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Amendment to SEBI (Prohibition of Insider Trading) Regulations

SEBI Circular dt: August 13, 2021 regarding automation of continual disclosures under Regulation 7(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 – System Driven disclosures (Ease of Doing business)

SEBI initiated the concept of automated disclosure and its phased implementation under SEBI (Substantial Acquisition of Shares and Takeovers) Regulation 2011 and SEBI (Prohibition of Insider Trading) Regulation 2015 (hereinafter referred to as ***PIT Regulations***) vide its first circular dt: December 1, 2015 and thereafter vide Circular dated May 28, 2018 which covered promoters, promoter group, directors and certain employees. Further in July 2020 SEBI amended PIT Regulations to provide for automated disclosures by inserting Regulation 7(2)(c) which is an enabling provision. SEBI, vide circular no. SEBI/HO/ISD/ISD/CIR/P/2020/168 dated September 09, 2020, implemented the System Driven Disclosures (hereinafter referred to as ***SDD***) which extended to designated persons, so as to cover all entities / persons covered under Regulation 7(2) of PIT Regulations. It was decided to begin this SDD with equity and equity derivatives. This circular stated that manual disclosure and continual disclosure shall run parallel till April 1, 2021. It was not mentioned clearly whether manual disclosure should be stopped w.e.f April 1, 2021 or how the transition shall happen. Stock exchanges were displaying SDD on their respective platforms on T+2 basis. So there was a need felt to clarify this whether manual disclosures under Regulation 7(2) of PIT Regulations will continue or not?

SEBI vide its circular dt: August 13, 2021 has clarified that manual disclosures under Regulation 7(2)(a) and 7(2)(b) are no more required. But SEBI has added a condition to it. SEBI says that manual disclosures will not be required only if company has complied with September 9, 2020 circular. So it can be said that Regulation 7(2)(a) and 7(2)(b) are not deleted from PIT Regulations, they continue to be applicable and manual disclosures are exempted only if companies have complied with September 9, 2020 circular.

September 9, 2020 circular stated that (a) Listed company shall provide the information including PAN number of Promoter(s) including member(s) of the promoter group, designated

person(s) and director(s) ('Entities') as per PIT Regulations to the designated depository. For PAN exempt entities, the Investor's Demat account number(s) shall be specified by the listed company and (b) In case of any subsequent update in the details of the entities, the listed company shall update the information with the designated depository on the same day. So if these two conditions are fulfilled, only then manual disclosures are exempt. But the question arises is what if the company fails to upload change in Entities details on same day? Will it lead to violation of SEBI Circular of September 9, 2020 and will that trigger manual compliance again?

Further, there can be many entities in the promoter group (as per definition of promoter group under ICDR Regulations) who were initially not members of the Company and hence their details would not have been given to the designated depository. If any such entity acquires securities of listed company having market value of more than Rs. 10 lakhs in one tranche itself, then intimation to designated depository should be made on the same day. However, a question arises that since the acquisition already happened before making the disclosure, whether manual disclosure under Regulation 7(2)(a) and 7(2)(b) will be required to be given in this case in addition to intimation to designated depository? A conservative view may be to make manual disclosure also in such cases.

Another point that needs to be highlighted is that disclosures under Regulation 7(2) of PIT Regulations are to be given by immediate relatives of Entities [Regulation 6(2) read with Regulation 7(2)]. Further the disclosures are to be given for trading in derivatives of companies' stock, if applicable. [Regulation 6(3) read with 7(2)]. Further SEBI has exempted manual filing under Regulation 7(2) if compliance is with September 9, 2020 circular. This circular had sought data of Entities,i.e., designated persons only and not of immediate relatives. Further FAQ no. 17of PIT FAQs released by SEBI inApril 29, 2021 says that *"data of immediate relatives of Designated Persons need not be uploaded as of now"*. Hence a question arises that in case of acquisitions / disposal by immediate relatives, whether manual disclosures need to be given or not?
On harmonious reading of all these provisions, it appears that **manual disclosures of immediate relatives of Entities will continue.**

Further many companies have included continuous disclosures under Regulation 7(2) of PIT Regulations as a part of code of conduct. **As manual continuous disclosures by Entities are done away with, it is advisable to amend the code of conduct of PIT to that extent at the upcoming board meetings. Otherwise, if any such disclosure (as mentioned in Code) is not done by any person, it shall amount to violation of Code, i.e., violation of PIT Regulations and might have to be intimation to stock exchanges !!!**

The above provisions of SEBI Circular August 13, 2021 have come into effect immediately.

Above referred SEBI circular can be accessed at below mentioned link:**https://www.sebi.gov.in/legal/circulars/aug-2021/automation-of-continual-disclosures-under-regulation-7-2-of-sebi-prohibition-of-insider-trading-regulations-2015-system-driven-disclosures-ease-of-doing-business_51848.html**

Amendment in SEBI - Substantial Acquisition of Shares and Takeovers Regulations

SEBI vide its amendment notification dt: August 13, 2021 has amended SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('SEBI SAST').

