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SECURITIES AND EXCHANGE BOARD OF INDIA

Securities and Exchange Board of India (Monitoring of Foreign Investment limits in Listed Indian Companies) Circular, 2018

Background

The Securities and Exchange Board of India ("**SEBI**") vide its circular dated April 05, 2018 had introduced a new system of Monitoring of Foreign Investment limits in listed Indian companies and prescribed guidelines w.r.t the necessary infrastructure, data to be provided by listed Indian companies and other related matters.

Circular

Vide its *circular dated May 17, 2018* ("**Circular**") the SEBI made certain amendments to the earlier circular dated April 05, 2018. In view of the same the following amendments for providing data have been made by the Circular:

1. The deadline for the listed Indian companies to provide the necessary data/ information to the depositories have been extended to May 25, 2018.
2. The new system for monitoring foreign investment limits in listed Indian companies shall be made operational on June 01, 2018.

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Securities and Exchange Board of India ("**SEBI**") vide its *Circular dated May 10, 2018* had provided certain amendments and made provisions relating to corporate governance suggested by the Committee on Corporate Governance under the Chairmanship of Shri Uday Kotak.

The provisions apply to entities whose equity shares are listed on a recognized stock exchange and are mentioned below: -

1. Disclosures on Board Evaluation:

The listed entity will consider the following as a part of its disclosures on board evaluation:

i. Observations of board evaluation carried out for the year.
ii. Previous year's observations and actions taken.
iii. Proposed actions based on current year observations.

2. **Group Governance Unit**:

Wherein the listed entity has a large number of unlisted subsidiaries:

i. The listed entity may monitor their governance through a dedicated group governance unit or Governance Committee comprising the members of its board of directors.
ii. A strong and effective group governance policy may be established by the entity.
iii. The decision of setting up of such a unit/committee or having such a policy shall lie with the board of directors of the listed entity.

3. Medium-term and long-term strategy:

The listed entity shall consider the following with respect to disclosure of medium-term and long-term strategy of the entity:

i. It may disclose, under the Management Discussion and Analysis section of the Annual report, within the limits set by its competitive position, its medium-term and long-term strategy based on a time frame as determined by its board of directors.

ii. The listed entity may articulate a clear set of long-term metrics specific to the company's long-term strategy to allow for appropriate measurement of progress.

4. The clause 4.4 of the SEBI Circular No. CIR/CFD/CMD/56/2016 dated May 27, 2016 has now been deleted.

Non-compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Standard Operating Procedure for suspension and revocation of trading of specified securities.

1. Securities and Exchange Board of India ("**SEBI**") vide its *Circular dated May 03, 2018* provides for the fines and other provisions relating to suspension and revocation of trading of specified securities.

2. This circular supersedes the earlier SEBI circulars dated November 30, 2015 and October 26, 2016.

3. The present circular provided for provisions relating to uniform structure for imposing fines as a first resort for non-compliance with certain provisions of the Listing Regulations and the standard operating procedure for suspension of trading in case the non-compliance discontinuing and/or repetitive and the manner of freezing of holdings of the promoter and promoter group of a listed entity that failed to pay fines levied by the stock exchanges.

4. Annexure I of this Circular provides for action to be undertaken and fines to be imposed in case of non-compliances with the Listing Regulations.

5. Annexure II of this Circular provides for the Standard Operating Procedure ("**SOP**") for suspension and revocation of suspension of trading of specified securities.

6. The recognized stock exchanges will have to disclose on their website the actions taken against the listed entities for non-compliances; including the details of the respective requirement, amount of fine levied, the period of suspension, details regarding the freezing of shares, etc.

Securities and Exchange Board of India (Delisting Of Equity Shares) (Amendment) Regulations, 2018

The Securities and Exchange Board of India ("**SEBI**") has made certain amendments to the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 ("**Regulations 2009**") and has notified the *Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2018* ("**Amendment Regulations**") vide Notification dated May 31, 2018.

The following insertions have been made to the Regulations 2009:

1. Insertion as Regulation 3 (3):

   Certain norms pertaining to delisting of equity shares would not be applicable to any entity that is getting delisted pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 ("**IBC**") subject to conditions that the resolution plan-

   > "(*a) lays down any specific procedure to complete the delisting of such share; or*
   > *(b) provides an exit option to the existing public shareholders at a price specified in the resolution plan:"*

   Further, the mechanism for determining the price to be paid to exiting shareholders would be determined as:

   > *"Provided that, exit to the shareholders should be at a price which shall not be less than the liquidation value as determined under regulation 35of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,*

2016 after paying off dues in the order of priority as defined under section 53 of the Insolvency and Bankruptcy Code, 2016.

