CIRCULARS

1. **Disclosure of reasons for encumbrance by promoter of listed companies** [Circular no. SEBI/HO/CFD/DCR1/CIR/P/2019/90, dated August 07, 2019. Effective Date: October 1, 2019]

Background

The requirement to disclose the details regarding pledging of shares by promoters were introduced in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 through amendment w.e.f. January 28, 2009. Subsequently, the requirement continued in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations) and was further expanded to cover all types of encumbrances.

Disclosure Format

In order to help investors to make an informed decision, SEBI vide Regulation 31 (1) & 31(2) of the Takeover Regulations 2011 mandated promoters of target companies to disclose the following details to the Stock Exchanges and the target company in the format prescribed by SEBI from time to time:

i. details of shares in such target company encumbered by him or by persons acting in concert (PAC) with him.
ii. details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.

Accordingly, vide Circular dated August 5, 2015 [Circular No. CIR/CFD/POLICYCELL/3/2015], SEBI prescribed the amended format for disclosure.

The prescribed format mandated promoters to mainly disclose details such as their name or their PAC, promoter holding in the company, promoter holding encumbered & details of events leading to the encumbrance of promoter shares.

Additional Disclosure Format

In order to bring greater transparency regarding reasons for encumbrance, particularly when significant shareholding by promoter along with PAC with him is encumbered, SEBI has decided to prescribe additional disclosure requirements under Regulation 31(1) read with Regulation 28(3) of Takeover Regulations, as follows.

1. The promoter of every listed company shall specifically disclose detailed reasons for encumbrance within two working days from the creation of the encumbrance, if the combined encumbrance by the promoter along with PACs with him equals or exceeds:
   a) 50% of their shareholding in the company; or
   b) 20% of the total share capital of the company,
2. In case the existing combined encumbrance of promoter along with PACs is exceeding the thresholds mentioned above as on September 30, 2019. Then the promoter shall make the first disclosure on detailed reasons for encumbrance by October 4, 2019.

The Format for the disclosure has been prescribed in Annexure-II of the circular. These disclosures are in addition to the disclosures prescribed in Annexure-I of circular dated August 5, 2019. Moreover, such disclosures will be warranted on every occasion, when the extent of encumbrance (having already breached the above threshold limits) increases further from the prevailing levels.

The enhanced and detailed disclosure mandated by SEBI vide this circular shall further increase transparency in listed companies and will benefit the investors to make an informed investment decision in relation to listed companies.

2. Permissible investments by Alternative Investment Funds operating in IFSC [Circular no. SEBI/HO/IFSC/CIR/P/2019/91, dated August 9 ,2019]

Introduction

The Securities and Exchange Board of India notified the SEBI (International Financial Services Centres) guidelines, 2015 to facilitate and regulate financial services relating to securities market in an International Financial Services Centre (IFSC) set up under Section 18(1) of Special Economic Zones Act, 2005. The IFSC Guidelines provided a broad framework for setting up of Alternatives Investment Funds (AIF) in IFSC.

An IFSC mainly caters to customers outside the jurisdiction of domestic economy, dealing with flows of finance, financial products and services across borders. Currently, Gujarat International Financial Tec-City Co. Ltd is the first and only IFSC notified by the central government in the special economic zone.

AIF incorporated in IFSC

Earlier, an AIF operating in an IFSC had Limited investment options. In order to increase participation of AIFs and make companies raise capital easily, SEBI vide Circular dated May 23, 2017 amended Clause 22 (3) of SEBI (International Financial Services Centres) Guidelines, 2015 relating to securities in which AIF operating in IFSC could invest.

Amended Clause 22(3) states that any AIF operating in IFSC shall be permitted to invest in the following:

(a) Securities which are listed in IFSC;
(b) Securities issued by companies incorporated in IFSC;
(c) Securities issued by companies belonging to foreign jurisdiction.

Further, AIFs were permitted to invest in India through the Foreign Portfolio Investment (FPI) route in terms of SEBI circular dated May 23, 2017. Then vide circular dated November 26, 2018 [Cr. No. SEBI/HO/IMD/DF1/CIR/P/143/2018] such AIFs were allowed to invest in India through the Foreign Venture Capital Investor or Foreign Direct Investment (FDI) route also, in accordance with applicable FDI policy/guidelines issued by Government of India and RBI in this regard

In order to further liberalise IFSC AIF investments, SEBI had consulted various stakeholders for their inputs. Based on the consultations, SEBI now vide this circular has decided to harmonize the provisions governing investments by AIFs incorporated in IFSC with those provisions regarding investments applicable for domestic AIFs.

