

Corporate & Commercial

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SEBI relaxes Superior Voting Rights

In 2019, SEBI had introduced the concept of Superior Voting Rights (SR) framework. In a move that is likely to further aid the listing of startups in India, SEBI on September 29, 2021 revised certain regulations pertaining to superior voting rights shareholders in companies.

The current framework allows issuance of superior voting rights shares to promoters or founders holding an executive position in the company desirous of listing on the Main Board. However, a sub-section of the framework was being seen as restrictive and onerous to comply with for founders who had diluted their holding but held superior voting rights shares.

Under the current framework, a superior voting rights shareholder could not be part of the promoter group at the time of listing if the collective net worth of the promoter group exceeded INR 500 crore. SEBI eased this restriction by mandating that the superior voting rights shareholder's net worth should not exceed INR 1,000 crore at the time of the proposed listing of the company.

The minimum gap between issuance of superior voting rights shares and filing of Red Herring Prospectus has also been reduced to three months from the existing requirement of six months.

In July this year, SEBI had sought market feedback on the existing framework for SR rights in order to provide flexibility to startup founders seeking to list publicly. The framework allows founders to retain more votes in the company even after the public listing and allows them to protect their SR shares for up to five years after listing.

T+1 settlement cycle

SEBI introduced an optional T+1 (**Trade Day plus one day**) settlement cycle for completion of share transactions to enhance market liquidity. Under the T+1 rule, stock transactions will be settled the very next day and not after two days as is the current norm. The new rule will come into force on January 1, 2022.

As per the SEBI Circular, stock exchanges can switch to the T+1 settlement cycle on any shares after giving an advance notice of at least a month to all stakeholders, including the investing community. After the switchover, the stock exchanges will have to continue with the T+1 settlement cycle for a minimum period of six months.

Key benefits of T+1 settlement cycle

- Shortened settlement time
- Reduced number of outstanding unsettled trades, thereby decreasing the unsettled exposure to Clearing Corporation by 50%
- Capital blocked in the system to cover the risk of trades will get proportionately reduced with the number of outstanding unsettled trades
- T+1 will not require large operational or technical changes by market participants
- It will not cause fragmentation and risk to the core clearance and settlement ecosystem

RBI issues Master Directions on Prepaid Payment Instruments

The Reserve Bank of India (RBI) has issued the Reserve Bank of India Master Directions on Prepaid Payment Instruments, 2021 (**MD-PPIs, 2021**) on August 27, 2021. PPIs themselves are the instruments that facilitate the purchase of goods and services, the conduct of financial services, enable remittance facilities, etc., against the value stored therein.

The MD-PPIs, 2021 have made it mandatory that no entity can set up and operate payment systems for PPIs without prior authorization of RBI, and are only allowed to issue PPIs, after obtaining the required authorization from the RBI under the Payment and Settlement Systems Act, 2007 by applying to the Department of Payment and Settlement Systems (**DPSS**) along with a 'No Objection Certificate' from their regulatory department, within 30 days of obtaining such authorization. The provisions of MD-PPIs are applicable to all the Prepaid Payment Instruments (**PPIs**) Issuers and System Participants.

Key aspects

- **The new classification categories of PPIs**
 - The new classification of PPIs is under two types viz. (i) Small PPIs and (ii) Full-KYC PPIs.
 - 'Small PPIs' are the instruments issued by the banks after receiving minimum details of the PPI holder, to be utilized only for the purchase of goods and services with a group of pre-identified merchants. As per the new directions, Small PPIs can hold cash up to INR 10,000 per month, and not exceeding INR 1.2 lakh in a year. Funds transfer or cash withdrawal from Small PPIs is not permitted.
 - 'Full-KYC PPIs' are instruments that are not restricted to an identified group of merchants and require the 'Know-Your-Client' (**KYC**) process of PPI holders to be diligently processed. It also supports fund transfers and cash withdrawals.
 - An added feature of the Video-based Customer Identification Process can be used to open full-KYC PPIs as well as to convert Small PPIs into full-KYC PPIs, thus facilitating the process.
- **Interoperability**
 - Through MD-PPI, 2021, interoperability has been made mandatory for all the Full-KYC PPIs, interoperability on the acceptance, and QR Codes in all modes by March 31, 2022.
 - An exception is created for PPIs issued in Mass Transit Systems (**MTS**) and gift PPI issuers have an option to offer interoperability.
 - It is also now mandatory for a PPI issuer to adhere to all the requirements of card networks and 'Unified Payment Interface' (**UPI**) including membership type and criteria, merchant on-boarding, adherence to various standards, rules, and regulations applicable to the specific payment system such as technical

requirements, certifications and audit requirements, governance, etc.

