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Common Grounds for Rejection of DRHP – Measures to avoid them

Introduction

When a company looks to raise capital through a public offering, the Draft Red Herring Prospectus ('DRHP') is a crucial document that must be submitted. Securities and Exchange Board of India ('SEBI')' (Framework for Rejection of Draft Offer Documents) Order, 2012 stresses the importance of clear and complete disclosures, in line with Schedule VI of the SEBI ICDR Regulations, 2018 to ensure investor protection. There are circulars/ guidance issued by SEBI and stock exchanges regarding drafting of DRHPs[i].

However, many DRHPs face rejection due to common issues like incomplete disclosures, non-compliance with regulations, or unclear risk information, all of which can prevent investors from fully understanding the offering. In this article, we'll look at these common reasons for rejection and offer some practical tips on how to avoid them, helping companies navigate the approval process smoothly.

Reasons for rejection of DRHPs

The key reasons and criteria why DRHPs are rejected, based on regulatory guidelines and common compliance issues are listed in the table below:

Title	Criteria/Details
Criteria for Rejection of DRHP	- **Capital structure issues:** a. Existence of circular transactions for building up capital or net worth of the issuer. b. Unidentified promoters. c. Discrepancies in promoter contributions as compared to provisions of SEBI (ICDR**)**
	- **Unclear objectives of the issue:** a. DRHPs with vague fund utilization plans: b. **Unjustified spikes in working capital needs[ii]:** Bombay Stock Exchange ['BSE'] in case of an SME IPO had sought clarification highlighting that during the forecast period there was lower working capital requirement as compared to working capital requirement prior to forecast period. c. **Incomplete project groundwork:** In an IPO company had stated that they were planning to utilise funds raised through IPO in setting up a factory and for purchase of plant and machinery. On further evaluation it was found that the company has not purchased the land till now for setting up of factory.
	- **Complex or exaggerated business models:** Misleading or overly complex models create difficulty in evaluating risks, which can result in rejection.
	- **Inconsistent financial statements:** **a. Sudden increases in income or profits without justification:**

	A sudden surge in business just before filing the draft offer document, especially in key financial metrics like income, profits, debtors, creditors, or intangible assets, may raise concerns. If the company's explanation for this spike is unsatisfactory, it could be scrutinized further. **b. Qualified audit reports, and improper accounting standards are flagged as concerns:** If auditors raise concerns about accounting policies in their reports, it applies not only to the issuing company but also to key subsidiaries, joint ventures, and associates that significantly impact its business. This scrutiny also extends to entities where IPO funds will be utilized.
	- **Pending litigation or regulatory action:** a. **Major unresolved lawsuits:** If the company is proposing an IPO and it has been levied a penalty, or its senior management has been levied a penalty by any regulatory authority then SEBI raises concerns in clearing IPO. **b. Regulatory investigations:** c. **Material issues that are concealed or undisclosed lead to rejection**: In a recent matter of Trafiksol Ltd SEBI stalled the IPO of the company as the details provided by it in their objects of the issue regarding purchase of software valued at Rs 17.70 crore from a vendor which had questionable financials and failed to file its annual financial statements with the Ministry of Corporate Affairs (MCA). SEBI has asked the company to return the money to the investors[iii].
	- **Non-compliance with laws:** a. **Violations of ICDR Regulations or companies Act provisions, or insufficient documentation can result in rejection:** SEBI has highlighted companies act 1956 violation in case of issue of shares to more than 50 employees of HDB Financial services. This is alleged to be in violation of Companies act 1956 and required SEBI approval for public issue then.[iv]

Consequences of rejection

In case of rejection of DRHP by SEBI, minimum cooling-off period of 6 months will have to be kept for resubmission of rejected DRHPs. Further for rejected DRHPs no refund of filing or processing fees will be given to the company. Resubmission of draft offer documents is permitted only after addressing the insufficiencies highlighted by SEBI.

Conclusion

An Initial Public Offering (IPO) is a crucial way for companies to raise funds, but it comes with extensive compliance and disclosure requirements. Since investors rely on the DRHP for key information before making decisions, companies have both a legal and ethical duty to ensure accuracy. Preparing for an IPO and drafting the DRHP is a time-consuming and costly process. If the DRHP gets rejected, it leads to wasted time and financial loss. To prevent this, companies must strictly follow the rules and regulations which will make the process easier.