Consequently, AIFs incorporated in IFSC shall now be permitted to make investments in other jurisdictions in India as per the provisions of the SEBI (Alternative Investment Fund) Regulations, 2012, and the guidelines and circulars issued thereunder, including the operating guidelines for AIFs in IFSC.

This would also ensure that AIF's in IFSC are treated at par with the offshore funds/investors with respect to the permissible investment avenues for making investments into India. AIF may now invest in unlisted securities (including shares of a private limited company and capital of a limited liability partnership) in the Indian market.

NCLAT ORDER

(Appeal No. 629 of 2018- Securities and Exchange Board of India V. 1. Assam Company limited, 2. SREI Infrastructure Finance Pvt Ltd, 3. Mr. C A Kannan T, 4. BRS Ventures Investment Limited. Dated 29th August 2019.)

An appeal by SEBI against an approved Resolution Plan was not maintainable under Section 61(3) of the I&B Code in absence of any violation of the provisions of the Code or any existing law or material irregularity.

Facts

A Resolution Plan submitted by "BRS Ventures Investment Ltd." had been approved by the NCLT, Guwahati Bench. However, the plan provided for Delisting of Equity Shares of "Assam Company Limited" which would indirectly result in denuding SEBI's jurisdiction over it. There were pending investigations initiated by SEBI against Assam Company Ltd. as a shell company pursuant to a letter dated 9th June 2017 issued by the Ministry of Corporate Affairs (MCA). SEBI had also passed certain directions, however, on an appeal by Assam Company Ltd, the directions had been stayed by the Securities Appellate Tribunal (SAT) and hearing had been granted. Based on the representation, SEBI again passed an interim order against Assam company which had 30 days to file objections. However, it failed to comply in spite of multiple opportunities. Meanwhile, Assam Company challenged the letter dated 09.06.2017 of the Government of India, MCA, which came to be allowed by a learned Single Judge of the Guwahati High Court, setting aside the said letter.

SEBI challenged the order of NCLT approving the Resolution Plan.

SEBI's Arguments

SEBI submitted that the clause in the Resolution Plan is that the Equity Shares of the 1st Respondent shall stand delisted from the concerned Stock Exchanges will not only obstruct the examination/ action initiated By SEBI but also consequently compel Public Share Holders to exit for a very meagre amount, which would not be in the interest of investors and the Securities market. Further, the Resolution Plan involving delisting of Equity Shares could not have proceeded without hearing SEBI. Further, the 1st Respondent without having taken any steps to file its reply/ objections against the interim order dated 08.12.2017 and without challenging the same before the appropriate Forum, contravened the SEBI Act and thereby attracting the **provisions of Section 30 (2) (e) of the Insolvency and Bankruptcy Code, 2016**

Respondents' Arguments

The 4th Respondent submitted that the sole ground taken by SEBI was that there are pending investigations against 1st Respondent as a shell company and therefore the delisting of equity shares should not be allowed in terms of the resolution plan. However, by an order dated 7th March 2019, the Hon'ble High Court of Guwahati had set aside the investigation. Further, the 4th Respondent had provided for exit route to the public shareholders by earmarking Rs.1.82 crores for cancellation of their shares and no individual and/or entity having any dues had been deprived of any amount under the approved resolution plan. Therefore, the approved resolution plan had taken care of the interest of the public shareholders and all the stakeholders, and SEBI's apprehensions were completely misplaced. In addition, the delisting procedure laid down in the approved resolution plan was in complete conformity with the procedure laid down by SEBI in 'Delisting of Equity Shares (Amendment) Regulations, 2018 and there is no violation by the respondent.

NCLAT Observations

The Appellate Tribunal observed that an interim order passed by SEBI (Appellant) directing investigation did not amount to any existing law, to attract Clause (e) of Section 30(2) of the I&B Code, therefore, SEBI could not take the plea that the approved Resolution Plan was in contravention of any law for the time being in force. Therefore, ground shown in Section 61(3) (i) for preferring an appeal against the approved Resolution Plan was not applicable in the present case. Moreover, there was no material irregularity in exercising the powers by the resolution professional during the corporate insolvency resolution period to attract the application of Section 61(3)(iii), (iv) and (v).

Further, SEBI had not challenged the order dated 7th March 2019, by the Hon'ble High Court of Guwahati to set aside the investigation started against the Corporate Debtor alleging it is a shell company in Writ Petition (C) No. 2572/2018.

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