Vide this amendment SEBI has deleted Regulation 30 of SEBI SAST and amended Regulation 29 of SEBI SAST.

These amendments are effective w.e.f April 1, 2022.

A. Regulation 30

Regulation 30 of SEBI SAST talks about continuous disclosures to be given by Promoter alongwith Persons Acting in Concert disclosing their voting rights and shares in target company as on March 31 every year and by every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company. As it is seen that SEBI has started phased implementation of SDD, so now continuous disclosures under Regulation 30 of SEBI SAST is no more required. The data with respect to Regulation 30 will be available with stock exchanges under SDD with effect from April 1, 2022. Hence, similar to PIT Regulations, SEBI has now mandated that annual disclosures in manual form will no longer be required under SEBI SAST too.

B. Regulation 31(1) and (2)

Further SEBI has amended Regulation 31(1) and 31(2) of SEBI SAST. Sub-regulation (1) and (2) provides for disclosure to be given to stock exchanges within a period of seven working days from the date or creation, release and invocation of encumbrance of shares done by Promoters alongwith Persons Acting in Concert.

SEBI has now added a proviso to Regulation 31(1) and 31(2) which reads as follows, *"Provided that the aforesaid disclosure requirement shall not be applicable where such encumbrance is undertaken in a depository".*

This means that where the encumbrance is marked in demat account of Promoters alongwith Persons Acting in Concert it need be disclosed to stock exchanges. Encumbrance is defined under Regulation 28(3) of SEBI SAST. It is an inclusive definition. It reads as follows,"encumbrance" shall include, (a) any restriction on the

free and marketable title to shares, by whatever name called, whether executed directly or indirectly, (b) pledge, lien, negative lien, non-disposal undertaking; or (c) any covenant, transaction, condition or arrangement in the nature of encumbrance, by whatever name called, whether executed directly or indirectly.

The question that arises is can all these encumbrances be marked in demat account? If yes, is it mandatory to mark these encumbrances in demat account? What if these encumbrances are not marked in demat account?

So if any encumbrances are not marked in demat accounts (as there is not process or it is not mandatory) then manual disclosure for such encumbrances needs to be given under Regulation 31.

C. Regulation 31(4) and (5)

It is important to note that SEBI had vide Circular dt: August 7, 2019 prescribed an additional requirement over and above disclosure requirement under Regulation 31(1) and (2). This requirement has been covered in Regulation 31(4) that in case any encumbrance is exceeding the limit mentioned below, then the disclosure of reasons and utilisation of funds raised are also required is to be disclosed to stock exchanges in specified format within 2 working days of creation of encumbrance:-
Limits: If combined encumbrance by the promoter along with Persons Acting in Concert with him exceeds a) 50% of their shareholding in the company or b) 20% of total share capital of the company.

It may be noted that there is no exemption granted with regard to compliance of Regulation 31(4) and hence this disclosure requirement needs to be complied with even if the relevant encumbrance is marked in demat account.

Also it is important to note that as per Regulation 31(5) Promoters on behalf of Persons Acting in Concert needs to give a declaration to Chairman of Audit Committee and stock exchanges at the end of every financial year, within seven working days stating that, *“Promoter along with persons acting in concert, has not made any encumbrance, directly or indirectly, other than those already disclosed during the financial year”.*

There is no relaxation in this regard too. Hence it is important for listed entities and its promoters to keep a track of encumbrances created, even if manual disclosures may not be required to be disclosed to stock exchanges.

Amendment can be accessed at below mentioned link: https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-second-amendment-regulations-2021_51886.html

Amendment to SEBI LODR Regulations

SEBI Circular dt: August 13, 2021 on disclosure of shareholding pattern of promoter(s) and promoter group entities.

1. Regulation 31(4) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR") mandates that all entities falling under promoter and promoter group be disclosed separately in the shareholding pattern SEBI vide Circular No. CIR/CFD/CMD/13/2015 dated November 30, 2015 and Circular no. SEBI/HO/CFD/CMD1/CIR/P/2018/149 dated December 07, 2018, prescribed formats for disclosure of shareholding pattern. SEBI vide Circular No. CIR/CFD/CMD/13/2015 dated November 30, 2015 and Circular no. SEBI/HO/CFD/CMD1/CIR/P/2018/149 dated December 07, 2018, prescribed formats for disclosure of shareholding pattern.

2. Currently, the shareholdings of promoter(s) and promoter group entities are collectively disclosed under 'table II - Statement showing shareholding pattern of the Promoter and Promoter Group'. Listed companies are submitting details of Promoter and Promoter group while uploading shareholding pattern in XBRL mode with stock exchanges. Bifurcation of Promoter and Promoter group was necessary to upload shareholding pattern. But the details with respect to Promoter and Promoter Group were not available in public domain. Now with this amendment SEBI has amended the format and the details of promoter and promoter group will now be available in public domain.