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[i] https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20241118-55
https://www.sebi.gov.in/legal/circulars/feb-2024/guidelines-for-returning-of-draft-offer-document-and-its-resubmission_81146.html
[ii] file:///C:/Users/hasti/Downloads/Merchant%20Banker%20Reply__Working%20Capital.pdf
[iii]https://www.sebi.gov.in/enforcement/orders/dec-2024/order-in-the-matter-of-trafiksol-its-technologies-ltd_89239.html
[iv] https://www.business-standard.com/finance/news/hdb-financial-services-regulatory-hurdles-1-5-billion-ipo-plans-125012300298_1.html

Compliances pertaining to revised market capitalisation as on December 31, 2024 –SEBI (Listing Obligations and Disclosures Requirements) Regulation 2015

Introduction

Securities Exchange Board of India (SEBI) had vided its amendment notification dated: May 17, 2024, amended sub-regulation (2) of Regulation 3 of SEBI (Listing Obligations and Disclosures Requirements) Regulation, 2015 ('LODR'). Regulation 3 provides for applicability of LODR to entities who have listed various types of securities. In this write up we shall check compliances that a listed entity needs to do in the context of LODR amendment May 17, 2024.

Pursuant to clause (a) and (b) of sub-regulation (2) of regulation 3 of LODR every recognised stock exchange shall at the end of calendar year December 31, 2024, prepare a list of entities that have their specified securities listed based on their average market capitalisation from July 1 to December 31[i]. It further states that the relevant provisions that become applicable to a listed entity based on average market capitalisation for the first time, the listed entity would be required to comply within a period of three months or beginning of immediate next financial year whichever is later.

So based on market capitalisation as at the end of December 31. If an equity listed entity becomes part of top 500 companies for the first time (earlier, it being part of top 1000) then it will have to comply with the compliances applicable for top 500 companies within a period of three months from December 31or start of next financial year whichever is later.

Listed companies having financial year beginning 1st April, will have to comply with the compliances applicable for top 500 Companies as specified under SEBI (LODR) on or before March 31.

Compliances applicable to listed entities based on market capitalisation are quoted below:

LODR applicability on the basis of market capitalisation

S. No.	Regulation	Provision	Applicability by market cap
1.	Reg. 17(1)(a)	At least one Independent woman director in the Board of Directors	Top 1000
2.	Reg. 17(1)(c)	Not less than six directors in the Board of Directors	Top 2000
3.	Reg. 17(2A)	Quorum for board meeting – 1/3rd of its total strength or 3 directors, whichever is higher	Top 2000
4.	Reg. 21	Risk Management Committee	Top 1000
5.	Reg. 25(10)	Directors and Officers insurance for all the independent directors	Top 1000
6.	Proviso to Reg. 30(11)	Rumour verification	Next 250 (post top 100)
7.	Reg. 34(2)(f) *	BRSR Report	Top 1000
8.	Reg. 43A	Dividend Distribution Policy	Top 1000
9.	Reg. 44(5)	AGM within 5 months from date of closing of financial year	Top 100
10.	Reg. 44(6)	One-way live webcast of proceedings of AGM	Top 100

* Glide path for applicability of BRSR Core which contains a limited set of Key Performance Indicators (KPIs) for which listed entities shall need to obtain reasonable assurance:

a. FY 23-24: top 150 listed entities
b. FY 24-25: top 250 listed entities
c. FY 25-26: top 500 listed entities
d. FY 26-27: top 1000 listed entities

Listed entities coming into a particular market cap for the first time and are required to comply with certain compliances viz appointment of Independent Women director, minimum director to be six directors, constitution of risk management committee needs to be done within 6 months.

Listed companies need to take concrete steps to avoid SEBI (LODR) non-compliance.

ESG and BRSR compliances for FY 2025-26.

As per SEBI circular dated.: 12 July, 2023[ii] read with reg. 34 of SEBI LODR top 500 companies as per market cap on 31st December 2024 are required to put in place systems for compliance with BRSR core during the period of three months ended March 2025 and submit report on BRSR core in the annual report for financial year 2025-26.

Listed companies that are coming under the purview of top 500 companies as per market capitalisation for the first time as on December 31, 2024, shall get 3 months or until the next financial year, whichever is later. During these three months listed companies would be required to put in place systems for compliance with applicable regulations of SEBI LODR incl. BRSR core. BRSR core focuses on performance of listed companies on specific Key Performance Indicators pertaining to certain BRSR principles. These nine KPIs are pertaining to Green House Gas ('GHG') emissions, water footprint, energy footprint, enhancing employee wellbeing, gender diversity, enabling inclusive development, fairness in communicating with consumers, openness in business and waste management.

