



Monthly Updates - SEBI MARCH 2019.

1. CIRCULARS

- **Modification of circular dated December 7, 2018 on ‘Disclosure of significant beneficial ownership in the shareholding pattern** [Circular no. SEBI/HO/CFD/CMD1/CIR/P/2019/36, dated March 12 ,2019]

The concept of significant beneficial ownership was introduced under the Companies Act, 2013 in order to address issues concerning Opaque Structures. Under these structures, it was felt difficult to identify those individuals, who are exercising control over companies. In this regard, Companies (Significant Beneficial Owners) Rules, 2018, was notified. The said Rules prescribed to make disclosures regarding individuals who qualify as Significant Beneficial Owners and with regard to a Company, the percentage of shareholding was held to be the criteria for identifying Significant Beneficial Ownership.

In order to give effect to above, SEBI Vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2018/0000000149 dated December 7, 2018 made it mandatory for listed Companies to make disclosures about details pertaining to Significant Beneficial owners (SBO) of their shares on quarterly basis along with their shareholding pattern in the format prescribed.

Subsequently, Ministry of Corporate Affairs (MCA) vide the Companies (Significant Beneficial Owners) Amendment Rules, notified on February 8, 2019 introduced various amendments. In respect to companies, the definition of Significant Beneficial Owner was amended and criteria for determining Significant Beneficial Owner is enlarged. In addition to percentage of shareholding, holding of voting rights, right to receive dividend and right to exercise significant influence or control were set as criteria to determine Significant Beneficial Ownership.

In view of the amendments to the said Rules, SEBI vide the Circular no. SEBI/HO/CFD/CMD1/CIR/P/2019/36, dated March 12 ,2019 has modified its earlier Circular introducing the disclosure format in line with the format set out in the Amended Companies (Significant Beneficial Owners) Rules, 2019 and requires disclosure of Significant Beneficial Ownership based on new criteria mentioned above. Further, **this Circular is given effect from quarter ending June 30, 2019.**

2. ENFORCEMENT – ORDER OF CHAIRMAN/MEMBERS

➤ **Actions against unregistered investment advisory (Way2Gains, Capital Mirror and Astro Capital Solutions) dated March 29, 2019.**

FACTS: - Securities and Exchange Board of India (“SEBI”) had received a complaint dated February 08, 2018 against M/s. Capital Mirror (hereinafter referred to as “Capital Mirror”), inter alia alleging engagement that it is carrying on unregistered investment advisory activities. Similarly, SEBI has also received a complaint against M/s. Astro Capital Solutions (hereinafter referred to as “ACS”) dated May 25, 2018 inter alia alleging that ACS failed to provide products/services after payment of money.

SEBI has observed that M/s.Way2gains (hereinafter referred to as “W2G”), is a connected entity of Capital Mirror and ACS. SEBI on investigation found that all the three companies are connected through common address and family relationships. SEBI has held that these companies were offering many packages offering stock tips and promising high returns to the customers. The services provided by above mentioned companies were held to be falling under Investment advisory as defined under section 2(m) of the IA Regulations. Further, based on the financial transactions in their Bank accounts, SEBI also concluded that the nature of their business falls under portfolio management services.

As these companies had no registration or certification for carrying on such activities, they were held to have violated the provisions of section 12(1) of the SEBI Act Read with regulation 3(1) of the IA Regulations and regulation 3 of the PMS Regulations.

ORDER: - In this view and in exercise of the powers conferred under Sections 11(1), 11(4)(b), 11B and 11D read with Section 19 of the SEBI Act. The Adjudicating officer issued by way of interim ex-parte order, the following directions –

- i. M/s.Way2gains, M/s. Capital Mirror, M/s. Astro Capital Solutions and their respective proprietors are directed to:-
 - a. cease and desist from acting as an investment advisor or portfolio manager and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever until further orders;
 - b. Not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders;
 - c. Not to divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders;
 - d. Immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, communications etc. in relation to their investment advisory activity or any other unregistered activity in the securities market until further orders.
- ii. Banks wherein Companies and its proprietors are holding accounts banks are directed not to allow any debits / withdrawals and credits from the said accounts, without the permission of SEBI. The Banks are also directed to ensure that all the above directions are strictly enforced.

3. SAT ORDER

Failure to make disclosures regarding Bridge Loan in an IPO

(Appeal No. 224/2017- Corporate Strategic Allianz Ltd. V. Securities and Exchange Board of India)

FACTS

The Corporate Strategic Allianz Ltd., the Merchant Banker had challenged the Order dated 12/05/2017. It was stated that Merchant Banker was the Book Running Lead Manager (BRLM) to the Initial Public Offer (referred to hereinafter as 'IPO) of a company known as Rushil Decor Ltd. (referred to hereinafter as 'the Company'). The Company had filed Red Herring Prospectus on June 8, 2011 and the prospectus on June 28, 2011. A show cause notice was issued to Merchant Banker indicating that the Company had taken unsecured bridge loan of Rs.7, 06, 00,000/- which was not disclosed in the Prospectus for the IPO and in fact the Prospectus categorically stated that the Company had not raised any bridge loan against the proceeds of this issue. The Adjudicating Officer found that the appellant had violated the provisions of Regulation 57 & 64(1) of the ICDR Regulations holding that a crucial fact was not disclosed in the prospectus and Regulation 13 of Merchant Bankers Regulations read with Clauses 1 to 7 and 21 of the Code of Conduct for Merchant Bankers specified in Schedule III of the Merchant Bankers Regulations. Therefore the Adjudicating Officer imposed a penalty of Rs.8, 00,000/- under Section 15HB of the SEBI Act.

In this appeal the counsel for Appellant contended that the appellant had exercised due diligence and had verified the adequacy of the disclosures and admitted that the loan of Rs.5.94 crores was not disclosed but submitted that it did not have a material bearing as it did not affect the disclosure that was required to be made in the IPO. On the other hand, the counsel for the respondent contended that the Adjudicating Officer had clearly found that the appellant had violated the provisions of Regulation 57 of the ICDR Regulations and therefore the company was not diligent and consequently also violated Regulation 64(1) of the ICDR Regulations.

ORDER

The tribunal after hearing both the counsels concluded that the appellant did not exercise due diligence and did not disclose fairly in the offer document. Thus, the imposition of penalty of Rs. 8 Lakhs under Section 15HB imposed by the Adjudicating Officer in the given facts is just and reasonable. In the light of this Hon'ble SAT held it does not find any error in the impugned order and this appeal fails and is dismissed.

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