



SEBI UPDATES

BACKGROUND

Under the Insolvency and Bankruptcy Code 2016 (“**IBC**”) the bidders to the resolution plan were facing compliance discomfort with multiple laws. This led to delay and confusion, thereby defeating the purpose of allowing bidders to come forward and take the benefit of IBC process. In order to overcome the hurdles faced by the bidders/acquirers while implementing the resolution plan under IBC, the Securities and Exchange Board of India (“**SEBI**”) on 31 May 2018 notified the amendments to its following regulations:-

- (a) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**Takeover Regulations**”); and
- (b) SEBI (Delisting of Equity Shares) Regulations, 2009 (“**Delisting Regulations**”).

While the amendment to Takeover Regulations would largely benefit the ongoing deals viz. Bhushan Steel Limited¹ and Binani Industries Limited², the amendments to the Delisting Regulations will have impact on acquisition of Electrosteel Casting Limited by Vedanta Limited.

Following are the amendments undertaken and the impact of the same:-

1. Takeover Regulations

A new proviso has been added under Regulation 3(2) of Takeover Regulations exempting the acquisitions of listed entities arising out of the resolution plan approved under IBC.

This amendment will allow acquirer to propose the resolution plan without any burden of open-offer getting triggered.

This amendment is on the track which was followed by the Government in 2015. In 2015 SEBI had amended the Takeover Regulations exempting lenders to acquire the control under the strategic debt restructuring scheme (“**SDR Scheme**”). However it failed to

¹ Tata Steel Limited acquired Bhushan Steel Limited

² Ultratech Cement is in the process of acquiring Binani Cement

exempt the acquirer who was suppose to takeover such control of the target company from the lenders as a process of SDR Scheme. The 2015 amendment was therefore futile since the ultimate acquirer was not getting benefit of the exemption resulting in failure of SDR Scheme. Hence the present amendment is a correction step which will allow the ultimate acquirer to take the benefit of the exemption.

2. Delisting Regulations

(a) A new sub-regulation (3) has been inserted in Regulation 3, relating to the applicability of Delisting Regulations. The said insertion states that the Delisting Regulations shall not apply to any delisting of equity shares of a listed entity made pursuant to a resolution plan approved under Section 31 of IBC, if such plan–

(i) lays down any specific procedure to complete the delisting of such share; or

(ii) provides an exit option to the existing public shareholders at a price specified in the resolution plan:

The above changes are subject to further three conditions that (i) exit to the shareholders should be at a price which shall not be less than the liquidation value as determined under Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 after paying off dues in the order of priority as defined under section 53 of IBC; (ii) if the existing promoters or any other shareholders are proposed to be provided an opportunity to exit under the resolution plan at a price higher than the price determined in terms of the above proviso, the existing public shareholders shall also be provided an exit opportunity at the same price; and (iii) the details of delisting of such shares along with the justification for exit price in respect of delisting proposed shall be disclosed to the recognized stock exchanges within one day of resolution plan being approved under Section 31 of the IBC.

(b) A new sub-regulation (2A) has been inserted to Regulation 30 which relates to re-listing of delisted equity shares. The said insertion states the exemption allowing that an application for listing of delisted equity shares may be made in respect of a company which has undergone corporate insolvency resolution process under IBC.

While the impact of these exemptions will immensely benefit the acquirer and facilitate structuring the debt of the target company it may highly disappoint the minority shareholder of the target company who may not get the benefit of a possible revival of target company due to delisting.

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For further clarification and details on the above, you may write to the Capital Markets team comprising of (among others) Mr. Vaishakh Kapadia (Partner) vkapadia@almtlegal.com and Mr. Prem Jumani (Senior Associate) at pjumani@almtlegal.com.