- Added safety and security measures are taken up for achieving interoperability through card networks.
- **Security features**
 - Vide the MD-PPI, 2021, RBI has introduced added security measures to ensure the safety of PPI holders. PPI issuers must disclose all the important terms and conditions to the PPI holders including details about of on the charges concerned.
 - It has made a two-factor authentication compulsory for all the PPI transactions, except for gift PPIs and PPIs used in MTS.
 - Transaction alerts have been mandated for both online and offline transactions.
 - The RBI also requires PPI issuers to comply with its circulars on enhancing the security of card transactions, enhancing public awareness in the face of increasing fraud, and e-mandates for recurring card transactions.
 - PPI issuers shall also provide a cap on the number of transactions and transaction value for different types of transactions. However, the same cap can be allowed to change, with additional authentication and validation.
 - A mechanism for monitoring, handling and follow-up of cyber security incidents, and cyber security breaches is required to be established and shall report to DPSS for such incidents.

The changes made in the regulatory framework for the PPIs have created a level playing field for banks and non-banks. The RBI seeks to mitigate risks with its focus on fintech solutions for the present digital economy. The RBI has also ensured security measures involving a two-factor authentication system and message alerts, along with a grievance redressal framework to bring transparency and awareness amongst the PPI users.

PLI scheme to boost the auto sector

The government approved a Production Linked Scheme (PLI) on September 15, 2021 for the auto and the drone industry with a corpus INR 26,058 crore for improving India's manufacturing capabilities. Incentives will be provided over a period of 5 years.

Key aspects of this scheme

- **Scheme components**
 - **Champion OEM Incentive Scheme:** The Champion OEM Incentive Scheme is a 'Sales Value Linked' scheme, applicable on Battery Electric Vehicles and Hydrogen Fuel Cell Vehicles of all segments
 - **The Component Champion Incentive Scheme:** It is a 'Sales Value Linked' scheme, applicable on Advanced Automotive Technology components of vehicles, Completely Knocked Down/Semi Knocked Down kits, Vehicle

aggregates of 2-Wheelers, 3-Wheelers, passenger vehicles, commercial vehicles, and tractors

- **Eligibility**
 - Existing automotive companies
 - New investors who are currently not in automobile
 - Auto component manufacturing business
- **Impact**
 - This PLI Scheme for auto sector is projected to bring fresh investments of over INR 42,500 crore, with incremental production of over INR 2.3 lakh crore and additional employment for over 7.5 lakh people
 - The scheme for drone sector is intended to attract fresh investments of over INR 5,000 crore over 3 years, with increase in eligible sales of INR 1,500 crore and additional employment of about 10,000 jobs

Indian market sees INR 2.74 lakh crore FPI

The Foreign Portfolio Investment (FPI) in Indian market has reached an all-time high with a total FPI worth INR 2.74 lakh crore in equity markets. In 2020-2021, India emerged as a preferred destination for global fund managers and high foreign fund inflows have propelled equity benchmark indices. Some of the key factors for increasing investor interest in Indian stock markets are as follows:

- **Government initiatives:** Policy initiatives improved ease of access and investment climate for FPIs. Few of these policies include rationalization of the FPI regulatory regime, operationalization of the online common application form for registration with SEBI as well as allotment of PAN and opening of bank and demat accounts.
- **US stimulus:** The United States Federal Reserve has printed nearly USD 3 billion in 3 months to offset the economic fallout of the coronavirus pandemic. The high scale printing is another motivation to drive the migration of foreign investors towards emerging markets like India.
- **Large equity issues:** The month of August witnessed Qualified Institutional Placements by large commercial banks and REITs. It will be interesting to see if similar FPI levels persist in the subsequent months.

SEBI tweaks mutual funds compensation

SEBI has recently modified the circular that mandated paying a fifth of compensation to key employees of asset management companies (AMCs) in the form of mutual fund (MF) units, ahead of its implementation date on October 1, 2021.

