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MMJCINSIGHTS

10 APRIL 2022

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Automation of disclosure of encumbrance of shares

SEBI vide circulars dated December 01, 2015, December 21, 2016, May 28, 2018 and September 23, 2020 implemented the System Driven Disclosures ("SDD") in respect of disclosures of acquisition or disposal of shares by certain identified persons, in phases. SEBI vide its Circular dt: September 23, 2020 had automated following disclosures to be made under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ['SEBI SAST']:

a. Details of acquisition and disposal under Regulation 29,
b. Continuous disclosures under Regulation 30 of SEBI (SAST) and
c. Disclosure of pledge of shares made by promoter and promoter group under Regulation 31.

Following are the disclosures that are still being done manually:

a. Triggering of disclosure requirement due to acquisition or disposal of the shares, as the case may be, by the acquirer together with persons acting in concert (PACs),
b. Triggering of disclosure requirement in case the shares are held in physical form by the acquirer and/or PACs.
c. Listed companies who have not provided PAN of promoter(s) including member(s) of the promoter group to the designated depository or companies which have not appointed any depository as their designated depository

Now SEBI has vide circular dt: March 7, 2022 has stated that the concept of SDD will now be extended to 'Disclosure of Encumbered Shares - Capturing the ultimate lender'. Till now SDD was capturing details of pledged shares but definition of 'Encumbrance' in Regulation 28(3) of SEBI (SAST) is much wider than 'pledge'. Encumbrance includes pledge. So vide this circular SEBI has stated that w.e.f July 1, 2022 all types of encumbrances as per Regulation 28(3) will now be captured under SDD.

SEBI had vide its circular dt: June 14, 2017 had directed depositories to record Non-Disposal Undertakings in depository system. Further vide its circular dt: July 24, 2020 SEBI had asked depositories to put in place systems for capturing and recording all types of encumbrances including non-disposal undertakings (NDUs), as specified under Regulation 28(3) of Takeover Regulations.

Now SEBI has directed listed entities that all types of encumbrances as defined under Regulation 28 (3) of SEBI SAST shall necessarily be recorded in the depository system. In this regard depositories have been directed to capturedetails of the ultimate lender along with name of the trustee acting on behalf of such ultimate lender such as banks, NBFCs, etc and in case of issuance of debentures, name of the debenture issuer shall be captured in the depository system. Further SEBI has directed depositories to capture reasons for encumbrances in depository system too.

SEBI has further directed depositories to devise an appropriate mechanism and record all outstanding encumbrances in the depository system by June 30, 2022.The depositories shall provide information to the stock exchanges, who shall consolidate the information

received from both depositories and disseminatethese SDD disclosures on their websites in simple readable pdf. Format. Further listed entities will have to do reconciliation of data atleast once in a quarter or immediately whenever any discrepancy has occurred. These provisions are effective from July 1, 2022.

Copy of the SEBI Circular can be accessed at below mentioned link:
https://www.sebi.gov.in/legal/circulars/mar-2022/automation-of-disclosure-requirements-under-sebi-substantial-acquisition-of-shares-and-takeovers-regulations-2011-system-driven-disclosures-ease-of-doing-business-_56655.html

Relaxation in timelines for processing of Investor Service Request

Securities and Exchange Board of India ('SEBI') has by way of its circular dt: April 13, 2020 and April 29, 2021 had granted relaxations to Registrar and Transfer Agents (RTAs) in prescribed timelines for processing of various investor service request viz. transmission of shares, issue of duplicate share certificates, processing of demat requests etc.

Now SEBI vide its circular dt: February 25, 2022 has further extended the timeline in view of Covid-19 situation, for processing following 7 investor service requests out of the 13 investor service requests mentioned in above-mentioned circulars:

1. Processing of remat requests
2. Processing of transmission requests
3. Processing of request for issue of duplicate share certificates
4. Processing of request for name deletion / name change / Transposition
5. Processing of request for consolidation / split / replacement of share certificate / amalgamation of folios
6. Handling of investor correspondence / grievances / SCORES complaint
7. Processing of demat requests

SEBI has videthis circular dt: February 25, 2022 stated that intermediaries and market participants may take additional 30 days over and above the prescribed timelines for processing of above referred investor service requests.

This additional 30 days' timeline is available for processing of investor service requests received till June 30, 2022.

As mentioned above this extension is given in timeline for processing of investor service request. But it needs to be noted that SEBI vide its Circular dt: January 25, 2022 had stated that securities shall be issued in dematerialised form only while processing of investor service requests. Accordingly SEBI (Listing Obligations and Disclosure Requirements) Amendment Regulations, 2022 dated 24th January, 2022had prescribed revised timelines for processing of transmission of securities. So it needs to be noted here that issue of securities while processing of investor service request shall be done in demat form only and extension is to be read in view of the revised prescribed timelines.