To comply with BRSR core principles listed companies need to have proper mechanisms in place to compile accurate data which shall then be disclosed in the BRSR core. The standards for all the above BRSR core parameters are stated in annexure 1 of the circular[iii].

It needs to be further highlighted that top 500 listed companies as per market capitalisation as on December 31, 2024, are required to attain assurance for the above-mentioned KPIs[iv]. Further SEBI has vided its circular dated: July 12, 2023, has also mandated top 500 listed companies as per market capitalisation as on December 31, 2024, to give disclosures of compliance with KPIs by its value chain partners. The first task that companies need to do is to identify its upstream and downstream value chain partners.

A value chain partner means an entity or a person who contributes to the company's sales or purchases. SEBI has stated that the company needs to disclose only its top 75% of its upstream and downstream partners.

After identification the entity needs to arrange meetings with its value chain partners and make sure that they have proper tools and mechanisms in place to disclose accurate data regarding the KPIs mentioned above.

Conclusion

In conclusion, listed companies must prioritize and ensure full compliance with all relevant regulations within a three-month timeframe to mitigate risks, maintain investor confidence, and uphold their legal and ethical obligations. Timely adherence to these compliance requirements is crucial for safeguarding the company's reputation and long-term sustainability in the market.

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[i] https://www.nseindia.com/regulations/listing-compliance/nse-market-capitalisation-all-companies

[ii] https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain_73854.html

[iii] ibid

[iv] ibid

Challenges in impact assessment relating to Corporate Social Responsibility Projects.

Introduction

Giving back to the society can be in the form of charity and also by way of Corporate Social Responsibility ('CSR'). Charity involves helping society by giving financial resources. CSR also involves helping society by giving financial resources but being accountable for these spending. CSR is not merely about spending financial resources but also ensuring that the financial resources spent has created an impact on the society. In this context spending financial resources through CSR carries an obligation that the funds spent have created an impact on the society.

CSR reporting or impact assessment is made mandatory for the listed company having per project outlay of ₹1 crore and overall CSR spend of Rs 10 crore[i]. However, even if the law does not require companies whose CSR obligations fall below this limit to undertake impact assessments, every company engaging in CSR should assess the impact of its activities.

In this article we will delve into the problems faced by companies while doing impact assessment of their CSR projects and their generic solutions.

Challenges Arise During Impact Assessment

1. **Absence of policy framework for impact assessment:** While there is no one-size-fits-all approach to conducting impact assessments, there are established frameworks and guidelines such as GRI Standards, SROI and the OECD guidelines, that provide structured methodologies for evaluating CSR project impact. These frameworks provide a common foundation, but agencies typically adapt their assessment process to align with the unique context and goals of each project. Choosing the right assessment framework is essential to accurately capture the impact in its full essence. While doing impact assessment a variety of challenges arise. If these problems are not addressed properly may undermine the accuracy and effectiveness of the impact assessment process. Here are some common problems which arise during impact assessment.

2. **Third party verification:**

Involvement of the independent organization for the identifying impact assessment is recommended in order to have third party verification.

3. **Incomplete or inaccurate data Collection:**

Impact assessment is primarily dependent on the accurate data collection relating to CSR projects. If the data collected relating to progress of CSR projects is incomplete or inaccurate the finding of the assessment will be unreliable which may lead to misleading conclusions and unforeseen negative impacts. Conducting thorough multisource data collection through fieldwork, stakeholder engagement and expert consultants will reduce the risk of inaccurate data collection. Incomplete data may arise due to following reasons:

a) **Language barrier:** It has often been observed that conducting impact assessments in the stakeholders' local language significantly enhances their engagement and participation.
b) **Unavailability of Stakeholders:** During impact assessments, challenges may arise when stakeholders are unavailable due to important cultural or personal commitments, such as preparations or attending the festivals considered auspicious and significant. Such factors should be taken into account when planning the assessment process.

