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SEBI proposes revision of existing norms for re-classification and disclosure of promoter/promoter group entities in shareholding patterns

On November 23, 2020, the Securities and Exchange Board of India (**SEBI**) in a move to reclassify persons as promoter/promoter group entities and disclosure requirements thereunder, proposed a consultation paper providing for certain modifications in the existing system (**Paper**).

Currently, Regulation 31A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**) governs the subject matter and says that - *"All entities falling under promoter and promoter group shall be disclosed separately in the shareholding pattern appearing on the website of all stock exchanges having nationwide trading terminals where the specified securities of the entity are listed, in accordance with the formats specified by the Board".*

Further, Section 31(4) of the LODR Regulations provide for conditions for re-classification of any person as promoter. Under the current regime, a listed entity is required to make an application to the applicable Stock Exchange for promoter/ promoter group re-classification upon fulfilment of certain pre-requisites and not later than thirty days from the date of approval of the request by the shareholders. Such request is to be accompanied by the views of the Board of Directors.

The conditions applicable to approval of a request for re-classification include:

- The promoters/promoter group seeking reclassification as public shareholders must fulfil the conditions laid down in regulation 31A (3) (b) LODR regulations.
- The listed entity must be in compliance with provisions of regulation 31A (3) (c) of the LODR regulations.
- A request containing the rationale for re-classification must be made to the board of directors of the listed entity.
- The board must decide upon such request and must then place it along with their views, for approval of the shareholders in the general meeting by way of an ordinary resolution. Provided the concerned promoter group seeking re-classification does not vote in such a meeting
- An application for re-classification must be made to the relevant stock exchanges within 30 days of passing such a resolution.

Overview of the proposed changes

The proposed changes to reclassify persons as promoter/promoter group entities and disclosure requirements, as per the Paper are as follows:

- **Condition pertaining to minimum threshold of voting rights:** The aggregate holding of promoter(s) seeking re-classification and persons related to the promoter(s) seeking re-classification shall not exceed 15 % or more of the total voting rights in the listed entity. The same is proposed in view of SEBI receiving feedback from market participants to review the current threshold of 10%, in order to ensure that erstwhile promoters who are not in control of affairs of the listed entity and have a shareholding of less than 15% may be re-classified as mere shareholder without having to reduce their shareholding.
- **Condition pertaining to interval between board meeting and general meeting:** The interval between a board meeting and a general meeting for the shareholders to consider reclassification request be reduced to one month instead of the existing norm of three months in order to make the reclassification process more efficient.
- **Government / SEBI ordered Reclassification:** The paper also proposes extending the exemption for disclosures granted to a company in case of re-classification of promoter(s)/ promoter group of the listed entity upon approval of its Resolution Plan as stated in Regulation 31A (9) LODR as directed by the Government/SEBI and/or in a consequence to operation of law.
- **Reclassification of existing promoter pursuant to open offer:** Exemption from complying with the general procedure prescribed, provided that re-classification is pursuant to an open offer made as per the SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 2011 (**SAST Regulations**) has also been proposed. Such an exemption is exercisable only when intentions of the existing promoters have been disclosed in the letter of offer. This is to ensure that the information is available in public domain and an application for re-classification becomes a mere procedural requirement. Furthermore, exemption may be granted where pursuant to an open offer a listed company discloses its interest in re-classifying erstwhile promoter(s)/ promoter group entities who are not traceable or are not co-operative and are not in control of the operations of the company.
- **Definitive Timeline for placing reclassification requests before the board of Listed Companies:** A definitive timeline of one month is now proposed for listed companies to place their reclassification request before the board of the listed company in order to streamline the reclassification process.
- **The disclosure of names of promoter group entities in the shareholder pattern has been proposed:** At present, Regulation 31(4) of the LODR 2015 mandate a listed entity to disclose all entities falling under promoter/ promoter group as per the shareholding pattern appearing on the website of all stock exchanges. In contrast to the current regime, the paper recommends disclosing the names of all entities falling within the ambit of Promoter/ promoter groups, irrespective of the number of shares held by them. Further, listed entities are to now obtain a declaration on a quarterly basis, from their Promoter/ Promoter Groups.