Provided further that, if the existing promoters or any other shareholders are proposed to be provided an opportunity to exit under the resolution plan at a price higher than the price determined in terms of the above proviso, the existing public shareholders shall also be provided an exit opportunity at a price which shall not be less than the price, by whatever name called, at which such promoters or other shareholders, directly or indirectly, are provided exit:

Provided also that, the details of delisting of such shares along with the justification for exit price in respect of delisting proposed shall be disclosed to the recognized stock exchanges within one day of resolution plan being approved under Section 31 of the Insolvency and Bankruptcy Code, 2016"

2. Insertion as Regulation 30 (2A):

An application for listing of delisted equity shares may be made in respect of a company which has undergone corporate insolvency resolution process under the IBC.

Securities and Exchange Board of India (Issue Of Capital And Disclosure Requirements) (Second Amendment) Regulations, 2018

The Securities and Exchange Board of India ("**SEBI**") vide their *notification dated May 31, 2018* in exercise of the power conferred to it under Section 30 of the Securities and Exchange Board of India Act, 1992 ("**Act**") made certain amendments to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**Regulation 2009**").

The amendments made to the Regulation 2009 are:

1. Regulation 70 (1) (c) and the proviso to Regulation 70 (1) have been omitted.

2. Insertion of Regulation 70(1A) as:

> *"(1A) The provisions of this Chapter, except the lock-in provisions, shall not apply where the preferential issue of specified securities is made in terms of the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 [1 of 1986] or the resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 whichever applicable."*

APPELLATE TRIBUNAL FOR ELECTRICITY

Appeal No. 75 of 2017

Maharashtra State Electricity Distribution Company Limited Vs Maharashtra Electricity Regulatory Commission and Anr.

Maharashtra State Electricity Distribution Company Limited ("**MSEDCL**"/ "**Appellant**") had filed an appeal against the order dated August 10, 2016 of Maharashtra Electricity Regulatory Commission ("**MERC**"/ "**Respondent No. 1**") in Case No. 150 of 2015 of Hindustan Zinc Limited Vs MSEDCL ("**MERC Order**").

1. Background

a. Hindustan Zinc Limited ("**HZL**"/ "**Respondent No. 2**") had in its petition filed before MERC in Case No. 150 of 2015 raised the issue of non-payment of dues and Delayed Payment Charges ("**DPC**") by MSEDCL in accordance with the Energy Purchase Agreement ("**EPA**").

b. MERC in its order dated August 10, 2016 had rejected the arguments of MSEDCL and had directed MSEDCL to pay outstanding dues as well as DPC within specified time failing which interest at the rate of 1.25% on delayed period shall be payable. The same was appealed by MSEDCL before the Hon'ble Appellate Tribunal for Electricity ("**APTEL**").

2. MSEDCL's Arguments

MSEDCL had argued that MERC had not considered its precarious financial condition which would be further affected by the MERC Order. Further, MSEDCL sought relaxation in terms of its contractual obligations and submitted that MERC could have exercised its powers under the MERC (Terms and Conditions for determination of RE Tariff), Regulations, 2010 to provide relaxation to MSEDCL.

3. APTEL's Judgement

APTEL in its *Order dated April 24, 2018* had found no merit in the arguments of MSEDCL and dismissed the Appeal in the present case and upheld the MERC Order. The relevant part of the aforementioned order is produced herein for ready reference: -

> *"Having regard to the legal and factual aspects of the matter as stated above, we are of the considered view that the issues raised in the instant appeal have no merit. The appeal is hereby dismissed devoid of merits.*
>
> *The Impugned Order dated 10.8.2016 passed by the State Commission is hereby upheld."*

RESERVE BANK OF INDIA

Setting up of International Financial Services Centres ("IFSC") Banking Units (IBUs) – Permissible activities

The Reserve Bank of India ("**RBI**") vide its circular dated May 17, 2018 modified some of its "terms and conditions" for setting up of IFSC Banking Units (IBUs).

Modifications

The following modifications are based on the suggestions the RBI has received from the stakeholders.

1. The parent bank will be required to provide a minimum capital of USD 20 million or equivalent in any foreign currency to start their IBU operations and the IBU should maintained at all times.
2. However, it added the minimum prescribed regulatory capital, including for the exposures of the IBU, should be maintained on an on-going basis at the parent level
3. The parent bank will be required to provide a Letter of Comfort for extending financial assistance, as and when required, in the form of capital / liquidity support to IBU.

Monitoring of foreign investment limits in listed Indian companies

1. Reserve Bank of India ("**RBI**") has vide its *Circular dated May 03, 2018* had provided for amendments and steps for implementing various provisions relating to Foreign Exchange Management (Transfer or Issue of Security by a person Resident outside India) Regulations, 2017.

2. SEBI had vide its *Circular dated April 05, 2018* and April 27, 2018 provided for framework on monitoring of Foreign Investment limits in listed Indian companies. The aforesaid circulars of SEBI had listed information about new system for monitoring foreign investment limits, for which the necessary infrastructure and systems for operationalizing the monitoring mechanism, was made available by the depositories.

