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SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the 17th February, 2016

SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (SECOND AMENDMENT) REGULATIONS, 2016

No. SEBI/LAD-NRO/GN/2015-16/036.— In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) read with section 13(8) and section 27(2) of the Companies Act, 2013, the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, namely:-

- 1.** (1) These regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2016.
- 2.** They shall come into force on the date of their publication in the Official Gazette.
- 3.** In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, after Chapter VI, the following Chapter shall be inserted, namely-

**“CHAPTER VI-A
CONDITIONS AND MANNER OF PROVIDING EXIT OPPORTUNITY TO
DISSENTING SHAREHOLDERS**

Applicability.

69A. (1) The provisions of this Chapter shall apply to an exit offer made by the promoters or shareholders in control of an issuer to the dissenting shareholders in terms of section 13(8) and section 27(2) of the Companies Act, 2013, in case of change in objects or variation in the terms of contract referred to in the prospectus.

- (2) The provisions of this Chapter shall not apply where there are neither identifiable promoters nor shareholders in control of the listed issuer.

Definitions.

69B. For the purpose of this Chapter:

- (a) “dissenting shareholders” means those shareholders who have voted against the resolution for change in objects or variation in terms of a contract, referred to in the prospectus of the issuer;
- (b) “frequently traded shares” shall have the same meaning as assigned to it in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- (c) “relevant date” means date of the board meeting in which the proposal for change in objects or variation in terms of a contract, referred to in the prospectus is approved, before seeking shareholders’ approval.

Conditions for exit offer.

69C. The promoters or shareholders in control shall make the exit offer in accordance with the provisions of this Chapter, to the dissenting shareholders, if:

- (a) the public issue has opened after April 1, 2014; and
- (b) the proposal for change in objects or variation in terms of a contract, referred to in the prospectus is dissented by at least ten per cent. of the shareholders who voted in the general meeting; and
- (c) the amount to be utilized for the objects for which the prospectus was issued is less than seventy five per cent. of the amount raised (including the amount earmarked for general corporate purposes as disclosed in the offer document).

Eligibility of shareholders for availing the exit offer

69D. Only those dissenting shareholders of the issuer who are holding shares as on the relevant date shall be eligible to avail the exit offer made under this Chapter.

Exit offer price.

69E. The ‘exit price’ payable to the dissenting shareholders shall be the highest of the following:

- (a) the volume-weighted average price paid or payable for acquisitions, whether by the promoters or shareholders having control or by any person acting in concert with them, during the fifty-two weeks immediately preceding the relevant date;
- (b) the highest price paid or payable for any acquisition, whether by the promoters or shareholders having control or by any person acting in concert with them, during the twenty-six weeks immediately preceding the relevant date;

- (c) the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the relevant date as traded on the recognised stock exchange where the maximum volume of trading in the shares of the issuer are recorded during such period, provided such shares are frequently traded;
- (d) where the shares are not frequently traded, the price determined by the promoters or shareholders having control and the merchant banker taking into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such issuers.

Manner of providing exit to dissenting shareholders.

69F. (1) The notice proposing the passing of special resolution for changing the objects of the issue and varying the terms of contract, referred to in the prospectus shall also contain information about the exit offer to the dissenting shareholders.

(2) In addition to the disclosures required under the provisions of section 102 of the Companies Act, 2013 read with rule 32 of the Companies (Incorporation) Rules, 2014 and rule 7 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 and any other applicable law, a statement to the effect that the promoters or the shareholders having control shall provide an exit opportunity to the dissenting shareholders shall also be included in the explanatory statement to the notice for passing special resolution.

(3) After passing of the special resolution, the issuer shall submit the voting results to the recognised stock exchange(s), in terms of the provisions of regulation 44(3) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(4) The issuer shall also submit the list of dissenting shareholders, as certified by its compliance officer, to the recognised stock exchange(s).

(5) The promoters or shareholders in control, shall appoint a merchant banker registered with the Board and finalize the exit offer price in accordance with these regulations.

(6) The issuer shall intimate the recognised stock exchange(s) about the exit offer to dissenting shareholders and the price at which such offer is being given.

(7) The recognised stock exchange(s) shall immediately on receipt of such intimation disseminate the same to public within one working day.

(8) To ensure security for performance of their obligations, the promoters or shareholders having control, as applicable, shall create an escrow account which may be interest bearing and deposit the aggregate consideration in the account at least two working days prior to opening of the tendering period.

(9) The tendering period shall start not later than seven working days from the passing of the special resolution and shall remain open for ten working days.

(10) The dissenting shareholders who have tendered their shares in acceptance of the exit offer shall have the option to withdraw such acceptance till the date of closure of the tendering period.

(11) The promoters or shareholders having control shall facilitate tendering of shares by the shareholders and settlement of the same through the recognised stock exchange mechanism as specified by SEBI for the purpose of takeover, buy-back and delisting.

