

JUNE 2018

SEBI AMENDS DELISTING AND TAKEOVER REGULATIONS TO FACILITATE INSOLVENCY RESOLUTION FOR LISTED COMPANIES

1. INTRODUCTION

The regulator of Indian securities market, the Securities and Exchange Board of India (“SEBI”) on May 31, 2018, notified amendments to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (the “Take-Over Regulations”) and the SEBI (Delisting of Equity Shares) Regulations, 2009 (the “Delisting Regulations”) (collectively, the “Amendments”).

The Amendments have been carried out to facilitate the acquisition of public listed companies undergoing the corporate insolvency resolution process (“Corporate Debtors”) under the provisions of the Insolvency and Bankruptcy Code, 2016 (the “Code”).

2. THE AMENDMENTS

2.1 The Delisting Regulations

The Delisting Regulations shall not be applicable to the delisting of equity shares of public listed companies that are the subject of the corporate insolvency resolution process under the Code, where the National Company Law Tribunal (the “NCLT”) has approved a resolution plan (a “Resolution Plan”).

The exemption is however, subject to the Resolution Plan providing for the following:¹

- (a) a specific procedure to complete the delisting of equity shares;
- (b) an *exit* to the public shareholders of the Corporate Debtor at a specified price, not lower than the liquidation price (in distributing any proceeds from the sale of the liquidation assets in accordance with the order of priority provided under Section 53 of the Code), or, if the promoters or other shareholders of the Corporate Debtor are provided a higher exit price, such higher exit price; and
- (c) the details regarding the delisting along with the justification of the exit price should be disclosed to the stock exchange within a period of one day from the date of approval of the Resolution Plan.

Previously, the Delisting Regulations² provided for certain embargos for the listing of securities, which had been delisted pursuant to the provisions of the Delisting Regulations. These Delisting Regulations have been amended to provide that henceforth, an application for listing of delisted equity shares may be made in respect of a Corporate Debtor.

¹ Regulation 3 of the Delisting Regulations

² Regulation 30 of the Delisting Regulations

2.2 Take-Over Regulations

Regulation 3 of the Take-Over Regulations, which provides for the obligation to make an open offer while acquiring the shares of public listed companies and restricts an acquirer to acquire more than the maximum non-public shareholding of 75%, has been amended.

Now, a successful resolution applicant acquiring the shares of a Corporate Debtor, pursuant to approval of the Resolution Plan by the NCLT, can take-over more than 75% shareholding of the Corporate Debtor.

INDUSLAW VIEW

To facilitate the corporate insolvency resolution process for listed companies, SEBI amended the Take-Over Regulations in August 2017, essentially exempting resolution applicants from having to make an *open offer* under Regulations 3 and 4 of the Take-Over Regulations.

Further, the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (the “**ICDR Regulations**”), were also amended to exempt such insolvent listed companies from following the process for preferential allotment under Chapter VII of the ICDR Regulations.

The Amendments (to the Take-Over Regulations and the Delisting Regulations), essentially perfect the process, permitting the resolution applicant to acquire the entire listed company.

The exemption from the Delisting Regulations requires that public shareholders should at least be paid the liquidation value *after* payment to all other stakeholders pursuant to the waterfall applicable in case of liquidation.

However, once a company has reached a stage where it can no longer pay off its debts or carry on its operations, it implies that the capital of the company has eroded with the shares of the company having lost their value.

Further, even if one is to look at the liquidation waterfall, the equity shareholders of a Corporate Debtor are paid only after all the other stakeholders of the Corporate Debtor have been paid out of the liquidation proceeds.

It is unlikely that a resolution applicant will have to pay any money to acquire the public shareholding of the Corporate Debtor, where the liquidation value of the Corporate Debtor is essentially zero, or if there would be no money left after making payments pursuant to the liquidation waterfall.

The Amendments which were much awaited and if read together with the earlier amendments to the Take-Over Regulations and the ICDR Regulations, provide a comprehensive and clear legal framework to facilitate the take-over of public listed companies undergoing the insolvency resolution process, enabling resolution applicants to frame Resolution Plans with more certainty.

Authors: Ran Chakrabarti | Harman Walia

Practice Areas: Banking & Finance | Corporate & Commercial | Capital Markets & International Offerings

June 6, 2018

DISCLAIMER

This alert is for information purposes only. Nothing contained herein is, purports to be, or is intended as legal advice and you should seek legal advice before you act on any information or view expressed herein.

Although we have endeavored to accurately reflect the subject matter of this alert, we make no representation or warranty, express or implied, in any manner whatsoever in connection with the contents of this alert.

No recipient of this alert should construe this alert as an attempt to solicit business in any manner whatsoever.