c) **Reluctance to participate in impact assessment process:** Input from stakeholders is vital for a thorough and accurate CSR impact assessment, as their feedback helps evaluate the true effectiveness of the project. However, issues like conflicts of interest or reluctance to participate can create obstacles in the process. Stakeholders may avoid sharing honest opinions due to personal biases, fear of negative consequences, or a lack of trust in the process. This can lead to incomplete or biased data, affecting the reliability of the assessment. Building trust and fostering open communication are crucial to overcoming these challenges and ensuring meaningful feedback from all involved.

d) **Technological Illiteracy:** Technological illiteracy creates significant barriers in CSR impact assessments. Stakeholders unfamiliar with digital tools may struggle to provide feedback, leading to incomplete or inaccurate data. Limited access to technology in certain regions forces field teams to rely on time-consuming, less reliable methods. Additionally, the lack of expertise in using advanced analytics or digital monitoring tools hinders the ability to gain valuable insights. As a result, the assessment process becomes more costly and less efficient, undermining the overall effectiveness of CSR evaluations.

e) **Obsolete demographic data:** Demographic data available for doing impact assessment is sometimes not updated. This creates challenges to ascertain the exact impact and change that has been brought in the society.

4. Complexity in measuring certain impacts:

Some impacts, like cultural heritage, mental health, or biodiversity, are difficult to quantify. These hard-to-quantify impacts may be underestimated or missed, resulting in insufficient mitigation strategies. Solution to this problem is to use qualitative research methods, consult experts, and include focus groups or community consultations to capture these nuanced impacts.

5. Financial Constraint:

Conducting thorough impact assessment may require significant resources, which smaller organization may lack. Limited resources may lead to incomplete or rushed results. Prioritizing critical impacts and risks within budget constraints and taking external funding or partnerships or scale the assessment to fit available resources while addressing key concerns may resolve this problem.

Conclusion:

The impact assessment of CSR projects is not just a regulatory requirement but a strategic tool for ensuring that corporate efforts genuinely contribute to societal well-being. With extensive planning and smart handling of challenges, companies can ensure a thorough and unbiassed impact assessment. This approach helps build trust with stakeholders, refine their strategies for future projects, and establish themselves as socially responsible organizations. In the long run, this commitment strengthens the alignment between business goals and societal needs, creating a win-win scenario for both. In essence, a well-executed impact assessment ensures that CSR efforts are not just about meeting obligations but truly about creating meaningful change.

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https://taxguru.in/corporate-law/challenges-impact-assessment-relating-corporate-social-responsibility-projects.html

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[i] Rule 8(3)(a) of CSR rules, 2014

Foreign Venture Capital Investment Understanding Investment categorisation and reporting.

The recent amendments made by the Securities and Exchange Board of India (SEBI) to the SEBI (Foreign Venture Capital Investors) Regulations represent a significant and proactive step towards streamlining the registration process for Foreign Venture Capital Investors (FVCIs) looking to participate in the burgeoning Indian market. By notifying these new regulations on September 5, 2024, which will come into effect on January 1, 2025, SEBI has demonstrated its commitment to creating a more efficient and accessible framework for foreign venture capital firms.

At the heart of these regulatory changes is SEBI's decision to leverage the expertise and established infrastructure of Designated Depository Participants (DDPs) to handle FVCI registrations. The integration of DDPs, who are already well-versed in the intricacies of securities registration and compliance, is expected to significantly reduce the administrative burden and expedite the overall registration procedure.

Importantly, these amendments also align with the broader regulatory landscape governing foreign investment in India. Under the Foreign Exchange Management (Non Debt Instruments) Rules, 2019, FVCIs registered with SEBI or the newly empowered DDPs are granted the flexibility to invest in a wide range of securities issued by Indian companies, as outlined in Schedule VII of the NDI Rules.

1. Investment by a Foreign Venture Capital Investor (FVCI) under Schedule VII

Foreign Direct Investment categorized under Schedule I of the NDI Rules must adhere to the established pricing guidelines prescribed under the Rules and reporting requirements under Foreign Exchange Management (Mode of payment and Reporting of Non-Debt Instruments) Regulations, 2019. In contrast, Foreign Venture Capital Investment under Schedule VII of the NDI Rules is not obligated to follow the pricing guidelines during entry and exit, nor do the Regulations prescribe reporting of Investment by FVCI's under Schedule VII.