The regulator said 'junior employees' below 35 years would have to invest only 10% of their compensation in MF units of the fund house in the first year, and 15% in

the second year from October 1, 2022 as against 20% for the other employees. However, CEO, Head of Department and Fund Managers, even if below 35 years of age, will not get this benefit.

Key changes

- The term 'key employees' changed to 'designated employees'
- Initial investment threshold 10% for those below 35 years
- Investment in units of the scheme shall be made on the day of payment of salary
- Superannuation benefits and gratuity paid at the time of death/retirement, shall not be included in the CTC
- The value of interest on loan availed of by the designated employees against the units from the AMC will not be included in the CTC
- Existing investments allowed to set off against fresh investments. In the case of liquid schemes, the units would get redeemed on expiry of the mandatory three-year lock-in period. While in open-ended schemes, employees can redeem their units in open-ended schemes twice in a financial year after the expiry of the mandatory lock-in period.
- The investment will be 'growth' of the MF schemes, and where this option is not available, they will invest in 'reinvestment of income distribution cum capital withdrawal option.

National Single Window System for ease of investors

- Commerce minister launched a National Single Window System (**NSWS**) that will help domestic and global investors in getting regulatory approvals through the online portal, which currently hosts 18 central departments and 9 states.
- Investors can access all solutions at one click of the mouse through end-to-end facilitation. This would bring transparency, accountability and responsiveness in the ecosystem and all information will be available on a single dashboard.
- The portal will provide investors services such as Know-Your-Approval (**KYA**), common registration, state registration, document repository, and e-communication. KYA service is an intelligent information wizard that generates approvals required by any business to commence operations. It does so by asking the investor a series of dynamic questions about their planned business activities and identifies the applicable approvals basis the responses provided.
- The single window system will usher in freedom from running to government offices for approvals and registrations and provide ease of doing business. It will provide strength to schemes such as Make in India, Startup India, and Production-linked Incentive (**PLI**) scheme.

Recommendations of 45th GST Council Meeting

Finance Minister chaired the first in-person Goods and Services Tax (**GST**) Council Meeting held on September 17, 2021. Following key recommendations were proposed at the 45th GST Council meet:

GST on goods

- **Extension of existing concessional rates and reduction of rates on certain treatment drugs:**
 - Concessional GST rates applicable on certain Covid-19 treatment drugs currently valid till September 30, 2021 have been extended till December 31, 2021
 - GST rate reduced to 5% on specified Covid-19 related treatment drugs till December 31, 2021
 - Life-saving drugs such as Zolgensma and Viltepsa to be exempted from GST when imported for personal use (currently applicable GST rate 12%)
- **GST rate changes in relation to, inter alia, following goods with effect from October 1, 2021 (unless otherwise stated):**
 - Biodiesel supplied to OMCs for blending with diesel reduced from 12% to 5%
 - Ores and concentrates of metals such as iron, copper, aluminium, and zinc increased from 5% to 18%
 - Railway parts, locomotives & other goods in Chapter 86 increased from 12% to 18%
 - Cartons, boxes, bags, packing containers of paper increased from 12% to 18%
- **Specified renewable energy devices and parts increased from 5% to 12%:** The Council observed that specified renewable energy devices attract 5% GST whereas their inputs are taxed at 18%. This inversion leads to embedding of ITC on input services and capital goods. Hence, to reduce inversion, GST rate is increased from 5% to 12% for specified energy renewable devices.
- **Inclusion of brick kilns and petroleum products:** The Council decided that brick kilns would be brought under special composition scheme with effect from April 1, 2022 with a threshold limit of INR 20 lakhs. Bricks would attract GST at the rate of 6% without ITC under the scheme and 12% with ITC.

