Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 3rd 22-23
Week – April 18th to April 22nd

Quote for the week:

"Quality is the best business plan"

– John Lasseter

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**"), Securities and Exchange Board of India ("**SEBI**") and orders passed by the NCLAT, SEBI and High Court.

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

- **RBI issues notification asking non-individual borrowers enjoying aggregate exposure of ₹5 crores to obtain LEI.**
- **SEBI issues Circular streamlining the process of public issues and redressal of investor grievances.**

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of April 18, 2022 to April 21, 2022.

Thank you,
Swift team

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REGULATORY UPDATES

MCA

1. MCA issues amendments relating to Nidhi Companies

- MCA details out amendments for Nidhi Companies one of which specifies that Nidhi companies who have not submitted Form NDH-4 or whose application is rejected by the central government shall not in any form raise deposit or loan from its members.

- Any public company desirous of getting the status of a Nidhi Company must file Form NDH-4 within a period of 120 days from the date of incorporation abide by the twin conditions of :
  a. Minimum 200 members;
  b. Minimum Net Owned funds of Rs. 25 Lakh.

- Make sure the promoter & director is a fit and proper person so as to not be disqualified as also be a person of integrity and knowledge.

- Central government confirmation will be sent within 45 days; if no confirmation has been received in the said period then it shall be deemed approval.

To read the full Notification, please click [here].

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RBI

1. **RBI notifies revised Regulatory Framework' for NBFCs, Disclosures in Financial Statements- Notes to Accounts of NBFCs**

- Non-Banking Finance Companies (NBFCs) are required to make disclosures in their financial statements in accordance with existing prudential guidelines, applicable accounting standards, laws, and regulations. The additional disclosure requirements for NBFCs in accordance with the SBR framework are outlined in the Annexure of the notification.

- These disclosures are in addition to and not in substitution of the disclosure requirements specified under other laws, regulations, or accounting and financial reporting standards.

To read the full notification, please click here.
To read the annexure, please click here.

2. **RBI notifies certain regulatory restrictions on lending in respect of NBFCs placed in different layers of NBFC 's [Middle Layer (ML) and Upper Layer (UL)].**

- RBI introduced regulatory restrictions on loans and advances by NBFC - Middle Layer (ML) and NBFC - Upper Layer (UL).

- Summary of few of the regulatory restrictions are mentioned below:
  - **Loans and advances to Directors** - Unless sanctioned by the Board of Directors/ Committee of Directors, NBFCs shall not grant loans and advances aggregating Rupees five crores and above to -
    - their directors (including the Chairman/ Managing Director) or relatives of directors.
    - any firm in which any of their directors or their relatives is interested as a partner, manager, employee or guarantor.
    - any company in which any of their directors, or their relatives is interested as a major shareholder, director, manager, employee or guarantor.
  - **Loans and advances to Senior Officers of the NBFC -** NBFCs shall abide by the following when granting loans and advances to their senior officers:
    - Loans and advances sanctioned to senior officers of the NBFC shall be reported to the Board.

- No senior officer or any Committee comprising, inter alia, a senior officer as member, shall, while exercising powers of sanction of any credit facility, sanction any credit facility to a relative of that senior officer. Such a facility shall be sanctioned by the next higher sanctioning authority under the delegation of powers.

- **Loans and advances to Real Estate Sector** - While appraising loan proposals involving real estate, NBFCs shall ensure that the borrowers have obtained prior permission from government/ local government/ other statutory authorities for the project, wherever required. To ensure that the loan approval process is not hampered on account of this, while the proposals may be sanctioned in normal course, the disbursements shall be made only after the borrower has obtained requisite clearances from the government / other statutory authorities.

To read the full Notification, please click here.

3. RBI issues Notification asking non-individual borrowers enjoying aggregate exposure of ₹5 crores to obtain LEI.

- RBI found that guidelines on LEI stand extended to Primary (Urban) Co-operative Banks (UCBs) and Non-Banking Financial Companies (NBFCs). It is further advised that non-individual borrowers enjoying aggregate exposure of ₹5 crore and above from banks[1] and financial institutions (FIs) shall be required to obtain LEI codes.

- RBI has given the following timeline for borrowers to obtain the LEI codes

Timeline for obtaining LEI by borrowers

Total Exposure	LEI to be obtained on or before
Above ₹25 crore	April 30, 2023
Above ₹10 crore, up to ₹25 crore	April 30, 2024
₹5 crore and above, up to ₹10 crore	April 30, 2025

- Borrowers who fail to obtain LEI codes from an authorized Local Operating Unit (LOU) shall not be sanctioned any new exposure nor shall they be granted renewal/enhancement of any existing exposure.

To read the full Notification, please click here.

SEBI

1. SEBI issues operational guidelines for "Security and Covenant Monitoring using Distributed Ledger Technology (DLT)"

- SEBI issued a Press Release to strengthen the process of security creation and monitoring of security created, asset cover and covenants of the non-convertible securities by detailing out the manner of recording of charges by Issuers and manner of monitoring by Debenture Trustees (DTs), Credit Rating Agencies, etc.