Conclusion

The Consultation Paper aims at inviting comments from the public and market intermediaries and to propose a prospective mechanism for reclassification of promoter/promoter group entities and the disclosure requirements in shareholding pattern to strike at the lacunas in the existing system.

Maharashtra real estate sop

The Maharashtra Government has approved a special stimulus package for the real-estate sector to address inherent issues such as slow pace of growth, unsold inventory and massive liquidity crisis further accentuated by the Covid crisis.

Offering a separate one-time cost window for building tasks throughout Maharashtra, the government has decided to decrease all building premiums by 50% for all ongoing and new projects sanctioned before a cut-off date, which is stated to be December 31, 2021.

The proposal was based on the recommendations of the Deepak Parekh Committee which inter-alia had highlighted steep number of premiums (as many as 22) collected in Mumbai as compared to places like Bengaluru, Delhi and Hyderabad where the number of premium collected is 10, 5 and 3 respectively. Hefty premiums in Mumbai leads to increased working capital requirements for builders who are already facing liquidity crunch. The government has also decided that the builder's will have to pay premium funds on the premise and basis of ready reckoner (**RR**) values of 2019 or of the 2020 charges, whichever is higher.

The Government has also sought to assure that the advantages of the sop are available to the end consumers, and has made it mandatory for the builders to give an undertaking that they would pay the entire stamp duty and no stamp duty will be charged from the home buyers. These reforms will have the propensity of bringing relief to the developer community in these challenging times by bringing down the cost of construction and thereby lowering the purchase cost to homebuyers, resulting in increased demand. This will be juxtaposed with the stamp duty reforms to provide the necessary boost to the sector.

SEBI relaxes eligibility norms for fintech companies for entering mutual fund business

The Securities and Exchange Board of India (**SEBI**) vide its board meeting conducted on December 16, 2020 amended SEBI (Mutual Fund) Regulations, 1996 (**Regulations**) by issuing Press Release no. 61/2020 on the same day (**Amendment**). The Amendment seeks to relax profitability norms applicable to sponsors of mutual funds. As per the Amendment, sponsors having a net worth of not less than INR 100 crore will be considered as eligible sponsors for the purpose of contributing towards the net-worth of the Asset Management Company (**AMC**) and will not be required to fulfil the profitability criteria under the Regulations at the time of making an application to act as a sponsor.

Prior to the Amendment, entities applying to act as sponsors were required to exhibit evidence of profit for 3 (three) consecutive years as well as maintenance of a net worth of INR 50 crores. SEBI has now waived these eligibility norms to encourage upcoming entrants into the mutual funds market, such as fintech start-ups that are looking to enhance the mutual funds market in India. The Amendment will be applicable to only new players in the market and not to entities that are already sponsoring mutual fund businesses, even with a net worth of INR 50 crore.

Salient features of the Amendment and SEBI's intentions thereof:

- SEBI relaxed these norms in order to enable new fintech start-up companies and private equity players with sufficient net worth to enter the mutual fund business.
- The Amendment will endeavour to encourage fintech start-up companies to go public as there will be no rush to immediately generate profits, wherein initially the companies had to exhibit profit for at least 3 (three) consecutive years.
- Currently, various fintech companies in the country act as distributors or intermediaries for mutual fund schemes. Investors use these fintech platforms to invest into mutual funds, primarily for better customer experience and a wholly technology enabled platform. Service providers such as Paytm Money, which is a registered investment advisor with SEBI, permit investors to invest a minimum of INR 100 for a systemic investment plan (**SIP**) which caters to an entirely different segment of investors compared to traditional AMCs.
- With the eligibility criteria relaxed, a variety of entities will now be permitted to apply as sponsors. In context with the Amendment, it will be interesting to see the approach that may be taken by present fintech entities such as Paytm Money, PhonePe, MobiKwik and Zerodha that may redesign and repackage mutual fund schemes available on their platform, that cater specifically to their customer base.

The Amendment endeavours not only to attract current fintech companies to apply as sponsors, but it also foresees the mutual fund customer base to increase in light of heightened participation by the tech savvy younger generation, many of whom may also be first-time savers and investors. SEBI believes that the Amendment will facilitate innovation, enhance reach and accelerate tech-enabled solutions in this industry.