3. Further it is necessary to highlight that SEBI vide its Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2021 dt: August 13, 2021 has amended the definition of Promoter Group. Vide this amendment SEBI has deleted following entities from Promoter Group,
   "any body corporate in which a group of individuals or companies or combinations thereof acting in concert, which hold twenty per cent. or more of the equity share capital in that body corporate and such group of individuals or companies or combinations thereof also holds twenty per cent. or more of the equity share capital of the issuer and are also acting in concert"

4. So where group of individuals or companies or both acting in concert hold 20% or more of equity share capital of listed company and any other body corporate, then that body corporate was forming part of promoter group. But with this amendment it will not be considered as 'Promoter group'. This is effective from August 13, 2021. So it is necessary to take a call and accordingly, if required, delete such names of body corporates from shareholding pattern.

   SEBI Circular can be accessed at below mentioned link: https://www.sebi.gov.in/legal/circulars/aug-2021/disclosure-of-shareholding-pattern-of-promoter-s-and-promoter-group-entities_51847.html

Amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulation 2018.

SEBI vide its amendment notification dt: Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2021 has amended SEBI (Issue of Capital and Disclosure Requirements Regulations, 2018 [‘SEBI ICDR’] w.e.f August 13, 2021.

1. **Promoter Group:** Definition of Promoter Group has been amended. Till now any body corporate in which a group of individuals or companies or combinations thereof acting in concert, were holding twenty per cent or more of the equity share capital and such group of individuals or companies or combinations thereof were also holding twenty per cent. or more of the equity share capital of the issuer and are also acting in concert were considered as part of Promoter group as per Regulation 2(1)(pp)(iii)(c). SEBI in its Discussion Paper dt: May 11, 2021 had proposed to delete this entity from definition as identifying these entitieswere not relevant post listing. It just highlighted those entities where common set of individuals or companies or both were holding stake exceeding 20%. Capturing these details of holdings by financial investors while being a challenging task, may not result in any meaningful information to investors. Further, post listing, it is more relevant to identify and disclose related parties and related party transactions.

   This will lead to reduced disclosures relating to Promoter Group at the time of filing of offer documents with SEBI. Further the definition of Promoter Group is borrowed by various regulations of SEBI from SEBI (ICDR) only. So this will have an impact on details of Promoter Group disclosed on quarterly basis und**er shareholding pattern as discussed above, filing/submitting of details of promoter group to designated depository under SEBI PIT Regulations etc.**

2. **Lock In requirements:**

		Regulation	Prior to amendment lock in period	Post amendment lock in period
1	Promoter Contribution – Compulsory	Regulation 16	Three years	18 months
2	Promoter Contribution Over and above minimum contribution	Regulation 16	One year	6 months
3	Pre IPO shareholding of non promoter	Regulation 17	One year	Six months
4	Promoter Contribution – Compulsory (FPO)	Regulation 115	Three years	18 months
5	Promoter Contribution Over and above minimum contribution (FPO)	Regulation 115	One year	6 months
The revised lock in period would be not be applicable for IPO/FPO where the funds raised through these issues (excluding the portion of OFS) will be utilised for capital expenditure. Capital expenditure is now defined under SEBI ICDR.				
6.	Lock in of partly paid up shares	Regulation 117	Three years	18 months

Rationale for change: This proposal was a part of discussion paper. The rationale for such change was that 20% lock-in of promoters' shareholding for 3 years was considered necessary when companies raised public capital for project financing/ greenfield projects with an objective to ensure continuous 'skin in the game' by such promoters. Nowadays, companies going public are well established with mature businesses, have pre-existing institutional investors like private equity firms, alternate investment funds etc. and their promoters have demonstrated 'skin in the game' for several years before proposing listing. Besides, Greenfield financing through IPOs is presently almost non-existent. Further, IPOs exceeding Rs. 100 crs. (excluding the component of offer for sale) are required to have a monitoring agency, seeking to ensure that the funds mobilized are used for the intended purpose of the objects of the Issue.

3. **Curtailing disclosure of Risk Factors pertaining to group companies:**Refusal of listing of securities of group companies, failure of group companies to meet listing requirements, and existence of large investor grievance against top five listed group companies by market capitalisation was required to be disclosed as 'Risk Factor'. This requirement has been done away with.

4. **Curtailing details of group companies in draft prospectus:** Till now details of all group companies in last three years had to be given in draft prospectus and out of these group companies financials were to be given in draft prospectus of top five listedgroup companies as per market capitalization and in case there are no listed group companies then details of top of unlisted group companies as per market

capitalisation needs to eb given. With this amendment names and registered office address of all group companies in last three years has to be disclosed in draft offer document. The information relating to financials of top five group companies based on market capitalization or turnover (in case unlisted) shall be posted on the website and a weblink needs to be given.

