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SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the 13th July, 2017

SECURITIES AND EXCHANGE BOARD OF INDIA (DEBENTURE TRUSTEES) (AMENDMENT) REGULATIONS, 2017

No. SEBI/LAD-NRO/GN/2017-18/011.— In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Securities and Exchange Board of India hereby, makes the following regulations to further amend the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, namely,—

1. These regulations may be called the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2017.

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 (Debenture Trustees) Regulations, 1993,-

   (i) in regulation 2, -

      (a) for clause (aa) the following shall be substituted, namely,–

      " "associate" shall mean any entity which is an associate under sub-section (6) of section 2 of the Companies Act, 2013 or under the applicable accounting standards and shall include a person whose director, is also a director, of the debenture trustee or the body corporate, as the case may be.";

(b) for clause (ab) the following shall be substituted, namely,–

" "body corporate" shall have the meaning assigned to it in or under sub-section (11) of section 2 of the Companies Act, 2013 and for the purpose of these regulations, includes a public financial institution as defined under sub-section (72) of section 2 of the Companies Act, 2013, a non-banking financial company, public sector undertaking established under any Central or State enactment which has its debt securities listed or which seeks to list its debt securities on a recognized stock exchange in accordance with the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, or any other issuer of debt securities in accordance with any Regulations issued by the Board.";

(c) in clause (ae), for clause (i) the following shall be substituted, namely,–

"if its shares are listed on any recognised stock exchange, change in control as per the provisions of regulation 4 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;";

(d) for clause (b) the following shall be substituted, namely ,–

" "Companies Act" means the Companies Act, 2013 (Act 18 of 2013);";

(e) for clause (ba) the following shall be substituted, namely ,–

" "debenture" means a debenture within the meaning of sub-section (30) of section 2 of the Companies Act, 2013;";

(f) for clause (bb) the following shall be substituted, namely –

" "debenture trustee" means a trustee appointed in respect of any issue of debentures of a body corporate;";

(g) for clause (e) the following shall be substituted, namely,–

" "insurance company" has the same meaning assigned to it under sub-section (7A) of section 2 of the Insurance Act, 1938;";

(h) for clause (ea) the following shall be substituted, namely –

" "issue" means an offer of debentures by a body corporate, to the public, or the holders of securities of such body corporate and includes a private placement of debentures made by a body corporate, which seeks to list its debt securities on a recognized stock exchange;";

(i) for clause (f) the following shall be substituted, namely –

" "principal officer" means,—

a key managerial personnel as defined under sub section (51) of section 2 of the Companies Act, 2013, and shall include any person connected with the management or administration of the body corporate upon whom the Board has served notice of its intention of treating him as the principal officer thereof;";

(j) after clause (ia) the following new clause (ib) shall be inserted, namely,–

"(ib) "recognised stock exchange" shall have the same meaning assigned to it under sub-section (f) of section 2 of the Securities Contracts (Regulation) Act, 1956.";

(ii) for regulation 7, the following shall be substituted, namely,–

"**Eligibility for being debenture trustee.**

7. No person shall be entitled to act as a debenture trustee unless it is :—

(a) a scheduled bank carrying on commercial activity; or

(b) a public financial institution as defined sub-section (72) of section 2 of the Companies Act, 2013; or

(c) an insurance company; or

(d) body corporate as defined under sub-section (11) of section 2 of the Companies Act, 2013."

(iii) in regulation 13, in clause (b),-

(a) for sub-clause (i) the following shall be substituted, namely,–

"(i) an undertaking by the body corporate to comply with all regulations / provisions of Companies Act, 2013, guidelines of other regulatory authorities in respect of allotment of debentures till redemption;"

(b) for sub-clause (ii) the following shall be substituted, namely,–

"(ii) the time limit within which the security for the debentures shall be created or the agreement shall be executed in accordance with the Companies Act, 2013 or provisions as prescribed by any regulatory authority as applicable."