GST rates and scope of exemption on services

- **GST rate changes in relation to, inter alia, following services with effect from October 1, 2021 (unless otherwise stated)**
 - Licensing services and right to broadcast increased from 12% to 18%
 - Printing and reproduction services of recorded media where content is supplied by the publisher increased from 12% to 18%
 - E-commerce operator will be liable to pay tax on following services provided through them:

- Transport of passengers by motor vehicles
- Restaurant services provided through it with some exceptions
- **Exemption on certain services**
 - Leasing of rolling stock by IRFC to Indian Railways has been withdrawn
 - Rate of Services by way of grant of National Permit to goods carriages on payment of fee reduced to nil
 - Validity of GST exemption on transport of goods by vessel and air from India to outside India has been extended up to September 30, 2022
 - Certain relaxations have been made in conditions for IGST exemption relating to import of goods on lease, where GST is paid on the lease amount to allow this exemption even if:
 - Such goods are transferred to a new lessee in India upon expiry or termination of lease
 - The lessor located in SEZ pays GST under forward charge

GST law and procedure

- The requirement of filing FORM GST ITC-04 under the Rule 45(3) of CGST Rules has been relaxed in the following manner:
 - Taxpayers with annual aggregate turnover in preceding financial year exceeding INR 5 crore shall furnish ITC-04 once in 6 months
 - Taxpayers with annual aggregate turnover in preceding financial year up to INR 5 crore shall furnish ITC-04 annually
- It has been decided that Section 50(3) of the CGST Act will be amended retrospectively from July 1, 2017 to provide that interest is to be paid by a taxpayer on 'ineligible ITC availed and utilized' and not on 'ineligible ITC availed'. It has also been decided that interest in such cases should be charged on ineligible ITC availed and utilized at 18%.
- Unused balance in CGST and IGST cash ledger may be allowed to be transferred between distinct persons (entities having same PAN but registered in different states), without going through the refund procedure, subject to certain safeguards.
- Interpretation of the term 'merely establishment of distinct person' in Condition (v) of the Section 2 (6) of the IGST Act, 2017 for export of services. It has been proposed that a person incorporated in India under the Companies Act, 2013 and a person incorporated under the laws of any other country are to be treated as separate legal entities and would not be barred by the Condition (v) of the Sub-Section (6) of the Section 2 of the IGST Act 2017 for considering a supply of service as export of services.
- A provision is to be incorporated in the CGST Rules, 2017 for removing ambiguity regarding procedure and time limit for filing refund of tax wrongfully.

Measures for streamlining compliances under the GST regime

- Refund to be disbursed in the bank account, which is linked with same PAN on which registration has been obtained under GST.
- Rule 59(6) of the CGST Rules to be amended to provide that a registered person shall not be allowed to furnish FORM GSTR-1 if he has not furnished the return in FORM GSTR-3B for the preceding month.

SEBI links PAN with Aadhaar

On September 3, 2021, SEBI issued a press release for linking the Permanent Account Number (**PAN**) with the Aadhaar Card before September 30, 2021. SEBI has called for compliance of the Central Board of Direct Taxes (**CBDT**) circular dated February 13, 2021, stating that the PAN allotted as on July 1, 2017 will be of no use in the securities market if it is not linked with the Aadhaar Card of the person.

In view of this, SEBI advised all the entities registered with SEBI including the Market Infrastructure Institutions (**MIIs**) to comply with the notification of the CBDT and to only accept those PAN which are linked with Aadhaar numbers. All the existing investors have also been asked to link their PAN with their Aadhaar cards before the cut-off date to ensure smooth continuation of transactions in the securities.

Relief package for telecom sector

The Cabinet approved measures to extend a lifeline to the cash-strapped telecom sector, including a redefinition of the much-litigated concept of Adjusted Gross Revenue (**AGR**) to exclude non-telecom revenue and a four-year moratorium on dues to the government as well as allowing 100% FDI through the automatic route.

It was announced that there will be **nine structural reforms** and **five procedural reforms** for the sector, including a fixed calendar for spectrum auctions with an extended tenure of 30 years and a mechanism to surrender and share spectrum.

Key aspects of this relief package

- This package is expected to protect and generate employment opportunities, promote healthy competition, protect interests of consumers, infuse liquidity, encourage investment, and reduce regulatory burden on Telecom Service Providers (**TSPs**).
- The package primarily provided relief to Vodafone Idea, which is on the brink of going bankrupt. A moratorium on AGR-related dues will offer space to the cash-strapped firm to improve its business and clear dues over a longer period.
- A four-year moratorium has been approved on dues of TSPs. However, TSPs who want to opt for

the moratorium will have to pay interest on the amount availed under the benefit.