Further the following disclosures have been done away with:

a. Regarding whether the group company has become a sick company within the meaning of the Sick Industrial Companies (Special Provisions) Act, 1995 or is under winding up/insolvency proceedings
b. Whether the company has made a loss in the immediately preceding year and if so, the profit or loss figures for the immediately preceding three year.
c. Disclosure shall be made about group companies which had remained defunct, including reasons for becoming defunct and for which application was made to the Registrar of Companies for striking off the name of the company, during the five years preceding the date of filing draft offer document with the Board.

Rationale for curtailing disclosures: The concept of group companies does not continue after listing and does not find a mention either in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) or the SEBI (Substantial Acquisition of Shares and Takeover Regulations), 2011 (Takeover Regulations). Many a times, financial investors get covered under the definition of group companies on account of investments made and/or dividend paid etc. despite there being no other transactions between them and the listed company. Besides, entities which are not material to the issuer company also get covered under this definition. Disclosure on related party transactions is required to be made in an offer document (including in the financial statements). There may be no need to have additional disclosures on group companies. Disclosures on related party transactions are also made post listing in terms of the LODR Regulations. Besides, there is a possibility where companies may have ceased to be group companies during the last three years but issuers are required to reach out to such companies and seek their cooperation for providing information.

Amendment can be accessed at below mentioned link:
https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-third-amendment-regulations-2021_51884.html

ASHISH O. LALPURIA (APPELLANT) VS. KUMAKA INDUSTRIES LTD. & ORS.(RESPONDENTS)

Non-compliances and irregularities or any illegal act already committed by the company cannot be ratified under the umbrella of "Scheme of Arrangements" as envisaged under Section 230-232 of the Companies Act, 2013.

Facts of the case:

- The Company presented a Scheme of Arrangement under Sections 391-394 of Companies Act, 1956 (Sections 230-232 of Companies Act, 2013) for sanction of the Arrangement, which was originally filed before Bombay High Court which by virtue of MCA notification got transferred to NCLT Special Bench, Mumbai.

- The Petitioner Company entered the Stock Market on 12th January, 1995 by a Public Issue of Rs. 37,47,400 Equity Shares of Rs. 10/- each at a Premium of Rs. 150/- per Share (Aggregating to Rs. 160/-per share).Pursuant to Application Money of Rs. 40/- per share (Rs. 2.50/- against Face Value of Rs. 10/- and Rs. 37.5/-against the premium of Rs.150/), 37,47,400 shares were allotted to successful applicant by the Petitioner Company. Out of the said 37,47,400 Equity Shares, 13,34,400 were fully paid up Equity Shares.However, the Shareholders of the remaining 24,13,000 shares did not pay the balance amount of Rs.120/- per share despite of several calls made by the Petitioner Company.During the time of allotment, 406 shareholders had subscribed to 10,375 shares by paying the full subscription amounts of ₹160 per share. However, they had applied for less than 100 shares, which was the minimum threshold.

- The Petitioner company had to forfeit the remaining shares of 24,13,000 for nonpayment of allotment money, however considering that the Forfeiture was not an Investor friendly option, the Board decided to implement a proposal whereby the 24,13,000 partly paidup shares would be reduced to 6,03,250 fully paid up shares.The same wasapproved by Board of the Petitioner Company to enter into the Scheme of Arrangement with the Shareholders of the Petitioner Company and the same was unanimously approved by the shareholders of the Petitioner Company.The Company made application to BSE for the said capital reduction. Thereafter on 6th May 1999, BSE communicated to the Company that it has rejected the Application for listing of these shares, the said letter of BSE did not receive the Petitioner Company due to change in its Address.

- As the petitioner Company was unaware of the BSE decision of non listing of 6,03,250 shares and 10,375 shares were issued and it had given effect to the said capital reduction.

- It was only in the year 2012 the Company sought permission from BSE to issue Preference Shares to Bank of Baroda, when it came to the Knowledge of the Petitioner Company about the refusal to list the shares. Since then and till date and in absence of any communication to the contrary, the Company presumed and believed that these authorities have accepted the revised capital status of the Company.

- Following to the advice of BSE, the Petitioner Company approached the Bombay High Court for sanction of the present scheme which later got transferred to NCLT Special Bench, Mumbai.

- The Scheme was ratified by the Board of Directors vide Board Resolution dated 10th May, 2014. No adverse observation letter dated 15th September, 2015 received from BSE was placed before the Board, pursuant to which NCLT has ordered the Meeting of Shareholders and Creditors and the said Scheme was unanimously approved by the Shareholders and Creditors of the Petitioner Company.

- NCLT Special Bench, Mumbai in its order dated July 6, 2020 held that the Scheme of Arrangement appeared to be fair and reasonable and does not violate any provision of law and is not contrary to public policy or public interest, the Appellant being aggrieved with the same filed the present appeal.

