIR/P/2019/142 dated November 27, 2019 and circular no. SEBI/HO/DDHS/DDHS/CIR/P/2019/143 dated November 27, 2019 which detailed out the guidelines on preferential issue and institutional placement by REIT and InvIT respectively.

- The circulars respectively, brought in modification to Clause 2.2 of the original circulars.

  "*Units of the same class, which are proposed to be allotted have been listed on a stock exchange for a period of at least six months prior to the date of issuance of notice to its unit holders for convening the meeting to pass the resolution in terms of clause 2.1 above*"

- Further, vide these circulars the Clause 4.2 has been amended whereby no allotment can be made to an institutional investor who is a sponsor or investment manager, or their relative, associate or related party.

- Although, if there is any un-subscribed portion then the same can be allotted to sponsors by abiding by the certain conditions:

  - Minimum subscribed issue size – 90%.
  - Issue objects – acquisition of assets from that sponsor.
  - These units shall be liable to be locked in as per Annexure I Clause 3
  - Approval of unitholders.

To read the notification regarding Infrastructure Investment Trust (InvIT) in detail, please click here.

To read the notification regarding Real Estate Investment Trust (REIT) in detail, please click here.

2. **SEBI vide circular dated September 26, 2022 issued modifications in the Operational Guidelines for FPIs, DDPs and EFIs pertaining to FPIs registered under Multiple Investment Managers (MIM) structure**

- SEBI vide notification dated September 26, 2022 modified circular number IMD/FPI&C/CIR/P/2019/124 dated November 05, 2019, had issued Operational Guidelines for FPIs, DDPs and EFIs, the circulars on the Operational Guidelines under Multiple Managers (MIM) Structure for FPIs, DDPs and EFIs.

- The said circular brought in modification in Para 4 of Part A:

  "*Where an entity engages multiple investment managers (MIM) for managing its investments, the entity can obtain multiple FPI registrations mentioning name of Investment Manager for each such registration. Such applicants can appoint different DDPs for each such registration. Investments made under such multiple registrations shall be clubbed for the purposes of monitoring of investment limits*"

To read the notification in detail, please click here.

3. **SEBI vide circular dated September 29, 2022 details about Participation of SEBI registered Foreign Portfolio Investors (FPIs) in Exchange Traded Commodity Derivatives in India**

- SEBI vide multiple circulars since 2017, has been working towards promoting the participation of various institutional investors into Exchange Traded Commodity Derivatives (ETCDs).

- Pursuant to this circular, it is decided to allow the Foreign Investors to participate through Foreign Portfolio Investment Route.

- The circular lists out the conditions for FPI to participate in ETCDs like

  - Participate in cash settled non-agricultural commodity derivative contracts and indices comprising such non-agricultural commodities
  - FPI should have risk management measures.
  - Position limits
  - In compliance with SEBI provisions
  - Stock Exchanges/Clearing corporations may specify add on measures.

- The stock Exchanges are advised to put in place proper infrastructure facilitating the implementation of the Circular which has come into practice from immediate effect.

To read the notification in detail, please click here.

IBBI

1. **IBBI vide Press Release No. IBBI/PR/2022/39 dated September 30, 2022, amended Insolvency and Bankruptcy Board of India (Insolvency Professionals), Regulations 2016 and decided to institutionalise the profession of IP (Insolvency Professionals).**

- The Insolvency and Bankruptcy Code, 2016 (the Code) envisages resolution of corporate debtor in a time bound manner to ensure maximisation of value of its assets. Considering the limitations on the part of an Insolvency Professional (IP), being an individual, in dealing with processes under the Code requiring concurrent efforts, and multi-disciplinary expertise, the Board decided to institutionalise the profession of IP to begin with, the Board has considered it appropriate to enable the Insolvency Professional Entity (IPE) recognised by the Board to carry on the activities of an IP.

- Accordingly, the Insolvency and Bankruptcy Board India notified the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Fourth Amendment) Regulations, 2022 on 28th September, 2022. The salient features of the amendments are as under:

  - An IPE, recognized by the Board, can seek registration as an IP with the Board, by making an application in the specified form along with a non-refundable application fee of two lakh rupees,

  - An IPE which is registered as an IP shall allow only its partner or director, as the case may be, who is an IP and holds a valid Authorisation for Assignment, to sign and act on behalf of it.

To read the notification in detail, please click here.

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ORDERS

SUPREME COURT

1. In the matter of M/s Tech Sharp Engineers Pvt. Ltd. Vs. Sanghvi Movers Ltd., [Civil Appeal No.296 of 2020].

- In the matter of M/s Tech Sharp Engineers Pvt. Ltd. Vs. Sanghvi Movers Ltd., The Hon'ble SC made some important findings and observations as under:

- The Hon'ble Supreme Court vide its order dated September 19, 2022 held that the pendency of the proceedings in a parallel forum, is not a sufficient cause for the delay in filing an application under the Insolvency and Bankruptcy Code, 2016 (the Code).

  - <u>Application Barred by Limitation:</u>

    - Relying on its judgment in B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Associates, observed that the NCLT/NCLAT has the discretion to entertain an application/appeal after the prescribed period of limitation.

    - Whether the explanation furnished for the delay would constitute "sufficient cause" or not would be dependent upon facts of each case. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished by the applicant for the delay in taking steps.

  - <u>Limitation vis-à-vis IBC</u>

    - The date of enforcement of the IBC and/or the date on which an application could have first been filed under the IBC are not relevant in computation of limitation. It would be absurd to hold that the CIRP could be initiated by filing an application under section 7 or Section 9 of the IBC, within three years from the date on which an application under those provisions of the IBC could have first been made before the NCLT even though the right to sue may have accrued decades ago.

    - What is material being the date on which the right to sue accrues, and whether the cause of action continuous.

    - Under Section 18 of the Limitation Act, an acknowledgment of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing of a fresh period of limitation, from the date on which the acknowledgment is signed. However, the acknowledgment must be made before the period of limitation expires.

- The Hon'ble Supreme Court observing the below facts of the case concluded the following:
    - The last acknowledgment, in this case was in 2013 and the Madras High Court neither suffered from any defect of jurisdiction to entertain the winding up application nor was unable to entertain the winding up application for any other cause of a like nature.
    - The initiation of proceedings in Madras High Court would not save limitation for initiation of proceedings for initiation of CIRP under the Code.
- A claim may not be barred by limitation, it is the remedy for realisation of the claim, which gets barred by limitation.
- The Hon'ble Supreme Court vide its order dated September 19, 2022 held that the pendency of the proceedings in a parallel forum, is not a sufficient cause for the delay in filing an application under the Insolvency and Bankruptcy Code, 2016 (the Code).

To read the order Summary 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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