(iv) for regulation 13A and clause (a) thereunder, the following shall be substituted, namely,-

"**13A.** A person shall not be appointed as a debenture trustee, in case-

(a) the debenture trustee,-

(i) is an associate of the body corporate;

(ii) beneficially holds shares in the company;

(iii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;

(iv) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

(v) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(vi) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

(vii) has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or ₹50 lakh or such higher amount as may be prescribed, whichever is lower, during the

two immediately preceding financial years or during the current financial year;

(viii) is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel;

(ix) is likely to have conflict of interest in any other manner:

Provided that this requirement shall not be applicable in respect of debentures issued:

(i) wherever there is guarantee by the state / central government for the debentures issued."

(v) for regulation 14 the following shall be substituted, namely,–

"**Obligation of the debenture trustees.**

14. Every debenture trustee shall amongst other matters, accept the trust deeds which shall contain the matters as specified in section 71 of Companies Act, 2013 and Form No. SH.12 specified under the Companies (Share Capital and Debentures) Rules, 2014."

(vi) in regulation 15,-

(a) for sub-regulation (1) the following shall be substituted, namely,-

"(1) It shall be the duty of every debenture trustee to-

(a) satisfy itself that the prospectus or letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;

(b) satisfy itself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;

(c) call for periodical status/ performance reports from the issuer company within 7 days of the relevant board meeting or within 45 days of the respective quarter whichever is earlier;

(d) communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor;

(e) appoint a nominee director on the Board of the company in the event of:

  (i) two consecutive defaults in payment of interest to the debenture holders; or

  (ii) default in creation of security for debentures; or

  (iii) default in redemption of debentures.

(f) ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;

(g) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;

(h) ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve;

(i) ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders;

(j) do such acts as are necessary in the event the security becomes enforceable;

(k) call for reports on the utilization of funds raised by the issue of debentures;

(l) take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held;

(m) ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures;

(n) perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders;

(o) take possession of trust property in accordance with the provisions of the trust deed;

(p) to take appropriate measures for protecting the interest of the debenture holders as soon as any breach of the trust deed or law comes to his notice;

(q) ascertain and satisfy itself that,-

(i) in case where the allotment letter has been issued and debenture certificate is to be issued after registration of charge, the debenture certificates have been dispatched by the body corporate to the debenture holders within 30 days of the registration of the charge with the Registrar of Companies;

(ii) debenture certificates have been dispatched to the debenture holders or debentures have been credited in the demat accounts of the debenture holders in accordance with the provisions of the Securities and Exchange Board of India (Debenture Trustee) Regulations 1993, Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations 2008, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015 and any other regulations issued by the Board;

(iii) interest warrants for interest due on the debentures have been dispatched to the debenture holders on or before the due dates;

(iv) debenture holders have been paid the monies due to them on the date of redemption of the debentures;

(r) inform the Board immediately of any breach of trust deed or provision of any law, which comes to the knowledge of the trustee.

Explanation: The communication to the debenture holders by the debenture trustee as mentioned in these regulations may be made by electronic media, press-release and placing notice on its website;

(s) exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement), Regulations, 2015, the listing agreement of the stock exchange or the trust deed or any other regulations issued by the Board pertaining to debt issue;

(t) In case where listed debt securities are secured by way of receivables/ book debts it shall obtain the following,-

(i) On Quarterly basis-

(a) Certificate from the Director / Managing Director of the issuer company certifying the value of the book debts / receivables;

(b) Certificate from an independent chartered accountant giving the value of book debts / receivables.

(ii) On Yearly basis-

(a) Certificate from the statutory auditor giving the value of book debts / receivables.

(vii) in regulation 15, in sub-regulation (1A), clause (c) shall be substituted with the following, namely,-

"(c) obtain a certificate from the issuer's Statutory Auditor:

(i) in respect of utilisation of funds during the implementation period of the project; and

(ii) in the case of debentures issued for financing working capital, at the end of each accounting year."

(viii) in regulation 17, for sub-regulation (1) the following shall be substituted, namely,–

"(1) Subject to the provisions of any law every debenture trustee shall keep and maintain proper books of account, records and documents, relating to the trusteeship functions for a period of not less than five financial years from the date of redemption of debentures."