Question for Consideration:
The non-compliances and irregularities or any illegal act already committed by the company cannot be ratified under the umbrella of "Scheme of Arrangements"

ARGUMENTS IN NCLT

Appellant Arguments:

- Scheme in its present form is not a Scheme that can fit into sections 230-232 of the Companies Act, 2013.The core contention raised is whether the scheme as presented can be construed as a *'Scheme of Arrangement'* under section 391 of the Companies Act, 1956 or under section 230 of the Companies Act,2013.

Respondent Arguments:

- The Learned Counsel, submits that the term 'arrangement' is not defined in the Companies Act, but as per judicial interpretation, it is of wide amplitude. The arrangement contemplated by way of the present scheme would certainly fall within the ambit of the term 'arrangement' as envisaged under section 391-394 of the Companies Act, 1956 or section 230-232 of the Companies Act, 2013.In support of his contention he relied upon the following judgments:

    - **Q.H. Talbros Ltd., In re (2016) (Punjab & Haryana) dated 10.12.2015**
    - **Re Savoy Hotels Ltd. (1981) (Chancery Division) (April 1981)**
    - **Hindustan Unilever Limited in the National Company Law Tribunal, Mumbai Bench dated 30.08.2018**
    - **SEBI & another v Sterlite Industries (India) Limited (2003)**

- All rights of the shareholders including the appellants are duly protected. The Directors have no interest in the Scheme and it is a duly sanctioned investor friendly Scheme.

- Learned Counsel for the Petitioner, further submits that the proposed scheme is for the benefit of public shareholders. The scheme does not benefit the promoters in any manner.

- The Learned Counsel for the Petitioner further submits that the objecting shareholder, has no locus standi to file any objection and the appeal is non-maintainable, as appellant holds merely fifteen shares (having face value of Rs. 10 each i.e. total value of Rs. 150/- only) of the respondent. This represents only 0.00012% of the paid up capital of respondent. The said percentage of the shareholding of the appellant is drastically below the threshold of the percentage prescribed to object the scheme under Section 230(4) of the Companies Act, 2013, which clearly states that it should not be less than 10% of the shareholding.

Appellant Arguments:

- Mr. Ashish Lalpuria submitted that the issue of *locus* should be decided only if this Tribunal holds that the Scheme as filed by the Petitioner in its present form is an ‘arrangement’ within the meaning of Companies Act 1956/2013.

Objection Raised by Regional Director:

(a) The company has acted on the legal opinion dated 3.11.1997 and not acted on the basis of the letter and spirit of provisions of Section 100 of the Companies Act,1956.
(b) Subscription made by each of the shareholders less than 100 each which is not acceptable.
(c) Letter of BSE dated 6.5.1999 not received by the company and only came to know in the year 2012 is also not acceptable since the company was listed and in touch with the Bombay Stock Exchange, the reason mentioned above is not justifiable.
(d) The present scheme is made only as per the advice of the BSE in the year 2013 which is not acceptable since the company has to comply with the Companies Act, 1956 before the letter received from the Bombay Stock Exchange.

NCLT:

The RD’s objection is more on the procedural aspects than anything else. Procedural notices would not be sufficient to deter us from considering the Scheme. The RD has not raised any objection as regards any illegality in the Scheme, or that it is against public policy, and therefore we overrule the said objections.

ARGUMENTS IN NCLAT

Appellant Arguments:

- The Company has misled the courts to believe that the proposal is a scheme for the benefit of all raising serious doubts about the existence of 406 shareholders and whether the Company is a shell company or not.

- The Appellant can file an appeal and the provisions of Section 230(4) would not apply, as the said Section 230(4) was created to stop shareholder holding less than 10% of the total number of the shares from objecting to an otherwise legal scheme, **but if the scheme is not dealing with legality**, or has breached the provisions of law or is unfair or has not complied with any of the provisions of various acts applicable, **then Section 230(4) does not apply** and the Shareholder holding less than 10% of Shares can even challenge the said scheme. Rule 16 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 also mandates that the notice of final hearing has to be advertise in addition to giving notices to the concerned authorities and the objecting Shareholders.

- The Appellant further contended and refereed the case of **Mihir Mafatlal vs. Mafatlal Industries Limited** where the Shareholder held only 5% Shares as well as in the matter of **Sesa Industries Limited vs. Krishna Bajaj** the Shareholder held only 0.12% shares, the Apex Court has entertained the petition when the questions involved were of mandatory procedural requirements like proper disclosure and valid consent in the meeting. The only objection raised by the Advocate of Respondent Company was on the point of locus of the Appellant and they did not offer a single explanation or arguments for the issue raised by the petitioner. This clearly shows that RespondentCompany is only interested in hiding the illegalities committed by them.

