Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 35th 22-23
Week – December 12th to December 16th

__Quote for the week:__

"If opportunity doesn't knock, build a door"

– Milton Berle.

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 Reserve Bank of India ("**RBI**") and Insolvency and bankruptcy Board of India ("**IBBI**") and orders from High court

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

- RBI vide Circular on December 12, 2022 issued Master Direction on Foreign Exchange Management (Hedging of Community Price Risk and Freight Risk in Overseas Markets) Directions, 2022.

- IBBI vide Notification dated December 12, 2022 issues the Insolvency Professional to act as an Interim Professional, Liquidator, Resolution Professional and Bankruptcy Trustee Guidelines, 2022.

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

Thank you,
Swift team

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RBI

1. **RBI vide Circular on December 12, 2022 issued Master Direction on Foreign Exchange Management (Hedging of Community Price Risk and Freight Risk in Overseas Markets) Directions, 2022**

- RBI issued directions to Authorised Dealer Category-I Bank ("AD Cat-I") for facilitating hedging of commodity price risk and freight risk in overseas markets by their customers / constituents.

- The said direction defines "hedging" as the activity of undertaking a derivation transaction to reduce an identifiable and measurable risk, commodity price risk and freight risk are considered as relevant risks.

- Residents other than Individuals are considered as Eligible entities.

- Resident entities in India are currently not permitted to hedge their exposure to price risk of gold in overseas markets. Only eligible entities are permitted to hedge their exposure to price risk of gold on exchanges on the International Financial Service Center ("IFSC") recognised by the IFSCA.

- Eligible entities having exposure to freight risk may hedge such exposure in overseas markets using any of the permitted products.

- Eligible Commodities whose price risk are permitted to be hedged are as given below:-

    - In case of direct exposures to commodity price risk:- All Commodities (except Gems and Precious Stones).

    - In case of indirect exposures to commodity price risk:- Aluminum, Copper, Lead, Zinc, Nickel and Tin. However, the list of eligible commodities would be reviewed annually.

- The permitted products are as given below:-

    - Generic Products such as Future and forwards, Vanilla options (call option and put option) and Swaps

- Structured Products such as products which are combination of either cash instruments and one or more generic products and products which are combination of two or more generic products.

- Banks are required to submit a quarterly report to the Chief General Manager, Financial Markets Regulations Department, RBI through Extensible Business Reporting Language (“XBRL”). Further in case of no transaction, a “NIL” report shall be submitted by the bank.

- The following Circular issued by RBI have been repealed:-

  - Hedging of Commodity Price Risk and Freight Risk in Overseas Markets dated March 12, 2018

  - Hedging of Commodity Price Risk and Freight Risk in Overseas Markets – Amendment dated January 15,2020

To read the Circular in detail, please click here

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IBBI

1. IBBI vide Notification dated December 12, 2022 issues the Insolvency Professional to act as an Interim Professional, Liquidator, Resolution Professional and Bankruptcy Trustee Guidelines, 2022.

- The IBBI is vested with the authority to recommend the name of the Insolvency Professional to act as an Interim Resolution Professional.

- The following are the instances where IBBI is required to recommend the name of the Insolvency Professional

    - When the operational Creditor has not specified the name of the Resolution Professional in an application made for CIRP.
    - Rejection of the Resolution plan submitted by the Insolvency Professional for the failure of the plan to comply with the conditions.
    - Board recommends the replacement of the Resolution Professional.

- The Adjudicating Authority (AA) in the case of "***Innovsource Private Limited Vs. Getit Grocery Private Ltd.***" Observed that when a panel of the Insolvency Professionals is made available to the AA is becomes easy to recommend the name of the Professionals whenever need be in a very time effective manner.

- The guidelines further state that when an AA gives directions to IBBI for recommendation of the Insolvency Professional, IBBI is not very accustomed to the nature, complexity and the volume of the CIRP in question. Thereby already making the recommendation process time consuming. Thus, if a panel is very much in place it becomes easier to select from the list of Professionals available.

- These guidelines also elaborate on the eligibility criteria for the Insolvency professionals to merit their names in the list of panel.

- The panel of Insolvency Professionals is made in such a way that the name of the Professional will be reflected against the zone where they are registered.

- IBBI shall also make sure to invite the interest of the Insolvency Professional in **Form A** for the period for which he is a part of the panel. Format to which is given towards the end of these guidelines.

- The panel is a merit based system and as a result the professionals will be ranked basis the assignments completed with the highest score being 100 and the lowest being 0.

- The guidelines also enumerate the obligations of the Insolvency Professionals who have merited their spot in the panel.

To read the Notification in detail, please click here.

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HIGH COURT

1. **Dispute between Ishvi Food Private Limited and DFM Foods Limited was amicably resolved vide settlement agreement executed with the intervention of the Delhi High Court Mediation and Conciliation Centre.**

DFM Foods Limited	Plaintiff
Ishvi Food Private Limited & ANR.	Defendants

Date of Judgement: December 12, 2022

Vide settlement agreement executed with the intervention of the Delhi High Court Mediation and Conciliation Centre, the dispute between the parties was amicably resolved with the following terms of settlement, as per the Settlement Agreement:

1. The Defendants acknowledged the Plaintiff to be the proprietor of the trademark "CURLS".

2. Defendants have violated the trademark rights of the Plaintiff, as also passed off their products as those originating from the Plaintiff.

3. Hon'ble Court directed not to import, offer for sale or supply, sell, supply, advertise, manufacture or cause to be manufactured, or in any way deal in goods Neutral Citation Number bearing the "CURLS" trademark of the Plaintiff in relation to the manufacture, sale, advertising, marketing etc. of its corn based snack product or in relation to any product or any other deceptively similar.

4. Defendant not to do any other act amounting to passing off of the Defendants' goods as those originating from the Plaintiff.

5. Defendant to destroy all infringing goods of any description in their possession within a week from the date of recordal of this compromise.

6. In consideration of the abovementioned undertaking by the Defendants, the Plaintiff foregoes its claim for delivery up, rendition of accounts, damages and costs under paragraph 43 (d) - (g) of the Plaint.

7. The undertakings given herein shall also be binding on all the legal heirs, representatives and assigns-in-business of the Defendants herein. A breach of these

undertakings shall automatically entitle the Plaintiff to claim for the damages prayed for in the suit."

The suit is, therefore, decreed and in terms of prayer clauses (A) to (C) in para 43 of the plaint read with the aforesaid Settlement Agreement which shall be treated as a part of this order. Wherein the parties shall remain bound by the terms of settlement.

To read the Judgement in detail, 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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