

Companies (Share capital and Debentures) Amendment Rules, 2019 1

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## COMPANIES (SHARE CAPITAL AND DEBENTURES)AMENDMENT RULES 2019

In exercise of the powers conferred by sub-section (1) and (2) of Section 469 of the Companies Act,2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules,2014, namely:-

1.(1) These rules may be called the Companies (Share Capital and Debentures) Amendment Rules, 2019.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Share Capital and Debentures) Rules,2014, in Rule 4 (hereinafter referred to as the principal rules), in sub-rule (1),-

(i) for clause c, the following clause shall be substituted , namely:-

“(c) the voting power in respect of shares with differential rights of the company shall not exceed seventy-four percent of total voting power including voting power in respect of equity shares with differential rights issued at any point of time ;

(ii) clause (d) shall be omitted.

3. In the principal rules. In Rule 5 in sub-rule (3) in the Explanation ,occurring at both the places , for the word “director or company secretary ” shall be substituted.

4. In the principal rules, in Rule 12,in sub-section (1), in proviso to Explanation ,-

(i) for the letters, figures , brackets and words “G.R.S” 180(E), dated 17th February , 2016 issued Department of industrial Policy and promotion of industry amd trade “ shall be substituted:

(ii) for the words “five years” shall be substituted.

5. In the principal rules, in Rule 18, for sub-rule (7), the following sub-rule shall be substituted, namely:-

“(7) The company shall comply with the requirements with regard to Debenture Redemption reserve (DRR) and investment or deposit of sum in respect of debentures maturing during the year ending on 31st dy of March of next year in accordance with the conditions given below:-

(a) Debenture Redemption reserve shall be created out of profits of the company available for payment of dividend

(b) The limits with respect to adequacy of Debenture Redemption Reserve and investment or deposits as the case may b e shall as under:-

(i) Debenture Redemption Reserve is not required for debentures issued by All India Financial institutions regulated by Reserve Bank of India and Banking companies for both public as well as privately placed debentures;

- (ii) For other Financial Institutions within the meaning of clause (72) of Section 2 of the Companies Act, 2013 ,Debenture Redemption Reserve shall be as applicable to Non-Banking Finance Companies registered with Reserve bank of India.
  
- (iii) For listed companies (other than All India Financial Institutions and Banking Companies as specified in sub-clause (i) , Debenture redemption is not required in the following cases-
  - (A) in case of public issue of debentures-
    - A. For NBFC's registered with Reserve Bank of India under Section 45-IA of the RBI Act, 1934 and for Housing Finance Companies registered with National Housing Bank;
    - B. for other listed companies
  
  - (B) in case of privately placed debentures for companies specified in sub-items A and B .
  
- (iv) for unlisted companies (other than All India Financial Institutions and Banking companies as specified in sub-clause (i)-
  - (A) for NBFCs registered with RBI under Section 45-IA of the Reserve Bank of India Act,1934 and for Housing Finance Companies registered with National Housing Bank , Debenture Redemption Reserve is not required in case of privately placed debentures.
  
  - (B) For other unlisted companies the adequacy of Debenture Redemption reserve shall be ten percent of the value of the outstanding debentures;
  
- (v) In case of company is covered in item (A) or item (B) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), it shall on or before the 30th

(day of April in each year , in respect of debentures issued by a company covered in item (A) or item (B) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), invest or deposit as the case may be a sum which shall not be less than fifteen per cent , of the amount of it debentures maturing during the year, ending on the 31st day of March of that year.

(vi) for the purpose of sub-clause (v), the methods of deposits or investment s, as the case may be , are as follows:-

- (A) in deposits with any scheduled bank, free from any charge or lien;
- (B) In unencumbered securities mentioned in sub-clause (a) to (d) and (ee) of Section 20 of the Indian trusts Act 1882
- (C) In unencumbered bonds issued by any other company which is notified under sub-clause (f) of Section 20 of the Indian Trusts Act, 1882
- (D) In unencumbered bonds issued by any other company which is notified under sub-clause (f) of Section 20 of the Indian Trusts Act, 1882.

Provided that the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing the year referred above.

(c) in case of partly convertible debentures , Debenture Redemption Reserve shall be created in respect of a non-convertible portion of debenture issue in accordance with this sub-rule.]

(d) the amount credited to Debenture Redemption Reserve shall not be utilized by the company except for the purpose of redemption of debentures.

### APPELLATE TRIBUNAL FOR ELECTRICITY

The Hon'ble Appellate Tribunal for Electricity (“**APTEL**”) has delivered its order dated August 21, 2019 in the matter of Green Energy Association (“**Appellant**”) versus Chhattisgarh State Electricity Regulatory Commission & Ors. (“**Respondent**”).

