

SEBI

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A.) Notification – Restrictions on promoters and whole-time directors of compulsorily delisted companies .

The Securities and Exchange Board of India (“SEBI”) in its circular dated September 7, 2016 provides for restrictions on promoters and whole-time directors of compulsorily delisted companies pending fulfilment of exit offers to the shareholders.

1. The circular provides guidelines for companies which have been compulsorily delisted. It states that, the whole-time directors, promoters and the companies promoted by any such person, shall not directly or indirectly access the securities markets for a period of ten years from the date of compulsory delisting.
2. "Compulsorily delisted company" means a company whose equity shares are delisted by the recognized stock exchange under Chapter V of the Delisting Regulations.
3. The promoter shall acquire delisted equity shares from the public shareholders, subject to their option of retaining their equity shares, by paying them the fair value, as determined by the independent valuer appointed by the concerned recognized stock exchange.



4. However to ensure effective enforcement of exit option to the public shareholders in case of compulsory delisting and taking into account the interests of investors, companies whose fair value is positive have been directed to-
 - not to effect transfer, by way of sale, pledge, etc., of any of the equity shares and corporate benefits like dividend, rights, bonus shares, split, etc. shall be frozen, for all the equity shares, held by the promoters/ promoter group till the promoters of such company provide an exit option to the public shareholders in compliance with sub-regulation (3) of regulation 23 of the Delisting Regulations, as certified by the concerned recognized stock exchange.
 - The promoters and whole-time directors of the compulsorily delisted company shall also not be eligible to become directors of any listed company till the exit option as stated above is provided.



B.) Circular-Rules applicable for National Commodity Derivatives Exchanges

SEBI in its circular dated September 21, 2016 provides for the rules applicable for National Commodity Derivatives Exchanges related to staggered delivery, early delivery system, early pay-in facility, penalty on delivery default, fixation of Final Settlement Price (FSP) and changes in expiry dates. They are as stated below-

1. Staggered delivery-

- In all futures contracts for which staggered delivery is mandated, the framework shall be as given below:
- The tender period shall start with onset of the applicable staggered delivery period. In case the day happens to be a Saturday, Sunday or exchange holiday, the tender period shall start from the next working day.
- Seller/buyer shall have an option of marking an intention of giving/taking delivery on any day from start of the tender period up to expiry of the contract.
- Exchange shall allocate delivery to buyers having open long position as per random allocation methodology to ensure that all buyers have an equal opportunity of being selected to receive delivery irrespective of the size or value of the position. However, preference may be given to buyers who have marked an intention of taking delivery.
- If the tender date is T, then pay-in and pay-out shall happen latest by T+2th working day.
- Open position on expiry of the contract would result in compulsory delivery and would be settled at Final Settlement Price (FSP) of the respective contracts and pay-in and pay-out shall happen latest by the 2nd working day after expiry.

2. Early delivery system-

In all futures contracts for which early delivery system are mandated, the framework shall be as given below:

- An early delivery period may be provided during Expiry("E")-14 to E-1 days of the contract during which buyers/sellers can give intention to take/give delivery.



- If the intentions of the buyers/sellers match, then the respective positions will be closed out by physical deliveries. The process of pay in and pay-out will be completed on the day on which matching has been done (“T”) + 2 basis .
- If there is no intention matching for delivery between sellers and buyers, then such delivery intention will get automatically extinguished at the close of E-1 day. The intentions can be withdrawn during the course of E- 14 to E-1 day if they remained unmatched
- In respect of delivery defaults after the matching of delivery intentions, penalty provisions as applicable in the case of delivery defaults in compulsory delivery contracts will be applied.
- On the expiry of the contract, all outstanding positions would be settled by delivery and all the penalty provisions for delivery default applicable in the compulsory delivery contracts shall apply.

3. Early pay-in facility

- Exchanges shall provide early pay-in facility to market participants permitting market participants to deposit certified goods to the Exchange accredited warehouse against relevant futures contracts sold.
- For such short positions against which early pay-in has been made, based on risk perception, exchanges may exempt imposition of all types of margins.
- However, Exchanges shall continue to collect mark to market margins from such market participants against such positions.
- In case of compulsory delivery and seller’s option contracts, delivery to the extent of open position at the expiry of the contract shall be mandatory after claiming early pay-in facility on the position. The exchanges should provide for extremely strict penalties including disciplinary actions against such members who fail to do so.

