Swift India
CORPORATE SERVICES LLP

Swift e-Bulletin
Edition 38th 22-23
Week – January 02nd to January 06th

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

"Go on your path, even if you live for a day"

– Park Jimin.
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 Securities and Exchange Board of India ("**SEBI**"), Reserve Bank of India ("**RBI**") and orders from Supreme Court.

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

- ❖ RBI vide notification dated January 04, 2023 notified the Rationalization of reporting in Single Master Form (SMF) on FIRMS Portal.

- ❖ SEBI vide circular dated January 05, 2023 issued relaxation to issuers of listed securities in terms of sending hard copies of their Annual Report with other documents to the select holders of such listed securities.

We have prepared a comprehensive summary for quick reference of the aforesaid updates and Judgements / orders issued during the week of January 02^{nd} to January 06^{th}, 2023.

Thank you,
Swift team

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REGULATORY UPDATES

RBI

1. **RBI vide notification dated January 04, 2023 notified the Rationalisation of reporting in Single Master Form (SMF) on FIRMS Portal.**

- RBI vide notification dated January 05, 2022 made changes with respect to the Foreign Investment in SMF on FIRMS portal.

- The following changes were made to the existing FIRMS manual

  - The forms submitted shall be auto acknowledged, the same shall be verified by AD Banks in 5 working days based on the uploaded documents.

  - If the filing is a delayed filing, the AD Bank shall either advise the Late Submission Fee (LSF) as is computed by the system or advise for compounding of contravention.

- In case of delay in filing the form

  - In case the delay is less than equal to 3 years from the last date of filing the forms then the AD will levy the Late Submission Fees (LSF) as is computed by the system. On receipt of the LSF the AD Bank will update that on the applicant's portal and intimate the same to the applicant via email.

  - In case the delay is more than 3 years then the AD Bank will approve the delayed form subject to compounding of contravention. The said compounding application has to be filed with RBI by the applicant.

- The salient feature of the rolled out changes are briefly stated in the annexure given at the end of the notification.

- In case of any variation between the notification and the manual, the manual shall prevail.

To read the notification in detail, please click here.

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SEBI

1. **SEBI vide circular dated January 05, 2023 issued relaxation to issuers of listed securities in terms of sending hard copies of their Annual Report with other documents to the select holders of such listed securities.**

- The Regulation 36 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 states that the issuers of the listed securities will be obliged to send the physical copies of the financial statements, Board's report, Auditor's report etc. as is mentioned in Section 136 to the shareholders whose mail id is not registered with the company.

- However, pursuant to circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/79 dated May 12, 2020 the initial relaxation was granted for sending the hard copies to shareholders whose mail id is not registered with the company till December 31, 2021 which was further pursuant to circular no. SEBI/HO/CFD/CMD2/CIR/P/2022/62 dated May 13, 2022 extended to December 31, 2022.

- Upon receipt of numerous representations to extend the last date of relaxation SEBI vide General Circular No. 10/2022 dated December 28, 2022 extended the relaxation for Annual General Meetings conducted till September 30, 2023.

- However, while availing the relaxations it should be noted that

  - The shareholders requesting the hardcopies shall be provided with the same

  - The notice of AGM under Regulation 47 of SEBI (LODR) shall contain a web-link to the Annual Report to better enable shareholders to have access to full annual report.

- The said circular shall be applicable from immediate effect.

To read the circular in detail, please click here.

2. **SEBI vide circular dated January 05, 2023 issued relaxation to issuers of listed non-convertible securities to send hard copies of their Annual Report with other related documents to the select debenture holders.**

- The Regulation 58 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 states that the issuers of the listed non-convertible securities will be required to send the physical copies of the financial statements, Board's report, Auditor's report etc. as is mentioned in Section 136 to the holders of non-convertible securities in case of the holders' mail id not being registered with the company.

- However, pursuant to circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/79 dated May 12, 2020 the initial relaxation was granted for sending the hard copies to the debenture holders of the company till December 31, 2021 which was further pursuant to circular no. SEBI/HO/CFD/CMD2/CIR/P/2022/62 dated May 13, 2022 extended to December 31, 2022.

- Upon receipt of numerous representations to extend the last date of relaxation SEBI vide General Circular No. 10/2022 dated December 28, 2022 extended the relaxation till September 30, 2023.

- The said circular shall be applicable from immediate effect.

To read the circular in detail, please click here.