Investment by Foreign Venture Capital Investor under Schedule VII of NDI Rules shall be allowed in following securities **only** :

1. Securities of an Indian Company (not listed on a recognised stock exchange) engaged in following sectors:
    - Biotechnology
    - IT related to hardware and software development
    - Nanotechnology
    - Seed research and development
    - Research and development of new chemical entities in pharmaceutical sector
    - Dairy industry
    - Poultry industry
    - Production of bio-fuels
    - Hotel-cum-convention centres with seating capacity of more than three thousand
    - Infrastructure sector (as per Harmonized Master List of Infrastructure sub-sectors approved by Government of India vide notification F. No. 13/06/2009- INF)

2. Units of Venture Capital Fund(VCF) or of a Category I Alternate Investment Fund(Cat I AIF) or units of a scheme set up by a VCF/ Cat I AIF
3. Equity Instruments of an Indian start up Company subject to the sectoral caps, entry routes and attendant conditions
4. Equity linked instrument or debt instrument issued by an Indian startup company irrespective of the sector in which the startup company is engaged

Investment by FVCI in securities listed on stock exchange shall be as per Securities and Exchange Board of India (FVCI) Regulations, 2000.

2. Foreign Direct Investment under Schedule I:

Investment non residents (including FVCI) in equity instruments of an Indian unlisted Company which is not engaged in any of the sectors mentioned in point 1 above **OR** Investment in any securities other than those mentioned above shall be required to be in compliance with Schedule I of NDI Rules.

	Schedule I_FDI(Purchase or sale of equity instruments of an Indian company by a person resident outside India)	**Schedule VII (Investment by FVCI)**
Mode of payment	Amount of consideration shall be paid as inward remittance from : • Abroad through **banking channels** or • out of funds held in in any repatriable foreign currency or Rupee account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016	Amount of consideration shall be paid as inward remittance from : • Abroad through **banking channels** or • out of funds held in a foreign currency account and/ or a Special Non- Resident Rupee (SNRR) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. The foreign currency account and SNRR account shall be used only and exclusively for transactions
Applicability of pricing guidelines under NDI Rules	Applicable	Not Applicable. FVCI shall be allowed to acquire or purchase any security at a price that is mutually acceptable to the buyer and the seller/ issuer

Remittance of sale proceeds	The sale proceeds (net of taxes) of the equity instruments may be **remitted outside India** or may be credited to any repatriable foreign currency or Rupee account of the person concerned, maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016	The sale/ maturity proceeds (net of taxes) of the securities may be **remitted outside India** or may be credited to the **foreign currency account** or a **SNRR Account** of the FVCI.
Reporting	Reporting as per Foreign Exchange Management (Mode of payment and reporting) Regulations, 2019	Reporting as per SEBI (Foreign Venture Capital Investors) Regulations, 2000

Investment under Schedule I shall be classified as Foreign Direct Investment(FDI) and should be in compliance with the prescribed sectoral cap, pricing guidelines, reporting requirements and other attendant conditionalities.

3. **Below are the key distinctions between investment under Schedule I and Schedule VII of NDI Rules:**

4. **Reporting of Foreign Investment under Schedule I and Schedule VII of the Rules:**

	Reporting of FDI under Schedule I	**Reporting of FVCI under Schedule VII**
Under Foreign Exchange Management (Mode of payment and reporting) Regulations, 2019	1. Issue of equity shares to FVCI shall be reported in Form FC GPR within 30 days of issue of equity instruments. 2. Transfer of equity shares to FVCI by a resident or vice versa shall be reported in Form FC TRS within 60 days of transfer	Not prescribed The Reserve Bank of India vide A.P. (DIR Series) Circular No.110 dated June 12, 2013 had clarified that where the *investment by FVCI is under Schedule 6 (Investment by FVCI) of the Notification ibid, no FC-GPR/FC-TRS reporting is required*. Such transactions would be reported by the custodian bank in the monthly reporting format as prescribed by RBI from time to time.

<table>
<tr>
<td>Under SEBI (Foreign Venture Capital Investors) Regulations, 2000</td>
<td>Not prescribed</td>
<td>SEBI vide circular dated September 13, 2024 has laid down below reporting requirements for FVCI's:
<table>
<tr><td>Reporting by FVCI for the quarter ending September 30, 2024 and December 31, 2024</td><td>Reporting by FVCI from quarter ending March 31, 2025 onwards</td></tr>
<tr><td>Excel report for the quarter ending September 30, 2024 and December 31,2024 shall be submitted in excel file in the prescribed format by November 15, 2024 and January 15, 2025 respectively through email at fvcireport@sebi.gov.in</td><td>FVCIs shall submit quarterly report in the revised format on the SEBI intermediary portal (SI Portal). The report shall be submitted within 15 calendar days from the end of each quarter.</td></tr>
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Conclusion: Foreign Venture Capital Investors holding valid registration as FVCI while making investment in an Indian company shall determine upfront whether the said investment is under Schedule I (FDI) or Schedule VI(FVCI) and report accordingly.