- Debenture Trustees on a yearly basis, shall also reconcile and eliminate duplicate entries for an asset in the system. Further, for data exchange and verification across depositories, format for unique Asset ID assigned to an asset.

- This is applicable to all the issuers proposing to issue non-convertible securities on or after April 01, 2022 and they shall record the details in the system before activation of ISIN.

To read the Press Release in detail, please click here.

2. SEBI issues Circular streamlining the process of public issues and redressal of investor grievances

- SEBI vide Circular dated April 20, 2022 provided compensation for delayed unblocking of their amount by SCSBS as per the compensation clauses.

- The said compensation mechanism will be applicable to all the ASBA processes. Through this mechanism now the investors will be getting the SMS alerts of all the blocking and unblocking of their amounts on SCSBs.

- The SCSBs shall make the application only after:
  a. unblocking of application amounts for each application received by such SCSB has been fully completed.
  b. applicable compensation relating to investor complaints has been paid by the SCSBs.

To read the full Circular, please click here.

JUDGEMENTS AND ORDERS

SEBI Order:

1. In the matter of **Alok Industries Limited**, SEBI imposed penalty of INR.2,00,000/- (Indian Rupees Two Lakh only) for contravention of '**PIT Regulations**'

- Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), observed non-compliance of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**') and Company's Code of Conduct for Prevention of Insider Trading by Mr. Madhusudan Vasudev Nagori, President of the Company. (hereinafter referred to as '**Noticee'**).

- In this regard, SEBI conducted an investigation in the scrip of Alok Industries Limited (hereinafter referred to as '**Company'**) and observed non-compliance of PIT Regulations during the **Investigation Period** from January 01, 2018 to June 30, 2018 by Noticee. Therefore, SEBI initiated adjudication proceedings against Noticee and alleged that the Noticee has failed to comply with clause 10 of the Minimum Standards for Code of Conduct and has violated provisions of Regulation 9(1) of PIT Regulations. The Adjudicating Officer issued the Show Cause Notice to Noticee and alleged that Noticee being a "Designated Employee of the Company" has entered into opposite transactions, during the investigation period, which is prohibited and made profits from such contra trades.

- On consideration of facts of the case, replies and submissions made by the Noticee, the Adjudicating Officer passed the order and imposed penalty of INR. 2,00,000/- (Indian Rupees Two Lakh only) on the Noticee i.e. Ms. Madhusudan Vasudev Nagori, under the provisions of Section 15HB of SEBI Act.

To read the Order in detail, please click here.

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NCLAT

1. **NCLAT dismissed the appeal stating advance towards license fee is an operational debt and adjudicating authority has rightly admitted application under section 9 of IBC, 2016**

- An appeal was filed against order dated 21.12.2021 passed by the Adjudicating Authority by which the Adjudicating Authority has admitted the Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by the Operational Creditor.

- The Operational Creditor had advanced a sum of Rs.32,43,000/- as interest free deposit towards the advance license fee which was contemplated to be a security deposit till the end of the license period. As the project could not take off and an Application under Section 9 was filed by the Operational Creditor was admitted. The counsel for appellant argued that the aforesaid amount was security deposit and can be paid off after expiry of license.

- After hearing from both parties the tribunal was of view that It is for the Appellant to take remedies out of the Agreement and it is open for the parties to take legal proceedings as permitted and the advance made towards license fee was an operational debt, the Adjudicating Authority had righted admitted the application and the appeal was dismissed.

To read the Order in detail, please click here.

HIGH COURT

1. **Delhi High Court asks Plaintiff to file petition against each domain name that it finds to be infringing**

Snapdeal Private Limited	Plaintiff
Godaddycom LLC And ORS.	Defendants

<u>Date of Judgement</u>: April 18, 2022

The Plaintiff is the registered proprietor of couple of trade marks registered in its name and refers those as SNAPDEAL trade marks. The Defendants, GoDaddyCom LLC are the Domain Name Registrars ("DNRs"), who provide domain names for parties who seek to register their respective websites under such domain names, and the other Defendants are the Department of Telecommunications and the National Internet Exchange of India (NIXI).

The plaint alleges that various third parties, with whom the plaintiff has no connection or association whatsoever, are registering domain names which include the "SNAPDEAL" word/thread. These domain names, it is alleged, are infringing in nature, as the plaintiff is the registered proprietor of the "SNAPDEAL" trade mark. It is also alleged that such third parties are, through the websites operating under the said domain names, carrying out illegal activities, such as providing lucky draws etc. and are also, in certain cases, posing as customer care centres for the plaintiff's products. All this, it is submitted, is taking place without the plaintiff's license or authorization.

Here the Plaintiff alleges that, by offering, for registration, domain names which include the thread "SNAPDEAL", the domain registrants are facilitating infringement of the plaintiff's registered mark and are also themselves infringers within the meaning of Sections 281 and 292 of the Trade Marks Act, 1999.

The Delhi High Court based upon its findings and hearing states that, the Plaintiff has to necessarily file the petition against each domain name that it finds to be infringing. Further it stated that, filing of petition against each domain name may be a long and cumbersome exercise which cannot be helped, as there is no shortcut to justice.

To read the Judgement in detail, please click here.


Disclaimer

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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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