3. **SEBI vide the circular dated January 05, 2023 notified Monitoring and Periodical reporting of the compliance with the requirements pertaining to 'Security and Covenant Monitoring' system hosted by Depositories**

- SEBI vide circular dated August 13, 2021 had specified the manner for recording of charges by Issuers and manner of monitoring and other responsibilities of stakeholders for 'Security and Covenant Monitoring' using Distributed Ledger Technology ("DLT").

- Following which SEBI vide circular dated March 29,2022 issued Operating Guidelines for the aforesaid system using DLT along with roles and responsibilities of the various stakeholders involved.

- Depositories are required to ensure periodic monitoring regarding compliance with the requirements of various circulars relating to 'Security & Covenant Monitoring System' issued by said along with the above-mentioned circulars.

- Depositories are required to notify SEBI with any instance of non-compliance on quarterly basis, not later than one month from the end of the quarter in the format as specified in the aforesaid circular.

- The provisions of this circular shall come in force from April 01,2023.

To read the circular in detail, please click here

4. **SEBI vide the circular January 05,2023 notified Extension of timelines for entering and verification of the details of the existing outstanding non-convertible securities in the 'Security and Covenant Monitoring' system hosted by Depositories.**

- SEBI vide circular dated August 13, 2021 had specified the manner for recording of charges by Issuers and manner of monitoring and other responsibilities of stakeholders for 'Security and Covenant Monitoring' using Distributed Ledger Technology ("DLT").

- Following which SEBI vide circular dated March 29,2022 issued Operating Guidelines for the aforesaid system using DLT along with roles and responsibilities of the various stakeholders involved.

- On receipt of representation from depositories for extension in timeline of entering the legacy data being requested by the issuers , SEBI modified the circular dated March 29, 2022 providing that issuers is required to ensure that they enter the details into the system on or before October 31, 2022 and Debenture Trustees("DTs") is required to verify the same by December 31, 2022, for existing outstanding non-convertible securities.

- Further, on receipt of representation from DTs citing operational/technical difficulties owing to the advanced nature of the technology involved and seeking extension of timeline for verifying entries made by issuer.

- Accordingly, for existing outstanding non-convertible securities, issuers is required to ensure that they enter the details into the system on or before January 31,2023 and DTs shall very the same by February 28,2023.

- DTs are required to submit a fortnightly progress report of status of compliance regarding the details pertaining to existing outstanding non-convertible securities being entered in the system by the issuers and verification of the same by the DT, till the extension of timeline for compliance is in place.

- The progress report shall be submitted within five days of the end of the fortnight.

To read the circular in detail, please click here

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JUDGEMENTS/ ORDERS

SUPREME COURT

1. **Supreme Court opined that the Appellant is not justified in invoking the jurisdiction of the CLB under Section 111A of the Companies Act for violation of SEBI regulations.**

IFB Agro Industries Limited	Appellant(s)
SICGIL India Limited and Others	Respondent(s)

<u>Date of Judgement</u>: January 04, 2023

The scope of the certificatory jurisdiction of the National Company Law Tribunal under Section 59 of the Companies Act, 2013, was the short question for Appellant's appeal relates to which was against the judgment of the National Company Law Appellate Tribunal. IFB Agro Industries Limited, is a listed company engaged in the manufacture and sale of rectified spirit, country liquor, marine products, carbon dioxide gas etc.

The Appellate Tribunal set aside the judgment of the National Company Law Tribunal allowing the company petition filed by the Appellant under Section 111A of the Companies Act, 1956 for rectification of Members Register. The Tribunal while allowing the petition, directed the Appellant to buy-back its shares which were held by the Respondents. In appeal, the Appellate Tribunal set aside this direction on the ground that the Tribunal exceeded its jurisdiction.

This being the reason, it is this order of the Appellate Tribunal which is been challenged before the Supreme Court which is called upon to determine the appropriate forum for adjudication and determination of violations of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1972, and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 19923, framed under the Securities and Exchange Board of India Act, 1992.

Both the questions, one, related to the issue following the decision of the Supreme Court ("Court") in Ammonia Supplies Corporation (P) Ltd. v. Modern Plastic Containers Pvt. Ltd. & Ors.5, the Court had held that the rectificatory jurisdiction under Section 59 of the 2013 Act is summary in nature and not intended to be exercised where there are contested facts and disputed questions. However, on the second issue, the Court has held that transactions falling within the jurisdiction of Regulatory bodies created under a statute must necessarily be subjected to their exante scrutiny, enquiry and adjudication. The Court, therefore, rejected the contention that the National Company Law Tribunal under Section 59 exercises a parallel jurisdiction with Securities and Exchange Board of India for addressing violations of the Regulations framed under the SEBI Act.

To read the notification 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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