(12) The promoters or shareholders having control shall, within a period of ten working days from the last date of the tendering period, make payment of consideration to the dissenting shareholders who have accepted the exit offer.

(13) Within a period of two working days from the payment of consideration, the issuer shall furnish to the recognised stock exchange(s), disclosures giving details of aggregate number of shares tendered, accepted, payment of consideration and the post-offer shareholding pattern of the issuer and a report by the merchant banker that the payment has been duly made to all the dissenting shareholders whose shares have been accepted in the exit offer.

Offer not to exceed maximum permissible non-public shareholding.

69G. In the event, the shares accepted in the exit offer were such that the shareholding of the promoters or shareholders in control, taken together with persons acting in concert with them pursuant to completion of the exit offer results in their shareholding exceeding the maximum permissible non-public shareholding, the promoters or shareholders in control, as applicable, shall be required to bring down the non-public shareholding to the level specified and within the time permitted under Securities Contract (Regulation) Rules, 1957.”

U.K. SINHA
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA

Footnote:

1. The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 were published in the Gazette of India on 26th August, 2009 vide No. LAD-NRO/GN/2009- 10/15/174471.
2. The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 were subsequently amended on:-
 - (1) 11th December, 2009 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2009 vide No. LAD-NRO/GN/2009- 10/23/186926.
 - (2) 1st January, 2010 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2010 vide No. LAD-NRO/GN/2009- 2010/25/189240.
 - (3) 8th January, 2010 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2010 vide No. LADNRO/GN/2009- 10/26/190146.

- (4) 13th April, 2010 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2010 vide No. LADNRO/GN/2010-11/03/1104.
- (5) 12th November, 2010 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2010 vide No. LADNRO/GN/2010-11/19/26456.
- (6) 29th April, 2011 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2011 vide F. No. LADNRO/GN/2011-12/05/13907.
- (7) 23rd September, 2011 by Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 vide No. LAD-NRO/GN/2011-12/24/30181.
- (8) 23rd September, 2011 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2011 vide F. No. LADNRO/GN/2011- 12/25/30309.
- (9) 30th January, 2012 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2012 vide No. LAD-NRO/GN/2011-12/34/2499.
- (10) 7th February, 2012 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2012 vide No. LAD-NRO/GN/2011-12/35/3186.
- (11) 21st May, 2012 by Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 vide No. LAD-NRO/GN/2012-13/04/11262.
- (12) 24th August, 2012 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2012 vide No. LADNRO/GN/2012-13/12/18951.
- (13) 12th October, 2012 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2012 vide No. LADNRO/GN/2012-13/18/5391.
- (14) 27th February, 2013 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements)(Amendment) Regulations, 2013 vide No. LAD-NRO/GN/2012-13/32/4947.
- (15) 26th August, 2013 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements)(Second Amendment) Regulations, 2013 vide No. LAD-NRO/GN/2013-14/19/6422.
- (16) 8th October, 2013 by Securities and Exchange Board of India (Listing of Specified Securities on Institutional Trading Platform) Regulations, 2013 vide No. LAD-NRO/GN/2013-14/28/6720.
- (17) 7th January, 2014 by Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 vide No. LAD-NRO/GN/2013-14/36/12.
- (18) 4th February, 2014 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2014 vide No. LAD-NRO/GN/2013-14/44/226.
- (19) 23rd May, 2014 by Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2014 vide No. LAD-NRO/GN/2014-15/03/1089.
- (20) 25th August, 2014 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2014 vide No. LAD-NRO/GN/2014-15/06/1372.

- (21) 24th March 2015 by Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2015 vide No. LAD-NRO/GN/2014-15/24/538.
- (22) 5th of May, 2015 by SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2015 vide No. SEBI-NRO/OIAE/GN/2015-16/003.
- (23) 11th of August, 2015 by SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2015 vide No. SEBI/LAD-NRO/GN/2015-16/007.
- (24) 14th of August, 2015 by SEBI (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2015 vide No. SEBI/LAD-NRO/GN/2015-16/008.
- (25) 14th of August, 2015 by SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 vide No. SEBI/LAD-NRO/GN/2015-16/012.
- (26) 02nd of September, 2015 by Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 vide No. SEBI/LAD-NRO/GN/2015- 16/013.
- (27) 10th of September, 2015 by SEBI (Issue of Capital and Disclosure Requirements) (Sixth Amendment) Regulations, 2015 vide No. SEBI/LAD-NRO/GN/2015-16/18.
- (28) 27th of October, 2015 by SEBI (Issue of Capital and Disclosure Requirements) (Seventh Amendment) Regulations, 2015 vide No. SEBI/ LAD-NRO/GN/2015-16/025.
- (29) 21st of January, 2016 by SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2016 vide No. SEBI/ LAD-NRO/GN/2015-16/031.