3. Penalty on delivery default

Penalty on seller in case of delivery default shall be as follows-

- Futures contracts on agri-commodities: 3% of Settlement Price + replacement cost .



- replacement cost would be the difference between settlement price and average of three highest of the last spot prices of 5 succeeding days after the commodity pay-out date, if the average price so determined is higher than Settlement Price, else this component will be zero.
- Futures contracts on non-agri commodities: 3% of Settlement Price + replacement cost (difference between settlement price and higher of the last spot prices on the commodity pay-out date and the following day, if the spot price so arrived is higher than Settlement Price, else this component will be zero.)
- Exchanges shall have the flexibility to increase/decrease penalty for specific commodities depending on situation, in consultation with SEBI.

5. Change in expiry date-

- Exchange may advance expiry date of running contract in case physical market is closed in the notified basis centre on the expiry day of the contract, due to festivals, strikes, erratic weather conditions, etc.
- Decision about advancing expiry of running contract shall be intimated to the trade participants at least 10 (ten) days before the revised expiry date. The delivery period may be advanced accordingly for contract having staggered delivery. The Future Settlement Price (“FSP”) of such contract shall be fixed as per the above procedure.

D.) SEBI's position on inter-se transfer of shares between the promoters .

SEBI vide its Interpretative Letter dated September 12, 2016 in the matter of KJMC Financial Services Limited has utilized the opportunity to reiterate the legal position on inter-se transfer of shares between the promoters and the company's eligibility to issue securities to its promoters on a preferential allotment basis. The facts are stated below-

1. KJMC Financial Services Limited is a company incorporated under the Companies Act, 1956 having its registered office at Mumbai. The equity shares of the applicant are listed on Bombay Stock Exchange ("BSE Limited").
2. During April 2016, promoter of the Company executed inter-se transfer of equity shares by way of gift (gift to his wife). This transfer did not result in any change in the promoter holding of the company.
3. The SEBI (SAST) Regulations, 2011 stated that whenever an acquirer acquires the shares/voting rights in excess of the threshold or control over the target company as prescribed under regulation 3, 4, 5 of SEBI takeover Regulations, then the acquirer is required to make a public announcement of offer to the shareholders of the target company.
4. However, Regulation 10 of the SEBI (SAST) rules granted exemption for certain qualified inter-se transfer such as transfer of equity shares to immediate relatives which included spouses. Hence the mentioned (SAST) Regulations, 2011 did not apply to the mentioned transfer between the promoter and the wife of promoter of KJMC Financial services.
5. The promoter had sought interpretative letter under SEBI (Informal Guidance) Scheme, 2003 regarding interpretation of regulation 72(2) of ICDR Regulations as to whether the inter- se transfer by way of gift as stated above will be considered as 'sale', thereby making the promoter and promoter group ineligible for allotment of specified securities on preferential basis.



6. As per section 4 of the Sales of Goods Act, 1930, "Sales" means "the property in the goods transferred from the seller to the buyer for a price.", which was not the case in this transaction as the shares were not transferred for a price.

7. Regulation 72 of the SEBI (ICDR) Regulations, 2009 deals with conditions of preferential issue. In this regard, regulation 72(2) is stated as under:

"The issuer shall not make preferential issue of specified securities to any person who has sold any equity shares of the issuer during the six months preceding the relevant date"

8. SEBI in its reply stated that for the purpose of the above transaction, the transfer would be considered as a sale as per the provisions stated in Regulation 72 of the SEBI (ICDR) Regulations, 2009 where a change in the ownership of shares and not consideration would be considered as sale.

Hence, pursuant to the above rules, SEBI inferred that the inter-se transfer of shares was considered as a sale and the promoter would not be eligible for any preferential issue of specified securities.