- The Appellant further submitted that after the Depositories Act, 1996 came into force it was mandatory for all the Companies to dematerialize its Shares and to only trade the Securities in Demat form. The Company did not adhere to the abovementioned guidelines and did not get itself registered with Depositories, due to this and certain other non-compliances, BSE suspended trading in the securities of the Company on 7th January, 2002. Considering the most important fact that before suspending the trading the securities of any company, Stock Exchanges issues show-cause notices periodically, about the details of non-compliances to be made good.

Respondent Arguments:

- The learned counsel submitted that at the outset the appeal is non-maintainable, without any locus and is liable to be dismissed. The percentage of the shareholding of the appellant is not only negligible but drastically below the threshold of the percentage prescribed to object the scheme, which clearly States that it should not be less than 10% of the shareholding.

- The appellant was not even a shareholder of Respondent Company at the time of the court convened meeting held on 08.02.2016. The shares originally held by the appellant's father were transferred to the appellant without delay and in compliance of law, who is presently holding 15 shares out of the 1,20,85,625 shares of Respondent Company. The father of the appellant, one Shri Om Prakash Lalpuria died on 15.06.2004, and thereafter, on expiry of nearly twelve years, the appellant on 17.02.2016, for the first time applied for the transmission of shares of respondent.

- The Directors have no interest in the Scheme and it is a duly sanctioned investor friendly Scheme. The only purpose of the said appealis to harass and blackmail the respondent, in order to avail some sort of ransom or monetary benefit.

- The Scheme was already brought in effect on 01.08.2020, and the vital part of the Scheme approved by NCLT is already implemented. It is submitted that presently the impugned Scheme is on the verge of final implementation and is expected to fully implemented by 25.09.2020. Form INC- 28 was duly filed by the answering respondent with the Registrar of Companies, Mumbai on 01.08.2020 and has been approved on 01.09.2020.The accounting effect of the Scheme is also implemented and reflected in the books of accounts of respondent and the same has already been approved by the auditors of respondent. The answering respondent has also obtained ISIN form NSDL and has initiated the process of listing of shares with the Bombay Stock Exchange.

- The Appellant is trying to mislead and misguide this Tribunal by filing incomplete pleading and veiling the relevant documents which were originally filed before NCLT/ High Court of Bombay. It is averred that this is an attempt on the part of the Appellant to derail the legal process and hamper the interests of the rest of the majority non-promoter shareholders.

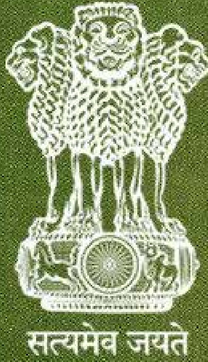
Held:

The NCLAT observed from the records that there were irregularities and non-compliances and the same was objected by the Stock Exchanges & Regional Director.***These non-compliances and irregularities or any illegal act already committed cannot be ratified under the umbrella of "Scheme of Arrangements" as envisaged under Section 230-232 of the Companies Act, 2013.***

NCLT has overruled the objections raised by the Regional Director on the ground that the objections are mere on the procedural aspects and do not raise any illegality in the scheme or that it is against public policy. Even if the objections are procedural but it is the jurisdiction of the Tribunal that such procedural aspects need to be duly complied with before sanctioning of the scheme, as it would lay down a wrong precedent which would allow companies to do whatever acts without the compliances and confirmation of the Court and other sectoral and regulatory authorities and thereafter get it ratified by the Court under the Umbrella of "scheme
The NCLAT held that before the scheme gets approved, there must be no actions pending against the company by the public authorities before sanctioning of a scheme under Section 230 of the Companies Act, 2013.

Hence, the appeal is allowed and the impugned order passed by NCLT, Mumbai bench is set aside and the Respondent Company is directed to undo all the actions taken in line with the sanctioned "Scheme of Arrangement".

In the matter of Ashique Ponnamparambath (the Appellant) Suspended Director of the Corporate Debtor,M/s Platino Classic Motors (India) Pvt Ltd Vs. The Federal Bank Limited (Respondent)order passed by the National Company Law Tribunal (NCLAT) Chennai dated 19th July,2021.



