



Regulatory Alert

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Relaxation in SEBI Regulations to facilitate Resolution Plan approved under Insolvency and Bankruptcy Code, 2016

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Background

The Insolvency and Bankruptcy Code 2016 (IBC) is a landmark legislation aimed at strengthening the Indian banking and financial system that has been saddled with non-performing assets and has been facing problems in recovering dues from defaulting corporate debtors.

- Under the IBC, the National Company Law Tribunal (NCLT) is designated as the adjudicating authority for insolvency matters involving Companies/LLPs.
- Regulation 31 of IBC empowers the adjudicating authority to sanction the Resolution Plan approved by the Committee of Creditors (COC), if the Resolution Plan meets the requirements prescribed under the IBC. Such approved Resolution Plan is binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved.
- The entire IBC process is time-bound. One of the hurdles in achieving timely closure was the implication of subordinate legislations especially if defaulting companies are listed on stock exchanges.
- In order to achieve the IBC timelines, SEBI has recently amended the below regulations effective 31 May 2018:
 - SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 2011 (SAST) ;
 - SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR) ;
 - SEBI (Delisting Of Equity Shares) Regulations, 2009 (Delisting); and
 - SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR)

The key highlights of the amendments to the above-mentioned SEBI Regulations are summarized in this alert.

Key amendments

The below amendments apply to listed companies which are under insolvency process under IBC and for which Resolution Plan has been approved:

- Acquirer may acquire shares or voting rights beyond the maximum permissible non-public shareholding of 75%
- Preferential issue of specified securities exempted from the applicability of Chapter VII (which deals with Preferential Issue of securities) under ICDR (except the lock-in provisions). Such exemption was earlier available only for equity shares.
- Exemption from complying with the Delisting Regulations where the delisting of equity shares is made pursuant to an approved Resolution Plan and where the plan lays down any specific procedure to complete the delisting of such share; or provides an exit option to existing public shareholders at a price specified in the Resolution Plan.

- In order to qualify for the above, the exit to the shareholders should be at a price more than the liquidation value as determined under IBC after paying off dues in the order of priority.
- In case it is proposed that existing promoters or any other shareholder are to be provided an opportunity to exit under the Resolution Plan at a price higher than the price determined as above, the existing public shareholders shall also be provided an exit opportunity at a price which shall not be less than the price.
- The amendment also permits a company under IBC to make an application for listing of delisted equity shares without mandatory cooling period prescribed under the Delisting Regulations.
- Certain relaxations provided under the LODR Regulations:
 - Relaxation from constituting and discharging responsibilities of certain Board of Director committees. These roles and responsibilities are to be fulfilled by the Resolution Professional
 - No approval of shareholders through resolution is required for material related party transactions in respect of a Resolution Plan approved under IBC subject to time-bound disclosures to recognized stock exchanges
 - A listed entity under IBC can dispose off shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) or cease to exercise control over the subsidiary or sell, or dispose off and lease assets amounting to more than 20% of its holding, subject to time-bound disclosures to recognized stock exchanges
 - Certain relaxations provided to listed companies where the re-classification of existing promoter or promoter group of the listed entity as long as existing promoter and promoter group seeking re-classification shall not remain in control of the listed entity, subject to time-bound disclosures to recognized stock exchanges
 - The requirements specified regarding filing of draft Scheme of Arrangement with the stock exchange/SEBI shall not apply to a restructuring proposal approved as part of a Resolution Plan by the NCLT under IBC.
 - Specified details for events in relation to the Corporate Insolvency Resolution Process (CIRP) of a listed Corporate Debtor under IBC to be disclosed to the stock exchange.

Conclusion

The amendments made in the SEBI Regulations for listed companies under IBC would give such listed companies and the acquirers, much needed relief from procedural compliances and would facilitate implementation of the Resolution Plan in a time-bound manner which is one of the key objectives of IBC.

Source:

- Notification No. SEBI/LAD-NRO/GN/2018/20 - SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2018 published in the Official Gazette dated 31 May 2018
- Notification No. SEBI/LAD-NRO/GN/2018/22 - SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2018 published in the Official Gazette dated 31 May 2018
- Notification No. SEBI/LAD-NRO/GN/2018/23 - SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2018 published in the Official Gazette dated 31 May 2018
- Notification No. SEBI/LAD-NRO/GN/2018/21 - SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2018 published in the Official Gazette dated 31 May 2018

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