CCI's nod to USD 3.4 billion deal between the nation's two largest retail giants

Competition Commission of India (**CCI**) on November 20, 2020 approved the much-anticipated Future Group - Reliance Retail deal (**CCI Order**). The acquisition by Reliance Retail Ventures Ltd (**RRVL**), Reliance Retail and Fashion Lifestyle Ltd (**RRVL WOS**) of the retail and wholesale undertaking as well as the logistics and warehousing undertaking of the Future Group was approved by the CCI under Section 31(1) of the Competition Act, 2002 (**Act**).

RRVL, a subsidiary of Reliance Industries Ltd, is an unlisted company engaged in the business of retail supply chain management. RRVL WOS, a wholly owned subsidiary of RRVL, has been recently incorporated to carry out various businesses including the businesses proposed to be transferred to RRVL WOS as part of the proposed combination.

As per the CCI Order, the deal will see the following six Future Group entities (**Transferor Companies**) being reorganized by way of amalgamation with Future Enterprises Ltd (**FEL**):

- Future Consumer Ltd
- Future Lifestyle Fashions Ltd
- Future Retail Ltd (FRL)
- Future Market Networks Ltd
- Future Supply Chain Solutions Ltd
- Futurebazaar India Ltd and its subsidiaries

Post re-organization of the Transferor Companies, RRVL and RRVL WOS will acquire retail and wholesale undertaking as well as the logistics and warehousing undertaking of FEL.

A summary of the combination detailing the particulars of the deal is to be filed with the CCI as per the terms contained in Regulation 13(1A) of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (**Combination Regulations**). The Combination Regulations were amended with effect from August 15, 2019 (**2019 Amendment Regulations**) to give effect to the 'green channel' mechanism which deals with combinations that are unlikely to result in any appreciable adverse effect on competition (**AAEC**). Under the 'green channel', the parties to the combination are to undertake a self-assessment of whether they meet the qualifying criteria to avail the green channel route. In case the parties qualify the aforesaid criteria, they may notify the

CCI of the proposed combination under the green channel and consummate the deal on an automatic approval basis.

The newly amended Regulation 13(1A) of the Combination Regulations now provides that *"A summary of the combination, not containing any confidential information, in not more than 1000 words, comprising details regarding: (a) name of the parties to the combination; (b) the nature and purpose of the combination; (c) the products, services and business(es) of the parties to the combination; and (d) the respective markets in which the parties to the combination operate, shall be filed for the purpose of publishing the same on the website of the Commission."* A summary to the Reliance-Future Retail combination in accordance with newly amended Regulation 13(1A) is available on the CCI's website and can be accessed here. The relevant market delineated for the purposes of the proposed combination is (a) the market for retail in India (including certain segments); and (b) the market for B2B sales in India.

It is important to note that the unamended Regulation 13(1A) required the parties to provide a summary also detailing '*an analysis of the likely impact of the combination on the state of the competition in the relevant market(s) in which the parties to the combination operate*'. This requirement had been removed by the 2019 Amendment Regulations and substituted to state only the '*respective market*' in which the parties to the combination operate. This indicates that the onus of undertaking the analysis of the likely impact of the combination on the state of competition rests solely on the CCI based on the disclosures made by the parties to the combination.

CCI's nod granted under Section 31(1) of the Act means that the antitrust body has concluded that the deal will not have an AAEC in the relevant industry. Section 31(1) of the Act states that *'Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under sub-section (2) of section 6.'*

On the other hand, Amazon, which owned a 5% indirect stake in Future Retail Limited, claimed that its 2019 investment agreement (**2019 Agreement**) barred Future Group from selling its assets to Reliance. Under the said investment agreement, both parties had agreed to arbitration in accordance with the Singapore International Arbitration Centre (**SIAC**) Arbitration Rules. In October 2020, an emergency arbitration was held at SIAC pertaining to a legal notice issued by Jeff Bezos-led Amazon for alleged breach of the 2019 Agreement. Amazon raised objections that in the 2019 Agreement, Future Group had signed a 'non-compete' and 'right of first refusal' clause, under which Amazon had the first right to invest in Future Retail. Despite that, the latter still went ahead with the deal without taking approval from the former. In pursuance of the same, the Singapore Court on October 25, 2020 passed an interim order barring Future Retail from disposing its assets or issuing securities to secure any funding from a restricted party. Subsequently, Amazon wrote to the Securities and Exchange Board of India (**SEBI**), stock exchanges and CCI, urging them to take into consideration the Singapore arbitrator's interim decision stating that it is a binding order.

