

SEBI amends various regulations granting relaxation to listed companies under the Insolvency and Bankruptcy Code, 2016

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In brief

While the introduction of the Insolvency and Bankruptcy Code, 2016 (IBC) was a welcome move by the Government last year, a holistic approach by amending the Securities and Exchange Board of India (SEBI) regulations for seamless process and compliance was lacking. A spate of amendments by the SEBI in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [SEBI (LODR) Regulations], SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SEBI Takeover Regulations), SEBI Issue of Capital and Disclosure Requirements Regulations, 2009 [SEBI (ICDR) Regulations] and SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2018 introduced through notifications¹ dated 31 May, 2018 effective from 01 June, 2018 serve as a bridge between the IBC and the respective SEBI Regulations to further smoothen and streamline the IBC process.

An overview of the amendments covered in the said notifications are provided in this Insight.

In detail

SEBI (LODR) Regulations

The following relaxations have been granted to listed companies:

Material related party transactions

Material related party transactions require the approval of shareholders. A proviso has been added to the effect that the approval of shareholders shall not be required for listed companies whose resolution plan has been approved under the IBC, subject to disclosure to recognised stock exchange

within one day of the resolution plan being approved.

Disposal of shares of material subsidiary

The following transactions required approval of shareholders through special resolution at a general meeting, unless such transactions were done under a Scheme of Arrangement duly approved by the court or Tribunal:

- i) Disposal of shares in a material subsidiary resulting in reduction of its shareholding (either on its

own or together with other subsidiaries) to less than 50% or cessation of the exercise of control over the subsidiary;

- ii) Selling, disposing and leasing of assets amounting to more than 20% of the assets of the material subsidiary on an aggregate basis during a financial year.

If the aforesaid transactions are done under a resolution plan under the IBC and such an event is disclosed to the recognised stock exchange within one day of the resolution plan being

¹ No. SEBI/LAD-NRO/GN/2018/20, No. SEBI/LAD-NRO/GN/2018/21, No. SEBI/LAD-NRO/GN/2018/22, No. SEBI/LAD-NRO/GN/2018/23

approved, the approval of shareholders would not be required.

Disclosure of class of shareholders and conditions for reclassifications

Prior to amendment, the following reclassification were allowed subject to fulfilment of certain conditions:

- i) New promoter replacing the previous promoter;
- ii) An entity becomes professionally managed and does not have any identifiable promoter, the existing promoters may be reclassified as public shareholders; and
- iii) Reclassification of promoter as public shareholders.

A sub-section has been added to provide that if reclassification is as per the resolution plan approved under the IBC, compliance with the specified conditions is not required, if such promoter and promoter group do not remain in control of the listed entity and such reclassification along with the underlying rationale is disclosed to the stock exchanges within one day of the resolution plan being approved.

Draft scheme of arrangement and scheme of arrangement

Prior to amendment, every listed entity desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement before filing the said scheme with any court or Tribunal under sections 230-234 and section 66 of Companies Act, 2013 is required to obtain an observation letter or no-objection letter from the SEBI and stock

exchanges.

A sub-regulation has been inserted to the effect that a listed entity under the IBC is not required to obtain prior approval of the SEBI and stock exchanges.

Corporate insolvency resolution process (CIRP)

Part A to Schedule III of the SEBI LODR Regulations provides for events that are required to be disclosed. A sub-clause has been inserted to include disclosures in relation to CIRP.

SEBI Takeover Regulations

In relation to open offer requirements of the existing SEBI Takeover Regulations under Regulation 3, the proviso to sub regulation (2) does not permit acquisitions that would breach the maximum permissible non-public shareholding limit of 75%. After the said proviso, another proviso has been inserted enabling the successful acquirer under the IBC to hold more than 75% in a listed entity.

A similar amendment in Rule 19A of Securities Contract Regulation Rules, 1957 is required for granting the full benefit of the above amendment.

SEBI (ICDR) Regulations

SEBI had in August 2017, exempted listed entities whose resolution plan had been approved under IBC from complying with the requirements of preferential issue of equity shares. The said relaxation has now been extended to preferential issue of convertible securities as well. However, provisions in relation to lock-in of securities would continue to apply.

SEBI (Delisting of Equity Shares) (Amendment) Regulations

The amendment under the said regulations exempts listed entities whose resolution plan has been approved under the IBC from complying with procedures, if the resolution plan

- a. Lays down any specific procedure to complete the delisting of such shares; or
- b. Provides an exit option to existing public shareholders at a price specified therein.

It further provides that exit to shareholders of such listed entities should be at a price not less than the liquidation value, as determined under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, after paying off dues in the order of priority, as defined under section 53 of the IBC.

An amendment has been made to the effect that the shares of the company which have been delisted as per the above can re-apply for listing without any tenure restriction.

The takeaways

The plethora of amendments introduced by SEBI is apposite at a time when the need for a streamlined IBC process is of utter necessity. Hopefully, similar amendments may be carried out in other statutes also.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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