(ix) in regulation 17A, after sub-regulation (3) the following new sub-regulation shall be inserted, namely,–

"(4) The Compliance Officer so appointed shall obtain certification in terms of the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007 or as may be specified by the Board."

(x) in regulation 19, in sub-regulation (2), for clause (b), the following shall be substituted, namely,–

"(b) that the provisions of the Companies Act, 2013, Circulars, rules and regulations are being complied with;"

(xi) for regulation 25, the following shall be substituted, namely,–

"**Liability for action in case of default.**

25. (1) A Debenture Trustee which-

(a) fails to comply with any conditions subject to which certificate has been granted;

(b) contravenes any of the provisions of the Act or these regulations;

(c) contravenes the provisions of the Companies Act or the rules made there under;

(d) fails to furnish any information relating to its activity as a Debenture Trustee as required by the Board;

(e) furnishes to the Board information which is false or misleading in any material particular;

(f) does not submit periodic returns or reports as required by the Board;

(g) does not co-operate in any enquiry, inspection or investigation conducted by the Board;

(h) fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf;

shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

(2) Nothing contained in sub-regulation (1) shall prejudice the powers of the Board to issue directions or measures under sections 11, 11B, 11D, sub-section (3) of section 12 or section 24 or Chapter VIA of the Act or under any other law for the time being in force."

(xii) Schedule IV shall be omitted.

Sd/-

AJAY TYAGI
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA

Footnote:

1. The Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, the Principal Regulations, was published in the Gazette of India on October 23, 1992 vide S.O. No. 780 (E).

2. The Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993, were subsequently amended on:

   (a) November 28, 1995 by the Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 1995 vide S.O. No.939 (E).
   (b) January 5, 1998 by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 1998 vide S.O. No.16(E).
   (c) September 30, 1999 by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 1999 vide S.O. No.795(E).
   (d) February 17, 2000 by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2000 vide S.O. No.135(E).
   (e) August 8, 2000 by the Securities and Exchange Board of India (Debenture Trustees) (Second Amendment) Regulations, 2000 vide S.O. No.743(E).
   (f) March 28, 2000 by the Securities and Exchange Board of India (Appeal to Securities Appellate Tribunal) (Amendment) Regulations, 2000 vide S.O. No.278(E).

(g) May 29, 2001 by the Securities and Exchange Board of India (Investment Advice by Intermediaries) (Amendment) Regulations, 2001 vide S.O. No. 476(E).

(h) September 27, 2002 by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 vide S.O. No.1045(E).

(i) July 4, 2003 by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2003 vide S.O.No. 763(E).

(j) March 10, 2004 by the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004 vide S.O. No. 398(E).

(k) September 7, 2006 by the Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2006 vide S.O No.1451 (E).

(l) May 26, 2008 by the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 vide Notification No. LAD/NRO/GN/2008/11/126538.

(m) April 13, 2011 by the Securities and Exchange Board of India (Change in Conditions of Registration of Certain Intermediaries) (Amendment) Regulations, 2011 vide Notification No. LAD/ NRO/ GN/ 2011-12/03/12650.

(n) July 05, 2011 by the Securities and Exchange Board Of India (Debenture Trustees) (Amendment) Regulations, 2011 No. LAD-NRO/GN/2011-12/13/21222.

(o) December 14, 2011 by the Securities and Exchange Board of India (Debenture Trustees) (Second Amendment) Regulations, 2011 No. LAD-NRO/GN/2011-12/30/37715.

(p) May 23, 2014 by the Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2014 vide Notification No. LAD-NRO/GN/2014-15/03/1089.

(q) December 8, 2016 by the Securities and Exchange Board of India (Change in Conditions of Registration of Certain Intermediaries) (Amendment) Regulations, 2016 vide Notification No. SEBI/LAD/NRO/GN/2016-17/023.

(r) March 6, 2017 by the Securities and Exchange Board of India (Payment of Fees and Mode of Payment) (Amendment) Regulations, 2017 vide Notification No. LAD-NRO/GN/2016- 17/037 read with March 29, 2017 by the Securities and Exchange Board of India (Payment of Fees and Mode of Payment) (Amendment) Regulations, 2017 vide Notification No. LAD-NRO/GN/2016- 17/038.

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