MINISTRY OF CORPORATE AFFAIRS

Companies Mediation and Conciliation rules , 2016

Ministry of Corporate Affairs (“MCA”) through its circular dated September 09, 2016 notified the companies 'Mediation and Conciliation rules. They are mentioned below-

1. Qualifications for empanelment- A person shall not be qualified for being empanelled as mediator or conciliator unless he-

- has been a Judge of the Supreme Court of India ; or
- has been a Judge of a High Court ; or
- has been a District and Sessions Judge ; or
- has been a Member or Registrar of a Tribunal constituted at the National level under any law for the time being in force ; or
- has been an officer in the Indian Corporate Law Service or Indian Legal Service with 15 (fifteen) years experience ; or
- is a qualified legal practitioner for not less than 10 (ten) years ; or
- is or has been a professional for at least 15 (fifteen) years of continuous practice as Chartered Accountant or Cost Accountant or Company Secretary ; or
- has been a Member or President of any State Consumer Forum ; or
- is an expert in mediation or conciliation who has successfully undergone training in mediation or conciliation.

2. Duty of mediator or conciliator to disclose certain facts-

- It shall be the duty of a mediator or conciliator to disclose to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, about any circumstances which may give rise to a reasonable doubt as to his independence or impartiality in carrying out his functions.
- Every mediator or conciliator shall from the time of his appointment and throughout continuance of the mediation or conciliation proceedings, without any delay, disclose to the parties about existence of any circumstance referred in the above point.



3. Representation of parties

- The parties shall ordinarily be present personally or through an authorised attorney at the sessions or meetings notified by the mediator or conciliator.
- The parties may be represented by an authorised person or counsel with the permission of the mediator or conciliator in such sessions or meetings and the mediator or conciliator or the Central Government.

4. Consequences of non-attendance of parties at sessions or meetings on due dates-

- If a party fails to attend a session or a meeting fixed by the mediator or conciliator deliberately or wilfully for two consecutive times, the mediation or conciliation shall be deemed to have failed and mediator or conciliator shall report the matter to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

5. Administrative assistance-

- In order to facilitate the conduct of mediation or conciliation proceedings, the mediator or conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

6. Offer of settlement by parties-

- Any party to the proceeding may, “without prejudice” offer a settlement to the other party at any stage of the proceedings, with a notice to the mediator or conciliator.
- Any party to the proceeding may make a, “with prejudice” offer to the other party at any stage of the proceedings with a notice to the mediator or conciliator.

6. Role of Mediator or Conciliator

- The mediator or conciliator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute, emphasizing that it is the responsibility of the parties to take decision which affect them and he shall not impose any terms .



8. Parties alone responsible for taking decision

- The parties shall be made to understand that the mediator or conciliator facilitates in arriving a decision to resolve the dispute and that he shall not and cannot impose any settlement nor the mediator or conciliator give any assurance that the mediation or conciliation shall result in a settlement and the mediator or conciliator shall not impose any decision on the parties.

9. Time limit for completion of mediation or conciliation-

- The process for any mediation or conciliation under these rules shall be completed within a period of 3 (three) months from the date of appointment of expert or experts from the Panel.
- On the expiry of 3 (three) months from the date of appointment of expert from the Panel, the mediation or conciliation process shall stand terminated.
- In case of mediation or conciliation in relation to any proceeding before Tribunal or Appellate Tribunal which could not be completed within 3 (three) months, the Tribunal or as the case may be, the Appellate Tribunal, may on the application of mediator or conciliator or any of the party to the proceedings, extend the period for mediation or conciliation by such period not exceeding 3 (three) months.

10. Parties to act in good faith

- All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute.

11. Confidentiality, disclosure and inadmissibility of information

- When a mediator or conciliator receives factual information concerning the dispute from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate : Provided that when a party gives information to the mediator or conciliator subject to a specific condition that the information may be kept confidential, the mediator or conciliator shall not disclose that information to the other party.