As a result, Future Group filed a lawsuit against Amazon before the Delhi High Court (**HC**) in a bid to stop the US-based e-tailer from 'misusing' the Singapore Court's interim order and 'interfering' in the INR 24,713 crore Reliance-Future deal. However, a single judge bench of the HC headed by Justice Mukta Gupta in its order passed on December 21, 2020 rejected Future Group's plea to restrain Amazon from writing to various regulatory authorities for not providing approval to the former's deal with Reliance and opined that the statutory authorities are free to take their own decisions in accordance with the law. Thus, the Court declared that while the balance of convenience was in favour of both Amazon and FRL, it also stated that in order to grant relief of an interim injunction, all three principles – a prima facie case, irreparable loss and balance of convenience – need to exist. In the words of the HC, '*Both FRL and Amazon have already made their representations and counter representations to the Statutory Authorities/Regulators and now it is for the Statutory Authorities/Regulators to take a decision thereon. Consequently, the present application is disposed of, declining the grant of interim injunction as prayed for by FRL, however, the Statutory Authorities/Regulators are directed to take the decision on the applications/objections in accordance with the law.*' Lastly, while the HC held that the interim order given by the emergency arbitrator is valid, it also termed Future Retail's resolution approving the transaction with Reliance as valid.

With respect to the validity of the interim order given by the emergency arbitrator, the Hon'ble Delhi HC limited itself to examining only the legal status of an emergency arbitrator to pass an order in terms of Part I of the Arbitration and Conciliation Act, 1996 (**Act**), without going into the legality on merits of the award passed in favour of Amazon. The HC stated that the award was valid as the emergency arbitrator was not coram non judice and concluded the same based on the following grounds:

- The parties in an International Commercial Arbitration seated in India can by agreement derogate from the provisions of Section 9 of the A&C Act.
- In cases where parties choose a curial law which is different from the law governing the arbitration, the court will look at the curial law for conduct of the arbitration as long as it is not contrary to the public policy or the mandatory requirements of the law of the country in which arbitration is held. In the instant case, Amazon and Future Group expressly chose the SIAC Rules as the curial law, as stated above.
- It cannot be held that the provision of emergency arbitration under the SIAC rules are, per se, contrary to any mandatory provisions of the A&C Act. The Court stated that the authority of the emergency arbitrator cannot be invalidated merely because it does not strictly fall within the definition under Section 2(1)(d) of the A&C Act or because of the Parliaments rejection to include the same in the section by way of an amendment.

In conclusion, it appears that the Court has passed a neutral observation in its order in favour of both Amazon and FRL, leaving the final discretion on the statutory authorities to form their own opinion on the deal in accordance with the law. The tussle between both the parties has moved a step ahead with both the parties agreeing to the names of three arbitrators for arbitration which will be held at the Singapore International Arbitration Centre.

Lakshmi Vilas Bank and DBS India merger

Lakshmi Vilas Bank (**LVB**) was running into continuous losses spanning over the last three years. With a steady decline of its financial position, it became of utmost necessity for Reserve Bank of India (**RBI**) to formulate a feasible strategic plan to revive and salvage the 94-year-old bank. One of the first actions that RBI initiated was to place LVB under one-month moratorium vide order number S.O.4127(E), effective from November 17, 2020. LVB currently is the third bank after Punjab and Maharashtra Co-operative Bank (**PMC bank**) and Yes Bank that the RBI had put under moratorium. The moratorium for Yes Bank was lifted and enabled full banking services from the 19 March 2020 to its customers; however, with regards to PMC bank, the moratorium period has been extending for more than a year and currently the withdrawal limit is INR 1 lakh.