- The definition of AGR has been changed to exclude non-telecom revenue. 'All non-telecom revenue will be removed from AGR'.
- Another important announcement was related to rationalizing spectrum charges that telecom firms must bear. The monthly compounding of interest on spectrum usage charges will be replaced by annual compounding and the interest rate will come down, based on the formula MCLR + 2%.
- The Centre has also announced 100% FDI in the telecom sector through the automatic route.
- So far, up to 49% was allowed through the automatic route and anything thereafter had to necessarily go through the government route. These measures are expected to ease the cash flow issues being faced by some players in the industry.
- The package is also expected to boost 4G proliferation, infuse liquidity and create an enabling environment for investment in 5G networks.

Anjali Rathi v. Today Homes and Infrastructure Ltd – The SC addresses prolonged disputes in the real estate sector

The real estate sector in India has been plagued by the problem of prolonged dispute resolution and grievance redressal. The Supreme Court (SC), through a catena of pronouncements, widened the remedies available for aggrieved homebuyers by allowing them to approach the consumer courts, RERA as well as NCLT for their grievances.

Facts

- The Petitioners are the homebuyers in a group housing project, Canary Greens, in Sector 73, Gurgaon, that was being developed by the Respondent. The agreements executed between the Petitioners and the Respondent had envisaged that possession will be granted in 2014 (36 months after the execution of the agreements). However, the said housing project was abandoned by the Respondent.
- Following is a brief timeline of the proceedings:
 - **July 12, 2018:** NCDRC ordered the Respondent to refund the principal amount to the Petitioners at 12% interest.
 - **October 23, 2018:** NCDRC issued certain orders in response to execution proceedings.
 - **November 19, 2018:** The orders dated October 23, 2018, were challenged by the Respondent and the Delhi High Court stayed the said orders.
 - **April 1, 2019:** NCDRC ordered attachment of properties of the Director of the Respondent if the decretal amount determined in the first

order was not paid within 2 weeks. The Respondent filed an appeal in the Delhi High Court against this order. However, the proceedings at the High Court were stayed on July 1, 2019, because the many of the claims were defused via settlement between the homebuyers and the Respondent.

- **October 31, 2019:** An operational creditor of the Respondent initiated proceedings against the Respondent under Section 9 of the Insolvency and Bankruptcy Code before the NCLT. CIRP was initiated and moratorium was declared under Section 14 of the code.
- The Petitioners filed this petition to request the SC to issue an attachment order against the personal properties of the promoters of the Respondent to give effect to the agreement between the parties.

Issue at hand

- Can the Petitioners raise a claim against the promoters of the Respondent company during the moratorium period?

Decision of the Court

- SC answered in affirmative and reasoned that there was no bar on the Petitioners from raising a claim against the promoters of the Respondent company even during the subsistence of the moratorium period. The Court relied upon the case of *P. Mohanraj v. Shah Bros. Ispat (P) Ltd¹*.
- The ratio of this decision was that moratorium is declared against the Corporate Debtor (in this case the Respondent company) and not against the natural persons associated with the Corporate Debtor. In the present case, the Petitioners have a right to bring a claim against the promoters of the Respondent on honoring the settlement.
- However, despite this ratio, the Court dismissed the petition on the grounds that the Resolution Plan was awaiting approval. Before departing, the Court also observed that the Petitioners may avail the appropriate remedies once the Resolution Plan has been approved.

Our viewpoint

- Cases like these highlight the delay and deferral in dispute resolution and grievance redressal in the real estate sector. The fault has occurred way back in the year 2014 and despite having filed various applications and initiating proceedings, the homebuyers' plights have not been assuaged.
- SC recognized the issue and in furtherance of avoiding further delays in settlement of the case, SC ordered NCLT to decide upon the Resolution Plan within 6 weeks of this order. Additionally, by providing a reasonable time to the NCLT, the court has also ensured that the efficacy of the NCLT proceedings is not compromised.
- Thus, a laudatory attempt has been made to balance the interests of the homebuyers as well as those of the developer.

¹ (2021) 6 SCC 258

HOT TOPIC

SPACs: Business combination options for Indian companies – Cross border mergers with emphasis on inbound mergers

Although Special Purpose Acquisition Companies (**SPACs**) have been active for decades, the year 2021 has been witnessing a considerable rise in SPAC activities, with nearly USD 128 billion raised from 447 SPACs in the United States of America (the **United States**) till the month of September, compared to approximately USD 83 billion raised from 248 SPACs in the year 2020 and 13 billion raised from 59 SPACs in the year 2019², thereby indicating a significant increase in the value and volume of transactions.