Accurate reporting by FVCIs is crucial, as any discrepancies or errors can have significant consequences. Improper categorization of investments as either FDI or FVCI can create confusion and complications before the regulatory authorities. This, in turn can lead to additional compliance requirements that the investor must fulfill, placing an unnecessary burden on their operations. Furthermore, reporting inaccuracies may even pose challenges at the time of repatriating the invested funds, as the regulatory bodies may scrutinize the investment's classification more closely. This could result in delays, additional documentation requirements, or even disputes over the legitimacy of the repatriation process.

This article is published on Taxmann. The link for the same is

https://www.taxmann.com/research/fema-banking-insurance/top-story/105010000000026067/foreign-venture-capital-investment-understanding-investment-categorisation-and-reporting-experts-opinion

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In the matter of Fortune Chemicals Limited – Appellant Vs. Ashok Kumar Jaiswal, Resolution Professional of Aarya Industrial Products Private Limited - Respondent at National Company Law Appellate Tribunal (NCLAT) order passed by New Delhi Bench dated 6 January 2025

Facts of the case:

- Mr. Avanish Kumar Singh (the Director) was a director in two companies, namely, M/s Fortune Chemicals Ltd. (Appellant) and M/s Gomtidhara Agro & Dairy Products Private Limited (GADPPL).
- The GADPPL was incorporated on 28 February 2014 had not filed its financial statements/annual returns since incorporation. As a result of which Mr. Avanish Kumar Singh was disqualified to be appointed a director of any other company as per provisions of Section 164(2) of Companies Act, 2013 (the Act) for a period of five years with effect from 1 December 2017 - i.e. the date on which GADPPL failed to file financial statements and annual returns for a continuous period of three financial years.
- The Appellant participated in the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor, Aarya Industrial Products Private Limited (CD) by submitting a comprehensive resolution plan aimed at reviving the debt laden CD.
- The Committee of Creditors (CoC) concluded that the resolution plan of the Appellant was non-complaint under Section 29A of Insolvency and Bankruptcy Code, 2016 (IBC). The plan was rejected by the CoC and decision was taken by the CoC to liquidate the CD.
- On 9 April 2021, the CoC voted in favour of the liquidation of the CD with 100% vote.
- The Earnest Money Deposit (EMD) amount of Rs. 25,00,000/- paid by the Appellant, on repeated requests was refunded to the Appellant on 10 May 2021.
- An application filed by the Appellant before National Company Law Tribunal (NCLT), Kolkata Bench was dismissed vide order dated 13 September 2022 due to non-compliance of section 29 A of IBC.
- Aggrieved by the order of NCLT – the appellant filed the appeal before National Company Law Appellate Tribunal (NCLAT).

Arguments of the Appellant:

- The Director of the Prospective Resolution Applicant (PRA) is disqualified to be appointed as the Director under Section 164(2) of the Act. The director was a connected person to Fortune Chemicals Limited i.e, and the Fortune Chemicals Limited was ineligible to be a resolution applicant;
- The Resolution Plan was not accompanied by an Affidavit stating that the PRA is eligible to submit a resolution plan under Section 29-A of IBC;
- The Resolution Plan did not provide clearly about the CIRP costs, thus, was non-compliant with requirements of Section 30 (2) (a) of IBC;
- The Resolution Plan was not-compliant with requirements of Section 30 (2) (e) of IBC regarding compliance to provisions of law;

- The Resolution Plan did identify the cause of default and did not also demonstrate how the PRA intended to address the cause of default, thus is non-complaint under Regulation 38 (3) (a) IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016;
- The feasibility of the Resolution Plan was highly questionable; thus, it was non-complaint under Regulation 38 (3) (b) IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016.

