

Discussion Paper on Compliance with SEBI Regulations by listed entities undergoing Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016

Background and Need for review

1. The objective of the Insolvency and Bankruptcy Code, 2016 (“IBC”) as stated in the preamble to the said Act is as under:

“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”

2. Corporate Insolvency Resolution Process (“CIRP”) is the process for resolution of insolvency of a corporate debtor in accordance with the provisions of IBC. Where the corporate debtor is a listed entity, the applicable regulatory framework under various SEBI Regulations may have to be suitably modified to facilitate insolvency resolution while at the same time ensuring that the interests of investors in securities of such corporate debtors are protected.
3. Under the framework outlined in IBC, in case of a company undergoing CIRP, the management of affairs of the company vests in a Resolution Professional (“RP”). Powers of the board of directors of the company stand suspended and are exercised by the RP. The officers and managers of the company report to the RP



and the personnel of the company, its promoters or any other person associated with the management of the company extend all assistance and cooperation to the RP in managing the affairs of the company.

4. Further, in terms of Section 28 of IBC, the RP is subject to supervision of the Committee of Creditors in as much as it cannot take certain actions listed there under without obtaining prior approval of the said Committee. Thus, activities of a listed entity which otherwise would have been undertaken with the approval of board of directors, would require action by RP or the approval of a Committee of Creditors (“CoC”) in a CIRP scenario.

Regulatory Instructions

5. The Insolvency and Bankruptcy Board of India (“IBBI”) has, inter alia, clarified vide circular dated January 03, 2018 that a corporate person undergoing insolvency resolution process under IBC needs to comply with provisions of the applicable laws (Acts, Rules and Regulations, Circulars, Guidelines, Orders, Directions, etc.) during such process, unless the provision is specifically exempted by the competent authority or becomes inapplicable by operation of law for the corporate person. IBBI has further directed that while acting as an Interim Resolution Professional, a Resolution Professional, or a Liquidator for a corporate person under the Code, an insolvency professional shall exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person undergoing any process under IBC complies with the applicable laws.
6. The Ministry of Corporate Affairs (“MCA”) has clarified vide its General Circular No. IBC/01/2017 dated October 25, 2017 that the approval of shareholders/ members of the corporate debtor/ company for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law if the resolution plan of the company was not being considered under IBC, is deemed to have been given on its approval by the Adjudicating Authority.

7. Thus, there is a fundamental change in management and governance of a listed entity during CIRP as well as pursuant to approval of resolution plan. The securities laws have cast several obligations on listed entities in the interest of investors. Keeping in view the interests of investors, the modified governance structure of the listed corporate debtor and the need for ensuring revival of the corporate debtor pursuant to resolution plan, there is a necessity of providing a suitable framework of compliance with securities laws by listed entities which are subject to CIRP (hereinafter referred to as 'listed corporate debtors').

Proposals for Review

8. In view of the circumstances pertaining to the listed corporate debtors, it is felt that suitable clarifications/ amendments may be required under various SEBI Regulations to facilitate and ensure compliance with the securities laws. For the said purpose, the insolvency proceedings in respect of a listed corporate debtor may be divided into three distinct stages, viz. (i) Pre-CIRP stage, i.e. the period before the application for initiating CIRP is admitted by NCLT, (ii) CIRP stage, i.e. the period spanning from admission of application by NCLT till the time the resolution plan is approved by NCLT, and (iii) Post-CIRP stage, i.e. the period when the resolution plan as approved by NCLT is being implemented. The various issues/ proposals corresponding to each of the aforesaid stage are outlined below.

A. Pre-CIRP Stage

9. Disclosures -

(a) Existing provision - Presently, there are no specific disclosure requirements pertaining to filing of application or admission of application for initiating CIRP in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations").

(b) Proposal - Regulation 30 of LODR Regulations which prescribes disclosure of material events to the stock exchanges may be suitably amended to specifically prescribe disclosures, on occurrence of the following events, by a listed corporate debtor:

- i. Filing of application by the corporate applicant for initiation of CIRP;
- ii. Filing of application by creditors for initiation of CIRP against the corporate debtor;
- iii. Amount in default as stated in the application made to NCLT under sections 7, 9 and 10 of IBC;
- iv. Receipt of demand notice or copy of invoice demanding payment of the amount involved in default, from the operational creditor, in terms of section 8(1) of IBC; and
- v. Admission of application by NCLT.

B. CIRP Stage

10. Trading in stock exchange - In addition to assessment of risk-reward trade-off, liquidity of the investment is also an important factor for an investor evaluating investments in equity. Deep and reliable secondary market for purchase and sale of shares is one of the vital elements of securities market. As such, continuation of trading in the scrip of listed corporate debtor would facilitate transparency and better price discovery and would, therefore, be in the interest of investors. However, continued trading on the stock exchanges would depend on such companies meeting the listing standards of the exchanges. Accordingly, comments are sought on whether it is desirable to impose any fetters on the transferability of shares of listed corporate debtors by introducing restrictions on trading in stock exchange.

11. Disclosures -

(a) Existing provision - Presently, there are no specific disclosure requirements pertaining to CIRP in the LODR Regulations.