After the one-month moratorium order on LVB, within a short span of time, RBI on November 25, 2020 announced the scheme of amalgamation for LVB with DBS Bank India Ltd (**DBIL**) effective from November 27, 2020. The moratorium imposed on LVB was also lifted from November 27, 2020 and banking services were restored immediately with all branches, digital channels and ATMs functioning as usual. As part of the amalgamation, DBIL has proposed to infuse much needed fresh capital of INR 2500 crore (approx.) into LVB from DBS Bank Ltd (**DBS**) existing resources only, to assist the growth of the merged entity.

Advantages of the merger

- DBS bank is a well-capitalized foreign bank that will bring in additional capital of INR 2,500 crore upfront, to support the credit growth of LVB.
- The merger of LVB with the Indian unit of Singapore-based DBS bank is a merger of two extreme entities, wherein DBIL comes in with a foreign banking culture that is more focussed on productivity and return on investment. Additionally, the proposed amalgamation would also provide 'stability and better prospects' to LVB's customers and employees during this time of uncertainty.
- Despite the size of LVB's non-performing assets (**NPAs**), a merger would give DBIL a readymade infrastructure with valuable customer base and a sizeable branch network in India with approximately 570 branches, presence in 16 states and 3 union territories.

Implication for the customers

- The interest rates on savings bank accounts and fixed deposits are governed by the rates offered by the erstwhile LVB till further notice. Any new deposits being booked may now be at the rates which were earlier published by LVB, which may be revised going forward.
- Customers will be permitted to resume banking facilities through LVB's network and services as earlier. However, customers will be permitted to utilise the DBS network only after the integration process is complete. This will be communicated by RBI on a future date to all LVB customers.
- All LVB employees will continue in service and now become employees of DBIL on the same terms & conditions of service as under LVB.
- The scheme states that LVB shall cease to exist when the merger is operationalized and its shares and debentures on any stock exchange will be delisted without any further action. Due to the write-off in paid-up share capital and reserves and surplus, the banks equity would go down to being zero.
- Consequently, it appears that the shareholders of LVB will be adversely affected by the merger; however, it is pertinent to note that LVB was already insolvent prior to the merger and thus it should not come as a shock to the shareholders of LVB that their shares may offer little or no value at all.

Conclusion

The merger of LVB with DBIL will hopefully turn out to be positive for the depositors and creditors of LVB, since DBIL has a strong parent in DBS, a leading financial service group in Asia. While RBI has managed to assist LVB anf its customers, the situation once again draws attention to the need for fundamental changes to India's banking sector.

Reduction of Stamp Duty: A boost for real estate sector

Complicated and heavy stamp duties have been a dampener in the real estate growth and there has been a steady push for rationalization of stamp duty in order to reduce the incidence of aggregated expense and help sales by lowering the effective cost for buyer. In this regard, the temporary reduction of stamp duty by Maharashtra is laudatory – in this first instance, the stamp duty will be reduced by 3% in Mumbai District and Mumbai Sub-urban District and by 2% in rest of the Maharashtra for transactions between Sep 1 to Dec 31, 2020, followed by a reduction by 2% in Mumbai District and Mumbai Sub-urban District and by 1.5% in rest of the Maharashtra for transactions between Jan 1 to Mar 31, 2021. This reduction has come at an opportune time in light of the all-time low interest rates, which will bring down the cost for homebuyers. The Ministry of Housing and Urban affairs hailed this decision of Maharashtra government and requested the other states to implement similar measures.

Similar measures were adopted by the state of Karnataka and Madhya Pradesh. The Madhya Pradesh government announced that they are reducing stamp duty cess by 2% in urban areas bringing it down to 10.5% from the earlier 12.5%, which was valid till 31st December 2020. The Karnataka government, on the other hand, passed a bill – the Karnataka Stamps (Second Amendment) Bill 2020 – which reduced the stamp duty from 5% to 3% for flats priced between INR 20 – 35 lakh and 2% (from 5% earlier) for flats priced below INR 20 lakh. The bill also proposes exemption from registration charges and lower stamp duty for industrial units set up in backward areas.

While this is indeed an encouraging start, these reforms have been long overdue and can hardly be classified as significant reforms. The States have been sluggish and lackadaisical in reduction and rationalization of stamp duty to make it a pan-India occurrence. It is expected that more States will follow suit and help alleviate the pain points that the real estate sector has had to contend with.

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