Copy of the circular can be accessed at below mentioned link:
https://www.sebi.gov.in/legal/circulars/feb-2022/extension-to-sebi-circular-on-relaxation-in-adherence-to-prescribed-timelines-issued-by-sebi-due-to-covid-19-dated-april-13-2020_56425.html

SEBI penalises members of promoter group for not implementing trading plan.

Securities and Exchange Board of India ('SEBI') conducted an investigation in the scrip of Mohota Industries Ltd ('the Company') to ascertain whether any violation of SEBI (Prohibition of Insider Trading) Regulations, 2015 ['PIT Regulations']. On investigation SEBI had certain observations with regard to:

(i) Ranchhoddas Mohota HUF (Noticee no. 1) - promoter of the Company,
(ii) Vinod Kumar Mohota HUF (Noticee no. 2) - promoter of the Company and Vinod Kumar Mohota, Managing Directorof the Companybeing Karta of Noticee no. 2,
(iii) Vinay Kumar Mohota HUF (Noticee no. 4) promoter of the Company andVinay Kumar Mohota (Noticee no. 3), a whole time director and promoter of the Company and also the Karta of Noticee no. 4,all the members of Noticee no. 4 being relatives of Noticee no. 3 and

(iv) Swati Mohota (Noticee no. 5) being the spouse of Vinay Kumar Mohota (Noticee no. 3) and also a member of the promoter group of the Company ['Noticees'].

Noticees had submitted trading plans to the Company specifying dates on which they will be selling shares in the Company. The Company had also approved the trading plans and the same were submitted to stock exchange.

On perusing the transaction statement of National Securities Depository Limited ['NSDL'] and Central Depository Services Ltd ['CDSL'] for the Noticees,SEBI observed that the Noticees had not traded in accordance with the Trading Plans submitted. SEBI then initiated adjudication proceedings against the Noticees for the alleged violation of regulation 5(4) of the PIT Regulations under section 15HB of the SEBI Act.

SEBI vide its adjudication order dt: February 24, 2022 penalised Noticees for not implementing the trading plan prepared and submitted to the Company and stock exchange pursuant to PIT Regulations.

Noticees argued before the Adjudicating Officer, SEBI that they were unaware of the complexities and impracticality of implementing the Trading Plan.Noticees further submitted that when PIT Regulations and the Trading Plan submitted by the Noticees were read together, due to the Cool Off Period [i.e. six months period from submission of trading plan] and the Restricted Periods [i.e. period between the twentieth trading day prior to the last day of quarter and the second trading day after the disclosure of financial results], the Noticees could effectively trade for only eight trading days during the Trading Period.

Noticees further submitted that they were unaware that they could not deviate from the Trading Plan. The Trading Plan was submitted with the honest intention to sell their shares to increase public shareholding. But due to restricted periods and cool off periods coupled with the low trading volume of the shares concerned, they were unable to execute the trades and had to apply for the withdrawal/extinction of the Trading Plan.

SEBI in this regard stated that feigned ignorance shown by Noticees regarding the complexities involved in implementing the Trading Plan is not acceptable and are irrelevant. SEBI further stated that Trading Plans submitted by Noticees itself clearly provides that the Noticees would not trade the shares under the Trading Plan during the Cool Off Period which indicates that the Noticees were aware that they would not be able to trade during the Cool Off Period since inception. Since the provisions regarding the Cool Off Period and the Restricted Periods were in force at the time of submission of Trading Plan, the Noticees cannot conveniently cloak themselves under the garb of lack of knowledge with respect to the same as a ludicrous excuse to escape the consequences of not executing the trades as per the Trading Plan. SEBI further highlighted the note appended to Regulation 5(4) of PIT Regulation. The note provides that changing the terms of the trading plan submitted or trading outside the scope of the trading plan would negate the purpose of the trading plan. The note further states that trading plans enables the investors at large to have knowledge regarding the trades intended to be executed, so that they can make informed decisions. I find that the aforesaid note lucidly sums up why it is essential to trade as per the trading plan and the impact it has on multiple stakeholders. Citing this SEBI held that Noticees are liable for not implementing the trading plan.

SEBI penalised Rs 100,000/- on each of the five Noticees [i.e. Rs 500,000] for not implementing trading plan and consequent violation of PIT Regulations.

The above referred order can be accessed at below mentioned link:
https://www.sebi.gov.in/enforcement/orders/feb-2022/adjudication-order-in-respect-of-five-entities-in-the-matter-of-mohota-industries-ltd-_56391.html

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