(b) Proposal - Regulation 30 of LODR Regulations may be suitably amended to specifically prescribe the following disclosures by a listed corporate debtor:

- i. Public announcement ordered by NCLT,
- ii. Invitation of claims by Interim Resolution Professional,
- iii. Confirmation of Interim Resolution Professional by the CoC,

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- iv. Intimation of meetings of CoC,
 - v. The event of Information Memorandum having been prepared by RP,
 - vi. Number of bids received by RP,
 - vii. The event of filing of resolution plan with NCLT,
 - viii. Approval of resolution plan by NCLT and the resolution plan, so approved,
and
 - ix. Any other material information not involving commercial secrets.

C. Post-CIRP Stage

12. Material Related Party Transactions (RPTs) -

(a) Existing provision - In terms of regulation 23(4) of LODR Regulations, all material related party transactions require approval of the shareholders through resolution and the related parties are required to abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.

(b) Proposal - In line with the General Circular dated October 25, 2017 issued by MCA, regulation 23(4) of LODR Regulations may be amended to clarify that shareholders' approval will not be required if a listed corporate debtor undertakes material RPTs as part of a resolution plan approved by NCLT.

13. Disposal of shares in material subsidiary -

(a) Existing provision - In terms of regulation 24(5) of LODR Regulations, a listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than fifty percent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal.

(b) Proposal - In line with the General Circular dated October 25, 2017 issued by MCA, the exemption from passing a special resolution which is currently available to 'schemes of arrangement' duly approved by a Court/ Tribunal may also be extended to resolution plans approved by NCLT.

14. Dealing with assets of material subsidiary -

(a) Existing provision - In terms of regulation 24(6) of LODR Regulations; selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal.

(b) Proposal - In line with the General Circular dated October 25, 2017 issued by MCA, the exemption from passing a special resolution which is currently available to 'schemes of arrangement' duly approved by a Court/ Tribunal may also be extended to resolution plans approved by NCLT.

15. Re-classification of promoters -

(a) Existing provision - Regulation 31A of LODR Regulations has laid down the conditions on fulfillment of which the promoter of a listed entity may be re-classified as a public shareholder. Regulation 31A(7)(b) also stipulates that increase in the level of public shareholding pursuant to re-classification of promoter shall not be counted towards achieving compliance with minimum public shareholding requirement under rule 19A of the Securities Contracts (Regulation) Rules, 1957.

(b) Issue - It has been represented to SEBI that in terms of resolution plan approved by NCLT, the existing promoters may be diluted to an extent that they may not be left with any significant shareholding and/or control in the listed corporate debtor. In respect of such cases, relaxation of the conditions prescribed under Regulation 31A of LODR Regulations has been sought for re-classifying such promoters as public shareholders. It has also been suggested that such re-classified shareholding should be permitted to be counted towards achieving compliance with minimum public shareholding requirement stipulated under the Securities Contracts (Regulation) Rules, 1957. Comments are hereby sought in this regard.

16. Compliance with Minimum Public Shareholding Requirement -

(a) Existing provision - In terms of regulation 38 of LODR Regulations, a listed entity shall comply with the minimum public shareholding requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957.

(b) Proposal - As part of implementing the resolution plan, if the public shareholding falls below the level of 25% then the listed corporate debtor may be granted a time period of 2 years instead of the 1 year period currently allowed under the Securities Contracts (Regulation) Rules, 1957, to achieve compliance with the minimum public shareholding requirement of 25%.

17. Acquisition beyond maximum permissible non-public shareholding -

(a) Existing provision - In terms of the proviso to regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations”), an acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

(b) Proposal - In case the said provision is not relaxed, it may hamper infusion of capital for ensuring revival of a listed corporate debtor. Accordingly, the said proviso to regulation 3(2) of the Takeover Regulations may be amended to permit acquisition of shares, in accordance with a resolution plan approved by NCLT, in excess of the maximum non-public shareholding, i.e. 75% presently.

18. Delisting pursuant to resolution plan/ liquidation -

(a) Existing provision -

- i. Presently, in case a listed entity is proposed to be delisted pursuant to a resolution plan approved under IBC, the provisions of SEBI (Delisting of Equity Shares) Regulations, 2009 (“Delisting Regulations”) need to be complied with.

- ii. Also, regulation 28(1) of Delisting Regulations already provides that in case of winding up proceedings of a company whose equity shares are listed on a recognised stock exchange, the rights, if any, of the shareholders of such company shall be in accordance with the laws applicable to those proceedings.

(b) Issue - It has been represented to SEBI that if the proposal for delisting is in accordance with the resolution plan which has been approved by NCLT, in such a case there is a need to relax the provisions of Delisting Regulations. Accordingly, comments are sought on the changes that may be required in the Delisting Regulations in this regard.

Public Comments

19. Considering the implications of the instant matter on the market participants including the investors and listed companies, public comments on the issues/ proposals made at **paragraphs 9 - 18** are solicited. Specific comments/ suggestions as per the format given below would be highly appreciated:

Name of entity/ person/ intermediary:			
Name of organization (if applicable):			
Contact details:			
Sr. No.	Pertains to para number	Proposed/ suggested changes	Rationale

20. Such comments may please be e-mailed to sebicip@sebi.gov.in or sent by post at the following address latest by **April 15, 2018**:

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