Arguments of the Respondent:

- The Appellant was ineligible under the provisions of Section 29A of IBC to submit a resolution plan.
- In terms of Regulation 36A (8) of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016, respondent had conducted due diligence to satisfy whether the Appellant complies with the applicable provisions of Section 29A of the IBC.
- Mr. Avanish Kumar Singh became disqualified to be appointed a director of any other company as per provisions of Section 164(2) of the Act for a period of five years with effect from 1 December 2017 and was ineligible to submit a resolution plan as per 29A of IBC.
- Mr. Avanish Kumar Singh, being a 'connected person', became a director of the Appellant in 2018, despite being disqualified to become a director, as the same was well within the five-year stipulated period as stated hereinabove.
- Furthermore, he falls into the category of 'connected person' as he was a director of the appellant and was in control and management of the appellant. Thus, the appellant clearly fell under the category of Section 29A(e) and (j) of the IBC and was ineligible to submit a resolution plan.
- The RP submitted that the Appellant never failed to adhere to any of the timelines during the CIRP of the CD. While last date for submission of resolution plan was 19 February 2021 and deadline for submission of EMD was 25 February 2021, EMD of Rs. 25,00,000/- was credited in the bank account only on 3 March 2021. On 7 April 2021, the Appellant sent email with a proposal to waive the debt assignment clause in their resolution plan thereby reducing resolution plan by approximately 30%.
- The Appellant had never adhered to the timelines and was non-complaint to Section 29A of IBC, 2016. It was further submitted that it is the well settled law as per judgments by the *Hon'ble Supreme Court in K. Sashidhar v Indian Overseas bank & Orsand this Tribunal in Harkirat Singh Bedi v Oriental Bank of Commerce & Ors., that the commercial wisdom of the CoC in accepting or rejecting a resolution plan was "non-justiciable" and that the scope of judicial intervention was very limited.*

Held:

- Only one resolution plan was submitted in the CIRP of the CD. The RP has brought out that this plan was not compliant with the eligibility requirements of Section 29A of IBC.
- As per provisions of Section 164 of the Act, no person who is or has been director of the company which has not filed financial statements and annual returns for any continuous period of three years shall be eligible to be reappointed as a director of the company or

appointed as a director in any other company for the period of five years from the date on which the said company continuously failed to file accounts of three years.

- The default u/s 164(2) of the Act had occurred on 1 December 2017, the date on which the GADPPL failed to file financial statements and annual returns for a continuous period of three years. Thus, Mr. Avanish Kumar Singh was ineligible to be a director as per provisions of Section 164(2) of the Act and the Appellant company also accordingly was not eligible to be a resolution applicant in terms of provisions of clause (e) of Section 29A of IBC, 2016.
- Further, it was noticed that the Appellant, after writing repeated reminders to RP, had taken back the EMD amount, and it was only as an afterthought, after nearly six months, that the Interlocutory Application was filed for consideration of the resolution plan. This clearly appeared to be an attempt to delay the process of CIRP/liquidation.
- The CoC, in its commercial wisdom, has not accepted the resolution plan and had directed the liquidation of the Corporate Debtor. The commercial wisdom of the CoC regarding acceptance/rejection of the resolution plan was "non-justiciable".
- The Hon'ble NCLT had rightly refused to intervene in the decision of the CoC and its commercial wisdom in rejecting the resolution plan of the Appellant.
- In the facts and circumstances of the case, the Appellate Tribunal was of the opinion that there was no ground to interfere with the order of the NCLT, and accordingly, the appeal was dismissed.

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NEWS UPDATES AND AMENDMENTS FOR THE MONTH OF FEBURARY 2025

Sr. No.	News Updates	Link
	TOPIC	
1	**MCA**	**MCA Plans to Deregister Up to 400 Chinese Firms in 3 Months Over Financial Fraud: Report** https://zeenews.india.com/companies/mca-plans-to-deregister-up-to-400-chinese-firms-in-3-months-over-financial-fraud-report-2773790.html
2	**NFRA**	**NFRA asks auditors to closely scrutinise ECL estimates, calls for stronger communication with audit committees** https://cfo.economictimes.indiatimes.com//news/tax-legal-accounting/nfra-asks-auditors-to-closely-scrutinise-ecl-estimates-calls-for-stronger-communication-with-audit-committees/117137364
3	**Union Budget**	**What India Inc wants from the Union Budget 2025** https://cfo.economictimes.indiatimes.com//news/policy/what-india-inc-wants-from-the-union-budget-2025/117346348
4	**Union Budget and IBC**	**Union Budget 2025: An opportunity to reform the IBC for fairer and faster corporate resolutions** https://timesofindia.indiatimes.com/blogs/secularati/union-budget-2025-an-opportunity-to-reform-the-ibc-for-fairer-and-faster-corporate-resolutions/
5	**SEBI**	Sebi to tighten standards for listed companies: Buch https://cfo.economictimes.indiatimes.com//news/governance-risk-compliance/sebi-to-tighten-standards-for-listed-companies-buch/118265422
	Amendments	
1	**Consultation Paper on Draft Circular on Extension of automated implementation of trading window closure to Immediate Relatives of Designated Persons**	SEBI proposes extending automatic window closure for immediate relatives of designated persons https://www.sebi.gov.in/reports-and-statistics/reports/feb-2025/consultation-paper-on-draft-circular-on-extension-of-automated-implementation-of-trading-window-closure-to-immediate-relatives-of-designated-persons_91727.html