Facts of the Case

- The Federal Bank Ltd (Financial Creditor/Respondent/Bank) made an application u/s 7 of the Insolvency and Bankruptcy Code 2016 (IBC/Code) to initiate a Corporate Insolvency Resolution Process (CIRP) against thePlatino Classic Motors(India) Pvt Ltd (Corporate Debtor).
- The application was admitted by the National Company Law Tribunal (NCLT)on7December 2020.
- Ashique Ponnamparambath – Suspended Director of theCorporate Debtor, challenged the admission order passed by the NCLT.
- The Orderwas challenged on the ground that the petition filed u/s 7 of the Code was not maintainable. The entire loan transaction was based on the 'Term Loan Agreement', an inadequately stamped document which is inadmissible in evidence.
- The bankcontended that on the 30June 2019, the corporate debtor availed, among other things, a term loan of Rs. Ten crores with an agreement to repay the same in 120 monthly instalments together with interest and charges outlined in the loan document.
- The corporate debtor as collateral security for the debt created an equitable mortgage favouring the bank. However, due to default in monthly instalments, the corporate debtor account status regarding the credit facility changed to a Non-Performing Asset (NPA)w.e.f 29October 2019.
- The financial creditor issued a demand notice dated the 16December 2019 to the corporate debtor requiring them to repay the outstanding loan amount. The corporate debtor failed to pay the amount demanded. As of the 16 March 2020, an amount of Rs. 6,39,13,042 was due from the corporate debtor, and it committed a default in paying the same.
- The appeal was filed on the ground that
    - NCLT failed to consider that the 'Term Loan Agreement' was the umbrellaagreement concerning not only the subject loan itself but the various security obligations/security documents thereunder. It provided for the hypothecation of immovable property, the mortgage of other pieces of immovable property owned by the corporate debtor by deposit of title deed and the creation of a floating charge on the Appellant's asset.

- NCLT failed to consider that it is settled lawthat under Section 17 of the Registration Act 1908, such agreements must be compulsorily registered for being considered legally admissible.

Arguments of the Appellant:

The Appellant contended

- That the Term Loan Agreement is the umbrella agreement with respect to the subject loan itself and the various security obligations/ documents thereunder. It is an agreement creating a right/title/interest in immovable property. It provides for the hypothecation of immovable property, the mortgage of other pieces of immovable properties owned by the corporate debtor by deposit of title deeds and the creation of a floating charge on the Appellant's asset.
- It is asettled law that as per Section 17 of the Registration Act, 1908, the aboveagreements must be compulsorily registered for being considered admissible.
- All the ancillary security documents executed pursuant to the Term Loan Agreement specify that they are being entered into as a result of the obligations imposed upon parties in the Term Loan Agreement. Thus, by the said Term Loan Agreement, all the corporate debtor's security obligations were registered in writing, including the creation of charges and mortgage over immovable property. Therefore, the registration of such a document is compulsory.
- The appellant further contended that the impugned order of admission was made despite the Corporate Debtor making the oral submission without prejudice willing to pay the outstanding amount to the Respondent within six months, thereby rendering the need for admission of insolvency proceedings superfluous infructuous. In the circumstances, there was no necessity of putting the corporate debtor into rigours of CIRP for one purportedly outstanding debt. The appellant has stated that it is at an advanced stage of entering into a settlement with the financial creditor. It has proposed a short six months to settle all disputes between the parties.

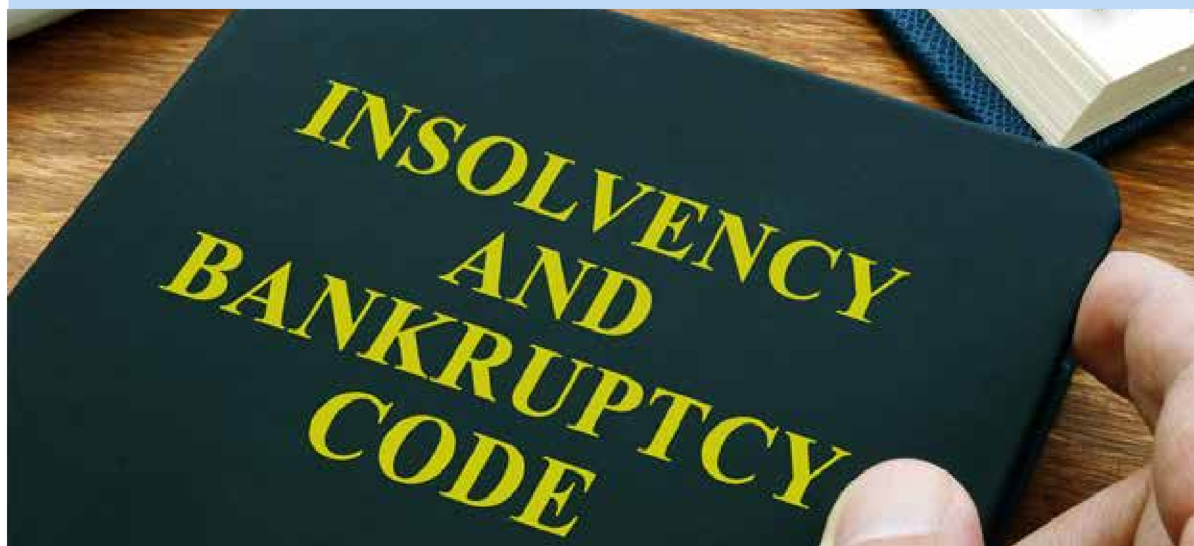
Arguments of the Respondent:

- Relying on the Hon'ble Supreme Court in case of *State of Haryana v Navir Singh* and *United Bank of India v Lekharam Sonaram & Co*, the contention of the Corporate Debtor that 'Term Loan Agreement" is an insufficiently stamped document, hence inadmissible in evidence, was an incorrect one.
- The Term Loan Agreement is a document that purports to create a right, title and interest in immovable property that is incorrect. At the broadest imagination, the same could only amount to security for payment of money. At the same breath, it is to be noted that the said document would not create a mortgage concerning the property mentioned therein. In the circumstances, the said document is not such a document for which registration is compulsory.
- Further, the corporate debtor's contention that the letter of hypothecation has to be deemed an agreement related to deposit of title deeds and compulsorily registrable is also incorrect and unsustainable, as the said document does not even indicate the deposit of the title deed.