- The receipt or perusal, or preparation of records, reports or other documents by the mediator or conciliator, while serving in that capacity shall be confidential and the mediator or conciliator shall not be compelled to divulge information regarding those documents nor as to what transpired during the mediation or conciliation before the Central Government or the Tribunal or the Appellate Tribunal or as the case may be, or any other authority or any person or group of persons.
- The parties shall maintain confidentiality in respect of events that transpired during the mediation and conciliation and shall not rely on or introduce the said information in other proceedings as to-
 - i. views expressed by a party in the course of the mediation or conciliation proceedings ;
 - ii. documents obtained during the mediation or conciliation which were expressly required to be treated as confidential or other notes, drafts or information given by the parties or the mediator or conciliator.
 - iii. proposals made or views expressed by the mediator or conciliator ;
 - iv. admission made by a party in the course of mediation or conciliation proceedings.
- There shall be no audio or video recording of the mediation or conciliation proceedings.
- No statement of parties or the witnesses shall be recorded by the mediator or conciliator.



12. Privacy

The mediation or conciliation sessions or meetings shall be conducted in privacy where the party's representatives, entitled by parties will be allowed to attend, but other persons may attend only with the permission of the parties and with the consent of the mediator or conciliator.

13. Protection of action taken in good faith

No mediator or conciliator shall be held liable for anything, which is done or omitted to be done by him, in good faith during the mediation or conciliation proceedings for civil or criminal action nor shall be summoned by any party to the suit or proceeding to appear before the Central Government or the Tribunal or the Appellate Tribunal to testify regarding information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the proceedings.

14. Settlement agreement

- Where an agreement is reached between the parties in regard to all the issues or some of the issues in the proceeding, the same shall be reduced to writing and signed by the parties and if any counsel has represented the parties, the conciliator or mediator may also obtain the signature of such counsel on the settlement agreement.
- The agreement of the parties so signed shall be submitted to the mediator or conciliator who shall, with a covering letter signed by him, forward the same to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.
- Where no agreement is reached at between the parties, before the time limit specified in rule 19, or where the mediator or conciliator is of the view that no settlement is possible, he shall report the same to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in writing.

15. Fixing date for recording settlement and passing order

- The Central Government or the Tribunal or the Appellate Tribunal as the case may be, shall fix a date of hearing normally within 14 (fourteen) days from the date of receipt of the report of the mediator or conciliator and on such date of hearing, if the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, is satisfied that the parties have settled their dispute, it shall pass an order in accordance with terms thereof.
- If the settlement disposes of only certain issues arising in the proceeding, on the basis of which any order is passed as above, the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall proceed further to decide the remaining issues.

16. Expenses of the mediation and conciliation

- At the time of referring the matter to the mediation or conciliation, the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, may fix the fee of the mediator or conciliator and as far as possible, a consolidated sum may be fixed rather than for each session or meeting.



- The expense of the mediation or conciliation including the fee of the mediator or conciliator, costs of administrative assistance and other ancillary expenses concerned, shall be borne equally by the various contesting parties or as may be otherwise directed by the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.
- Each party shall bear the costs for production of witnesses on his side including experts or for production of documents.
- The mediator or conciliator may, before the commencement of the mediation or conciliation, direct the parties to deposit equal share of the probable costs of the mediation or conciliation including the fees to be paid to the mediator or conciliator.
- If any party or parties do not pay the amount, the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall on the application of the mediator or conciliator, or any party, issue appropriate directions to the concerned parties.
- The mediation or conciliation shall commence only on the deposit of the said amount and in case amount is not paid before such commencement, the mediation or conciliation shall be deemed to have terminated.

17. Resort to arbitral or judicial proceedings-

- The parties shall not initiate, during the mediation or conciliation under these rules, any arbitral or judicial proceedings in respect of a matter that is the subject-matter of the mediation or conciliation, except that a party may initiate arbitral or Judicial proceedings, where, in his, opinion, such proceedings are necessary for protecting his rights.

18. Matters not to be referred to the mediation or conciliation

The following matters shall not be referred to mediation or conciliation, namely-

- the matters relating to proceedings in respect of inspection or investigation under Chapter XIV of the Companies Act of 2013; or the matters which relate to defaults or offences for which applications for compounding have been made by one or more parties.
- cases involving serious and specific allegations of fraud, fabrication of documents forgery, impersonation, coercion etc.



- cases involving prosecution for criminal and non-compoundable offences.
 - cases which involve public interest or interest of numerous persons who are not parties before the Central Government or the Tribunal or the Appellate Tribunal as the case may be.
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Warm Regards,

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