2	**SEBI Consultation Paper on draft circular for Management Statement and Auditor`s Independent Practioners Report on digital assurance based on information obtained from external data repositories**	Securities and Exchange Board of India ('SEBI') vide its notification dated February 3, 2025, released a consultation paper proposing a 'Management statement and Auditor's / Independent Practitioner's report on digital assurance' ['Report on Digital Assurance']. Regulation 33 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) governs the submission of financial results by listed companies. The Auditing and Assurance Standards Board ['AASB'] and Digital Accounting and Assurance Board ['DAAB'] of The Institute of Chartered Accountants of India ('ICAI') has issued a "Technical Guide on Digital Assurance" to provide guidance to its members on digitally available audit evidence and information ['Technical Guide']. Technical Guide does not mandate separate reporting by auditors. SEBI has now proposed a separate Report on Digital Assurance of financial statement to be prepared by a peer reviewed statutory auditor or independent financial practitioners based on Technical Guide. This is to increase transparency and improve disclosure standards. https://www.sebi.gov.in/reports-and-statistics/reports/feb-2025/consultation-paper-on-draft-circular-for-management-statement-and-auditor-s-independent-practitioner-s-report-on-digital-assurance-based-on-information-obtained-from-external-data-repositories_91557.html
3	**Consultation Paper on aspects relating to Secretarial Compliance Report, Appointment of Auditors and Related Party Transactions of a Listed Entity**	The Consultation Paper seeks public feedback on proposed amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**") and SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 ("**SBEBS Regulations**"). The key features of the Consultation Paper include: **I. Strengthening the Secretarial Compliance Report:** **II. Eligibility Criteria for Appointment of Statutory Auditors** **III. Enhancing Disclosures for Auditor Appointments** **IV. Amendments to Related Party Transactions** **V. Clarifications on the Applicability of RPT Provisions**

		https://www.sebi.gov.in/reports-and-statistics/reports/feb-2025/consultation-paper-on-aspects-relating-to-secretarial-compliance-report-appointment-of-auditors-and-related-party-transactions-of-a-listed-entity_91740.html
4	**Relaxation in timelines for holding AIFs investments in dematerialised form**	SEBI grants extension from July 1, 2025 https://www.sebi.gov.in/legal/circulars/feb-2025/relaxation-in-timelines-for-holding-aifs-investments-in-dematerialised-form_91919.html
5	**The Companies (Prospectus and Allotment of Securities) Amendment Rules ,2025**	Demat date extended 30 June 2025 https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NTE3MjcxODc4&docCategory=Notifications&type=open

VIEW SHARED IN MEDIA - FOR THE MONTH OF FEBURARY 2025

Sr. No.	Topic for Media Comment	Link
1.	**SEBI | Consultation Paper on Draft Circular on Extension of automated implementation of trading window closure to Immediate Relatives of Designated Persons**	Automated trading window closure would reduce tracking of trades efforts by listed entities for immediate relatives of designated persons. SEBI has proposed to restrict trading by only immediate relatives. Automatic window closure is still not applicable for person with whom designated persons have material financial relationship. Data of immediate relatives of designated persons in the listed entities will now have to be kept updated at all times. SEBI may consider increasing the scope of automated trading window closure to all categories of price sensitive information.

https://investmentguruindia.com/newsdetail/comment-on-sebi-proposing-to-allow-automatic-trading-window-closure-for-immediate-relatives-of-designated-persons-by-makarand-m-joshi-founder-mmjc-and-associates-a-corporate-compliance-firm990954