3. The current Circular provides for application of terms of para 6 of Annexure A of the circular dated April 05, 2018 wherein all listed Indian companies are required to provide the specified data/ information on foreign investment to the depositories. The requisite information had to be provided before May 15, 2018.

4. The para 6 of the April 05, 2018 circular provided for companies to update their data in the framework provided by the depositories and filing information regarding CIN, Name, date of Incorporation, Applicable sector, Applicable cap, etc.

5. The Circular further provides for listed Indian companies to not receive any foreign investment and will be said to be non-compliant with Foreign Exchange Management Act, 1999 (FEMA) and regulations made thereunder in non-compliance with the above.

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

Hon'ble Maharashtra Electricity Regulatory Commission ("**MERC**") has pronounced its Order dated May 04, 2018 in the matter of Green Energy Association ("**GEA"/" Petitioner**") versus Maharashtra State Electricity Distribution company Limited ("**MSEDCL**"/" **Respondent**") in *Case No. 32 of 2017*.

1. Background

The Petitioner in the above-mentioned matter had approached Hon'ble MERC under section 42 of the Electricity Act , 2003 ("**EA 2003**")read with the provisions of the MERC (Distribution Open Access) Regulations, 2016 ('**DOA Regulations'**), regarding wrongful withholding or denial of Short-Term Open Access ("**STOA"**) and Medium-Term Open Access ("**MTOA**") permissions of its members and consumers by the Respondent.

2. MERC Ruling

The Hon'ble MERC has directed MSEDCL to grant STOA permissions to applications of the Petitioner's members from the month of September, 2016 to January, 2017 and further recalculate wheeling charges or transmission charges on actual energy drawn at the consumption end and further refund any amount recovered in excess along with applicable interest within a month.

The Petitioner herein was represented by **Eternity Legal.**

DELHI HIGH COURT

Hilton Roulunds Limited (Appellant) Vs Commissioner of Income Tax (Respondent)

Hon'ble High Court of Delhi ("**High Court**") had pronounced its order dated April 20, 2018 in ITA 325/2005 in case of M/S Hilton Roulunds Ltd. vs Commissioner of Income Tax on 20 April, 2018.

1. Facts:

a. M/s. Hilton Roulands Ltd. entered into Trade Mark license agreement dated 27th January, 1993 which was later substituted with license agreement dated 9th November, 1995 with M/s. Hilton Rubbers Limited for the exclusive right to use the Trade Mark "HILTON" in India in regards to certain products.

b. The appeal was made to ascertain and decide whether the payment of Rs.1,00,00,000 (Rupees One Crore) for exclusive use of the trademark "HILTON" is to be treated as capital expenditure or revenue expenditure.

2. **Order:**

a. The High Court in its order recognised the payment as a revenue expenditure.

b. Further, the High Court stated that such recognition of nature of expenditure would be done on a case to case basis and provided for certain parameters to be examined while determining the nature of the expenditure on the following basis:-

i) The nature of the right being given - exclusive, non-exclusive, permanent or term based;
ii) The benefit being derived - whether enduring, long term, short term;
iii) The nature of payment being made - periodic, lump sum, revenue linked payments, etc.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

Order under Regulation 8(3)(b) of the Insolvency and Bankruptcy Board Of India (Insolvency Professionals) Regulations, 2016.

The Insolvency and Bankruptcy Board of India ("**Board"**) passed an Order dated May 22, 2018 in the matter of application for grant of certificate of registration as an Insolvency Professional ("**IP**") under regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 ("**IP Regulations**").

The Applicant who was a professional member of the ICSI Institute of Insolvency Professionals submitted an application under regulation 6 of the IP Regulations seeking a certificate of registration as an IP.

Regulation 5(b) of the IP Regulations stipulates the condition that a person is eligible for registration if he has passed that Limited Insolvency Examination and has at least fifteen (15) years of experience in management.

In the instant case, the Insolvency and Bankruptcy Board of India ("**Board"**) formed a prima facie opinion that the experience during CS management training and the practice as a sole proprietor do not qualify as experience in management. The Board provided the Applicant an opportunity of personal hearing.

The Board promulgated the reasons why experience in management is required of an IP. The Board stated that an IP plays an important role in resolution, liquidation and bankruptcy processes of companies, LLPs, partnership firms and individuals as he manages the affairs of the corporate debtor as a going concern, etc.

The Board also made refences to multiple judicial pronouncements to further emphasize on the point.

In view of the above the Board exercised its right to reject the application under the IP Regulation and held that the Applicant did not have the requisite experience in management for registration as an IP.

The Order can be found in the link below:

http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/May/Rejection%20Order_22.05.2018_IP%20registration_2018-05-24%2010:02:28.pdf

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Warm Regards,

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