Held:

- Based on the documents filed by the Financial Creditor, it was clear thatthe Financial Creditor has proved that the Corporate Debtor has defaulted inmaking the repayment. Hence its loan account was declared as NPA. Debt and default were reasonably established by the financial creditor.
- Application filed by the financial creditor u/s 7 of the code was complete in all respects. Therefore, the petition filed was admitted.
- The Appellant emphasised the alleged insufficiently stamped Term Loan Agreement. However, in addition to the Term Loan Agreement, the Financial Creditor relies on Demand Promissory Note, Hypothecation letter regarding depositing of title deed, a certified copy of the bank statement, and so many other documents filed along with the Application. Therefore, even if it is considered that the Term Loan Agreement is insufficiently stamped and it cannot be accepted in evidence, then also alleged debt and default are proved beyond doubt. And therefore, the objections raised by the appellant/corporate debtor were unsustainable.
- Hence, the appeal was dismissed.

Amendment introduced in Insolvency Resolution Process and Liquidation Process.



The Insolvency and Bankruptcy Board of India (IBBI) has amended the Insolvency and Bankruptcy Board of India - Insolvency Resolution Process for Corporate Persons Regulations, 2016 and the Liquidation Process Regulations, 2021.

The key highlights of the amendments are as follows:

- **Amendment in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for CorporatePersons) Regulations, 2016**
  - IBBI has amended the Insolvency and Bankruptcy Board of India - **Insolvency Resolution Process for Corporate Persons Regulations, 2016** on 30thSeptember, 2021. The amendment enhances the **conduct, timeliness, and value maximization** in corporate insolvency proceedings.
  - **Committee of Creditors' Statutory role more of a public function**- The regulations provide Committee of Creditors (CoC)to discharge their functions and exercise its powers,in compliance with the guidelines issued by the Board in the said respect. The guidelines are made by taking into account all the recent judicial pronouncements where the role and the responsibilities of the CoC are established, the commercial wisdom of CoC in deciding the fate of a Corporate Debtor.
  - **Significance of Timeline** -The amendment seeks to address delays in Corporate Insolvency Resolution Process (CIRP) such as repeated issue of expression of interest, numerous modifications in request for resolution plans and iterations of modifications in the resolution plan and even consideration of unsolicited resolution plans. ***It places a cap on the number of times such modifications may be made***. ***This will ensure adherence of timeline envisaged under the Code***.
  - **Introduction of Challenge Mechanism like Pre- Pack Insolvency Resolution Process-** The challenge mechanism can be an additional option available with the stakeholders under the CIRP and ***will improve transparency and drive maximization of value.***

- **Amendment in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for CorporatePersons) Regulations, 2016**
  - IBBI has amended the Insolvency and Bankruptcy Board of India theInsolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 on 30thSeptember, 2021.
  - **Expansion of the Scope of Stakeholders Consultation Committe**e - The amendment regulations provide for manner of selection of representatives of stakeholders in Stakeholders Consultation Committee and the scope of Consultation Committee to cover all aspects related to sale of assets and appointment of professionals.
  - The participation of large number of buyers in the process is key to better realization of value for the stakeholders. Keeping this in view the amendment regulations provide that ***Liquidator shall not require payment of any non-refundable deposit or fee for participation in an auction. It also provides that the earnest money deposit shall not exceed ten percent of the reserve price in an auction.***
  - **Availability of electronic platform** - With a view to improve visibility for the liquidation assets, the Board has made available an electronic platform at http://www.ibbi.gov.in for hosting public notices of auctions of liquidation assets of ongoing liquidation processes.
  - **Enhancement of Transparency and Accountability** -The amendment regulations provide for the ***Liquidator to intimate the reasons for rejection of the highest bid to the highest bidder and report the same in the next progress report***.

Contributors

Deepti Jambigi Joshi - Partner
deeptijambigi@mmjc.in

Aarti Ahuja Jewani - Partner
artiahuja@mmjc.in

Omkar Dindorkar - Partner
omkardindorkar@mmjc.in

Madhura Godbole - Team Leader - IBC Wing
madhuragodbole@mmjc.in

Vallabh Joshi - R&D Team
vallabhjoshi@mmjc.in

Esha Tandon - R&D Team
eshatandon@mmjc.in