#### **Background**

The Appellant Green Energy Association is a registered Association of companies engaged in the business of renewable energy under REC mechanism. Respondent No.1 is Chhattisgarh State Electricity Regulatory. In Appeal No. 106 of 2016, the Appellant was aggrieved by the fact that the State Commission by the Impugned Order dated December 21, 2015 had dismissed the petition as being non-maintainable due to lack of locus standi on the part of the Appellant. The State Commission had not decided the matter on merits as to whether the obligated entities have acted against the provisions of the CSERC RPO Regulations and the Electricity Act 2003 not complying with the shortfall in RPOs for Financial Years 2013-14 and 2014-15. In Appeal No. 65 of 2017 the Appellant is assailing the correctness of the Impugned Order dated June 16, 2016 passed by the State Commission in Suo-Motu No.41 of 2015 wherein the State Commission has provided an additional time period of twelve months to the Respondent No. 2/ CSPDCL for fulfillment of their RPO for the year 2013-14 under the RPO Regulations, 2013.

#### **APTEL Ruling**

The Appeal No. 106 of 2016 filed by the Appellant Green Energy Association was non-maintainable and hence it was dismissed. In view of the dismissal of the above appeal, Appeal No. 65 of 2017 filed by the Appellant does not survive for further consideration and hence disposed of accordingly. The impugned orders dated 21.12.2015 in Petition No. 44 of 2015 and dated 16.06.2016 in Suo-Motu Petition No. 41 of 2015 passed by the Chhattisgarh State Electricity Regulatory Commission was hereby upheld.

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**Non-compliance with certain provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR Regulations”)**

1. SEBI issued a Circular bearing reference number CIR/CFD/DIL/57/2017 dated June 15, 2017, specifying the fines to be imposed by the Stock Exchanges for non-compliance with certain provisions of SEBI (ICDR) Regulations, 2009.
2. Regulation 297 and 298 of SEBI (ICDR) Regulations, 2018, *inter alia* specify liability of a listed entity or any other person for contravention and actions which can be taken by the respective stock exchange, the revocation of such actions and consequences for failure to pay fine in the manner specified by SEBI.
3. In pursuance of the above, for non-compliance with certain provisions of ICDR Regulations, stock exchanges shall impose fines on the listed entities, as under:

S/N		Regulation / Schedule	Fine
1.	Delay in completion of a bonus issue :  i. Within 15 days from the date of approval of the issue by its board of directors – in cases where shareholders’ approval for capitalization of profits or reserves for making the bonus issue is not required	295 (1)	₹ 20,000 per day of non-compliance till the date of compliance.
2.	ii. Within 2 months from the date of the meeting of its board of directors wherein the decision to announce bonus issue was taken subject to shareholders’ approval – in cases where issuer is required to seek shareholders’ approval	162	Same as above

S/N	Violation	Regulations/ Schedule	Fine
3.	As per Schedule XIX - Para (2) under heading Application for listing, it is stated that: "The issuer shall make an application for listing, from the date of allotment, within such period as may be specified by the Board from time to time, to one or more recognized stock exchange(s)". In regard to above, it is specified that Issuer shall make an application to the exchange/s for listing in case of further issue of equity shares from the date of allotment within 20 days (unless otherwise specified)	Schedule XIX – Listing of Securities on Stock Exchanges.	Same as above
4.	Listed entities shall make an application for trading approval to the stock exchange/s within 7 working days from the date of grant of listing approval by the stock exchange/s		Same as above

Credit of Fine:

5. The amount of fine realized as per the above structure shall continue to be credited to the "Investor Protection Fund" of the concerned stock exchange.
6. The recognized stock exchange shall disseminate on their website the names of non-compliant listed entities that are liable to pay fine for non-compliance, the amount of fine imposed, details of fines received, etc.
7. The recognized stock exchange shall issue notices to the non-compliant listed entities to ensure compliance and collect fine as per this circular within 15 days from the date of such notice.
8. Needless to state, if any non-compliant listed entity fails to pay the fine, the recognized stock exchange may initiate appropriate enforcement action, including prosecution in furtherance of regulation 298 of ICDR, 2018.

**Bonus Issue Delays:**

9. With respect to bonus issue delays, it is clarified that :

a) The approvals for the listing and trading of promoters' bonus shares may be granted by the Stock Exchange, only after payment of the requisite fine by the listed entity.

b) However, the approvals for the listing and trading of bonus shares allotted to persons other than the promoter(s) may be granted in the interest of the investors, subject to compliance with other requirements.

10. This circular will be applicable from the date of issue of the circular.

11. The Stock Exchange are advised to bring the provisions of this circular to the notice of listed entities and also to disseminate the same on its website.

12. This circular is issued under regulation 299 of ICDR Regulations and in exercise of power conferred under Section 11(1) of the Sebi Act 1992, to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market.



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Warm Regards,

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