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SEBI increases creeping acquisition limit up to 10% for acquisition of shares by promoters through preferential issue without making an open offer under Takeover Code

Creeping acquisition limit for fresh acquisition by promoters temporarily increased to 10% under the Takeover Code

Background:

Currently, under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Code), acquirer together with persons acting with him (PAC), who holds 25% or more of voting rights in the target company but less than the maximum permissible non-public shareholding (presently at 75%), are allowed to acquire additional shares or voting rights up to 5% of the voting rights (creeping acquisition) in any financial year (1 April to 31 March) without having to make an open offer.

Under Regulation 6, acquirer together with PAC who holds 25% or more of voting rights in the target company but less than the maximum permissible non-public shareholding, are not allowed to make voluntary open offer (minimum 10%) to acquire additional shares in accordance with Takeover Code, if they have acquired shares without attracting the obligation to make a public announcement of an open offer in the preceding 52 weeks.

Amendments to Takeover Code by SEBI:

Increase in creeping acquisition limit for acquisition through preferential issue to promoters by the target company

Securities and Exchange Board of India (SEBI) has, on 16 June 2020, amended¹ Takeover Code allowing promoters who hold 25% or more of shares or voting rights in the target company but less than the maximum permissible non-public shareholding, to acquire additional shares or voting rights up to 10% of the voting rights through preferential issue of equity shares, without triggering an open offer. This relaxation can be availed during the financial year 2020-21 i.e. 1 April 2020 to 31 March 2021.

Voluntary open offer

SEBI has also permitted acquirer and PAC holding 25% or more of the shares or voting rights in the target company, but less than the maximum permissible non-public shareholding, who have acquired

¹ Notification no. SEBI/LAD-NRO/GN/2020/14 on Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2020 dated 16 June 2020 issued by SEBI.

shares without attracting the obligation to make a public announcement of an open offer in the preceding 52 weeks, to make a voluntary open offer till 31 March 2021.

Conclusion:

The above relaxation by SEBI comes at an opportune time when businesses are under economic stress and in need of capital to tide over the Covid-19 crisis. It would assist the listed entities to raise additional equity funds from promoters for their business needs without triggering an open offer under the Takeover Code. It also permit promoters to increase their shareholding in the target company up to 10% in the financial year 2020-21, under the creeping acquisition route through preferential issue without making an open offer.



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