Due to the complexities surrounding the conventional IPO procedure, many companies are now opting for this alternative fast-track route for listing their shares. Despite the notification on July 16, 2021 of the IFSCA (Issuance and Listing of Securities) Regulations, 2021, which seeks to establish an ecosystem for listing of SPACs on the stock exchanges in the International Financial Services Centre, there are numerous legal and regulatory hurdles to the establishment of SPACs in India.³ As a result, Indian companies are looking for options to go public via SPACs listed overseas, especially in the United States. For instance, Walmart Inc.'s Flipkart is exploring a merger with a blank-check company to go public in the United States.

In this note, we explore some of the options available to Indian companies to enter into business combinations with SPACs listed in Nasdaq Stock Market LLC (**NASDAQ**) supported by recent case studies. This is the second article in our series on SPACs and is divided in two parts. In this part we discuss the scope of cross border mergers and explore the option of inbound mergers, in the context of de-SPAC transactions. In the next part, we will examine/analyze other options, being outbound mergers and share swap arrangements.

Business combination options for Indian companies can take the form of merger/reverse merger as well as inbound merger.

Merger/reverse merger

- Cross border mergers require prior approval of the Reserve Bank of India (**RBI**), the approval of three-fourth of the members and creditors of the merging companies, and the sanction of the National Company Law Tribunal (**NCLT**). However, RBI approval will be a *'deemed approval'* if such a transaction is undertaken in accordance with the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 (**Cross Border Regulations**). This reduces the time taken and resources utilized in clearing regulatory hurdles for effectuating the transaction.
- Companies must also adhere to the requirements, (including the valuation and pricing guideline requirements) set forth in the Foreign Exchange Management (Transfer or issue of any Foreign Security) Regulations, 2004 (**ODI Regulations**) and Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (**Non-Debt Rules**).
- Compliance with the ODI Regulations and Liberalized Remittance Scheme (**LRS**) is required for investment in shares by resident shareholders of Indian companies, and thus, prior permission of RBI may be required under the regulations framed under the Foreign Exchange Management Act, 1999 (**FEMA**).
- Such transactions are deemed to have RBI approval if, amongst other conditions, the fair market value of the securities acquired by a resident individual shareholder of the Indian company in the foreign company is within the limits prescribed under the LRS. At present, the maximum amount stipulated under the LRS is USD 250,000 per financial year. It may therefore be easier for Indian companies having a foreign holding company located in a merger friendly jurisdiction to route the de-SPAC transaction through the foreign holding company. For instance, ReNew Power Pvt Ltd (**ReNew India**) entered into a business combination with RMG Acquisition Corporation II (**RMG II**) (a SPAC based out of Cayman Islands) through ReNew Energy Global Ltd. (**ReNew Global**), a public limited company registered in England and Wales (ultimate holding company of ReNew India). As a result of the business combination, RMG II has become a wholly owned subsidiary of ReNew Global. On August 24, 2021, ReNew Global's Class A ordinary shares and warrants commenced trading on the NASDAQ.⁴
- It may however be kept in mind that if the foreign holding company has resident individual shareholder(s) in India, he/they may need to seek regulatory approval for investment in shares.

² <https://www.spacresearch.com/>

³ For legal and regulatory issues, please see our earlier article available at <https://www.mondaq.com/india/shareholders/1101002/statutory-regulatory-amendments-in-india-to-make-spac-effective>

⁴ <https://sec.report/Document/0001193125-21-259256/>

- A significant risk in the Indian context is the possibility of a grievance application being filed before the NCLT by an aggrieved party or by a dissenting shareholder, resulting in delay in the completion of the transaction. Given that sponsors of a SPAC based out of the United States have around 2 years to complete the business combination, it becomes critical to evaluate and address these risks/situations and ensure the transaction is completed within the stipulated time-period, failing which the SPAC will have to be dissolved, and shareholders will be returned their money.
- An additional roadblock to a de-SPAC transaction is the perception of government agencies surrounding shell companies. Many companies have in the past misused the concept of reverse mergers by using shell companies to launder money, using their promoters to divert funds from unlisted to listed entities and evading tax.⁵ SPACs must be defined and distinguished from shell companies and misconceptions about SPACs being used as money laundering vehicles need to be clarified and corrected.
- A reverse merger between a private company and a SPAC enables the transfer of ownership of a clean shell with no previous history, operations or any potential liabilities associated with past operations. The SPAC sponsors retain control in the combined entity, unlike reverse mergers where the surviving management and board of directors of the combined entity are that of the acquired operations company. For instance, following the de-SPAC transaction, the board of directors of Videocon d2h Ltd. (**Videocon d2h**), Yatra Online, Inc. (**Yatra**) and ReNew Global retained nominees of their respective SPACs.

