



## SEBI regulations amended to facilitate insolvency resolution

The Securities and Exchange Board of India ('SEBI') has issued much-awaited notifications amending its regulations, effective from June 1, 2018, with a view to facilitate insolvency resolution plan for listed entities under the Insolvency and Bankruptcy Code, 2016 ( 'the Code'). These notifications strike a right balance along with the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, giving a fillip to the successful resolution of insolvency cases.

We have summarised the amendments made to each regulation and their impact, in this regulatory alert.

### **SEBI (Delisting of Equity Shares) Regulations, 2009 ('Delisting Regulations')**

Unlike listed companies seeking delisting of its equity shares from the stock exchange(s) in the normal course, listed companies undergoing insolvency resolution proceedings ('Listed Insolvent Company(ies)') require a separate mechanism for resolution plans to be effective and hence, SEBI has amended the Delisting Regulations to provide that the acquirers can choose to delist such acquired Listed Insolvent Company without following the intricate delisting procedure.

The above-mentioned relaxation applies if National Company Law Tribunal ('NCLT') approved resolution plan -

- Lays down the specific procedure to complete the delisting, or
- Provides an exit option to the existing public shareholders at a price specified in the resolution plan.

It's worth noting that exit price to the public shareholders need not take into account any valuation based on frequently or infrequently traded shares or any other SEBI formula except that it should not be less than liquidation value [after paying off dues as per the Code]



and all shareholders should be provided exit at the price at least equivalent to the price at which exit is provided to promoters or other shareholders.

### **Impact**

The above-mentioned amendments to the Delisting Regulations provide significant relief to the potential acquirers of Listed Insolvent Companies. Hitherto, an acquirer of a Listed Insolvent Company had to comply with onerous requirements of the Delisting Regulations such as compliance with bidding/ reverse book building process, fixation of the floor price, the minimum number of equity shares to be acquired for delisting, prior approval of stock exchanges etc. Post-amendment, the acquirer would not be required to comply with any of these requirements.

The amendment requires disclosure of details of delisting to be made within one day of resolution plan being approved by NCLT. One more important relaxation is that there is no cooling-off period (5 years in other cases) for relisting of the securities, providing exit comfort to the lenders and relaxed compliance for acquirers.

### **SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ('Takeover Regulations')**

An amendment has been made in Regulation 3(2), by inserting a proviso enabling the acquirer holding 25% or more of shares or voting rights in a listed company, to acquire shares more than the maximum non-public shareholding i.e. 75% subject to and in accordance with the resolution plan approved by the NCLT.

### **Impact**

Hitherto, as per the Takeover Regulations, the acquirers were treated at par and no person could acquire shares or voting rights beyond the maximum non-public shareholding i.e. 75% (unless the acquisition is under a delisting offer). The above amendment has paved a way for the acquirer for infusion of funds through equity capital without triggering Takeover Regulations i.e. beyond 75% of the post-issue share capital of the Listed Insolvent Company. However, no relaxation is granted to comply with minimum public shareholding and such acquirer would need to comply with minimum public shareholding requirement (25%) within 1 (one) year from the date it acquires shares, as per the Securities Contracts (Regulations) Rules, 1957.

### **SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ('ICDR Regulations')**

SEBI has amended Regulation 70 of ICDR Regulations providing an exemption from compliance with requirements for the preferential issue of securities (except for the compliance with compulsory lock-in to such acquired securities) for the securities issued pursuant to NCLT approved resolution plan. While such exemption was available to issue of equity shares, the exemption has now been extended to the preferential issue of convertible instruments (e.g. convertible preference shares, convertible debentures) as well. Therefore, SEBI requirements for a preferential issue such as pricing, shareholder approval, disclosure,



tenure, etc. (except lock-in provisions) shall not apply to the preferential issue of equity shares and convertible instruments.

### Impact

This provides acquirers with the much-needed flexibility to structure their capital infusion into insolvent companies without being subject to the rigours of preferential issue guidelines. The retention of lock-in is also in line with the objective of only encouraging investors/strategic acquirers with a medium to long-term mindset.

## SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations')

Several amendments have been made in the LODR Regulation to facilitate insolvency resolution for Listed Insolvent Companies. A brief overview of the same is as under:

Amendment	Impact
<ul style="list-style-type: none"><li>Though the resolution plan is a kind of scheme approved by NCLT, the specific SEBI requirements (such as prior approval of stock exchanges, obtaining fairness opinion, valuation report, majority approval of minority shareholders, etc.) relating to a scheme of arrangement would not apply to a restructuring proposal under a resolution plan, subject to specific disclosures about resolution application and resolution plan to be made to the stock exchanges within one day of the resolution plan being approved</li></ul>	<ul style="list-style-type: none"><li>This amendment brings much-needed clarity on undertaking a scheme of arrangement approved under a resolution plan. Further, the dispensation from seeking approval of the stock exchanges and the shareholders would enable speedy implementation of the resolution plan.</li></ul>
<ul style="list-style-type: none"><li>Pursuant to the amendment, subject to approved resolution plan, the erstwhile promoters can be reclassified as public shareholders, subject to them having no control of the listed company and the fact of such reclassification being disclosed to the stock exchanges within one day of the resolution plan being approved.</li></ul>	<ul style="list-style-type: none"><li>In terms of the resolution approved by NCLT, the shareholding of an existing promoters of the Listed Insolvent Companies may be significantly diluted and acquirer would want them to be classified as public shareholders. This amendment further enables satisfaction of minimum public shareholding norms, in case the acquirer desires to keep the company listed, as the reclassified shareholding will be considered for minimum public shareholding norms.</li></ul>



Amendment	Impact
<ul style="list-style-type: none"><li>• Regulation 15,18,19, 20 and 21 of the LODR Regulations have been amended to provide that resolution professional appointed under the Code, shall step in to the shoes of the board of directors and various committees (e.g. audit committee, nomination and remuneration committee, etc.), specified therein.</li></ul>	<ul style="list-style-type: none"><li>• This amendment is in harmony with sections 17 and 23 of the Code, which provides that, where an application for insolvency resolution is accepted by NCLT, then from the date of appointment of a resolution professional, the management of the affairs of the entity vests with the resolution professional and the powers of board of directors stand suspended. This amendment brings the SEBI regulations in sync with the provisions of the Code.</li></ul>
<ul style="list-style-type: none"><li>• No shareholder approval required for material related party transactions, disposal of shares in a material subsidiary or for dealing with assets of a material subsidiary, the actions whereof are taken as a part of a resolution plan.</li></ul>	<ul style="list-style-type: none"><li>• Ministry of Corporate Affairs ('MCA') had earlier clarified<sup>1</sup> that the shareholder approval required under the Companies Act, 2013 or any other law shall be deemed to have been given on approval of the resolution plan by NCLT. SEBI has accepted the same stand adopted by MCA that shareholders' approval will also not be required for undertaking any material related party transactions or any actions pertaining to the material subsidiary.</li></ul>

## Our Comments

Considering that several listed entities are undergoing insolvency process, the amendments will facilitate a more meaningful and quicker resolution. The concerned acquirers and their advisors will now have more clarity and flexibility in structuring their acquisition bids, resolution plans and seeking necessary exemptions from NCLT, for Listed Insolvent Companies.

<sup>1</sup> General Circular No. IBC/01/2017 dated October 25, 2017



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