Inbound merger

- An inbound merger is one where the resultant company is an Indian company. Any office of the merged entity outside India is deemed to be a branch office or office outside of India of such merged entity and the transactions conducted by the merged entity with such branch or office will be in accordance with the Foreign Exchange Management (Foreign Currency Account by a person resident in India) Regulations, 2015 (**Current Account Regulations**).
- The Current Account Regulations permit an Indian party to open and maintain a foreign currency account abroad and to make remittances to such account for purposes of its branch abroad, subject to the provisions of Current Account Regulations.
- An instance of an inbound merger, with respect to de-SPAC transactions, is the merger of Videocon d2h and Silver Eagle Acquisition Corporation (**Silver Eagle**) in December 2014. Silver Eagle was an American SPAC listed in NASDAQ. In exchange of the proceeds from Silver Eagle's initial public offering held in the trust account (less certain expenses and payables), Videocon d2h issued equity shares to the stockholders of Silver Eagle in proportion to their stockholdings. The equity shares issued by Videocon d2h were represented by American Depository Shares (**ADS**) and issued and delivered to the stockholders of Silver Eagle through a depository in the United States. After consummation of the transaction Silver Eagle was dissolved and Videocon d2h was the surviving company. Consequently, Videocon d2h's ADS was listed in NASDAQ. Silver Eagle's Chairman and Chief Executive Harry Sloan and Silver Eagle's founder Jeff Sagansky joined the board of directors of Videocon d2h.⁶ As a result of this transaction, Videocon d2h became the first United States-listed Indian pay-tv operator.⁷
- The Cross Border Regulations provide for a 2-years window from the date of sanction of merger by NCLT for ensuring that the guarantees and outstanding borrowings of the foreign company are recorded in the books of the merged entity. The merged company may acquire and hold any asset outside India which an Indian company is permitted to acquire under FEMA and will have to sell off any assets or security outside India and extinguish any liability outside India that are not permitted to be acquired.
- Additionally, no remittance towards repayment of such liability is permitted from India within 2 years. SPAC financial statements are very short with no historical financial results to be disclosed, no assets to be described (other than cash) or any significant liability since SPAC does not have an operational business. Therefore, the process of merger becomes feasible to be completed within 2 years' time frame.

Conclusion

When looked from the perspective of a de-SPAC transaction, an inbound merger appears to present few regulatory hurdles, as there is no requirement for transfer of any assets or liabilities to the resultant Indian company, as the SPAC company has no assets (other than money) and a few liabilities. A merger of an Indian company through foreign holding company in a merger friendly jurisdiction, such as ReNew India's merger with RMG II via ReNew Global, is also a viable option, as the non-resident shareholders of the foreign holding company will not be subject to LRS compliances or any stringent regulatory guidelines. The other options, being outbound mergers and share swap arrangements will be discussed in the next part.

⁵ <https://blog.ipleaders.in/shell-companies-in-corporate-restructuring/>

⁶ https://www.sec.gov/Archives/edgar/data/1629220/000114420415018103/v405232_424b3.htm#TANNA

⁷ <https://www.vccircle.com/videocon-d2h-inks-375m-deal-us-blank-cheque-co-track-nasdaq/>

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HSA AT A GLANCE

FULL-SERVICE CAPABILITIES



BANKING & FINANCE



COMPETITION & ANTITRUST



CORPORATE & COMMERCIAL



DEFENCE & AEROSPACE



DISPUTE RESOLUTION



ENVIRONMENT, HEALTH & SAFETY



INVESTIGATIONS



LABOR & EMPLOYMENT



PROJECTS, ENERGY & INFRASTRUCTURE



PROJECT FINANCE



REAL ESTATE



REGULATORY & POLICY



RESTRUCTURING & INSOLVENCY



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