

## **Listed Companies' Mergers Through The High Court Route Now Within SEBI'S Spectrum : Prior Approval Made Mandatory.**

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Up until the issue of the Circular dated 4 February, 2013 ("**Circular**"), a listed company desirous of undertaking a scheme of arrangement under Chapter V of the Companies Act, 1956, (Amalgamation, Merger, Reconstruction, Reduction Of Capital, etc.) was required to file the draft scheme [by virtue of Clause 24(f) of the Listing Agreement] with the relevant stock exchanges, for approval, at least one month prior to filing of the scheme/petition in the High Court. In addition, pursuant to the draft scheme being sanctioned by the High Court under sections 391-394 or 101 of the Companies Act, 1956, a listed company desirous of getting its equity shares listed after the merger/demerger/ amalgamation, etc. was required to seek an exemption from the Securities and Exchange Board of India ("**SEBI**") from the requirements of the provisions of Rule 19(2)(b) of Securities Contracts (Regulations) Rules, 1957 ("**SCRR**") relating to the allotment of shares/debentures to the public, which SEBI has been granting on a case to case basis. However, in light of receipt of applications seeking exemption from certain entities containing inter alia inadequate disclosures, convoluted schemes of arrangement, exaggerated valuations, etc, SEBI has taken the view that granting exemption from the requirements of the provisions of Rule 19(2)(b) of the SCRR on the basis of such applications may not be in the best interest of the minority shareholders. Additionally, if the listing permission or exemption is delayed or denied, it would add to the uncertainty and deprive shareholders of an exit opportunity.

SEBI therefore has made its prior approval mandatory for every listed company before filing its draft scheme with the High Court. The Circular prescribes the revised requirements for the listed companies desirous of undertaking a scheme of arrangement ("**Draft Scheme**") under Chapter V of the Companies Act, 1956, (Amalgamation, Merger, Reconstruction, Reduction Of Capital, etc.) read with Clause 24(f) of the Listing Agreement, which now includes obtaining prior approval of SEBI. The intent of issue of the Circular stems from concern towards protection of the interest of minority shareholders of listed companies.

The requirements prescribed by SEBI in the Circular are summarized hereinafter. These compliances are required to be expedited prior to filing of the petition and Draft Scheme in the High Court for its sanction:

- The stock exchange, upon receipt of the Draft Scheme from the listed

- company is required to forward the same to SEBI within three working days.
- Upon receipt of "Objection/No-Objection" letter from the designated stock exchange, SEBI shall provide its comments on the Draft Scheme to the designated stock exchange.
  - The designated stock exchange, upon receipt of comments from SEBI shall issue an Observation Letter to the listed company after suitably incorporating the comments received from SEBI.
  - The listed company shall be required to (a) include the Observation Letter of the designated stock exchange in the notice sent to the shareholders seeking approval of the Scheme; and (b) bring the same to the notice of the High Court at the time of seeking approval of the Scheme.
  - Immediately upon filing of the Draft Scheme with the designated stock exchange, the listed company is required to disclose the Draft Scheme and other relevant documents on its website. It shall also disclose the Observation Letter of the designated stock exchange on its website within 24 hours of receiving it.
  - All complaints/comments received by SEBI on the Draft Scheme shall be forwarded to the designated stock exchange, for necessary action and resolution by the listed company. The listed company shall submit to the designated stock exchange 'Complaints Report' which shall contain the details of complaints/comments received by it on the Draft Scheme from various sources (complaints/comments written directly to the company or forwarded to it by the stock exchange) prior to obtaining the Observation Letter from stock exchange on Draft Scheme.
  - The listed company shall also include the 'Complaints Report' in the notice sent to the shareholders while seeking approval of the Draft Scheme. The 'Complaints Report' shall be forwarded by the designated stock exchange to SEBI before SEBI communicates its comments on the Draft Scheme to the designated stock exchange.
  - The listed company shall ensure that the Draft Scheme submitted with the High Court for sanction, provides for obtaining shareholders' approval through special resolution passed through postal ballot and e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution. The Draft Scheme shall also provide that the special resolution shall be acted upon only if the votes cast by public shareholders in favour of the proposal amount to at least two times the number of votes cast by public shareholders against it.
  - Upon obtaining sanction from the High Court, the listed company shall submit documents mentioned in paragraph 2 of part B of Annexure I to the Circular to stock exchanges who will in turn forward them with its comments to SEBI and SEBI shall endeavor to offer its comments/ approvals to the designated stock exchange within 30 days.

The revised requirements have been made applicable to listed companies which, on the date of the Circular, have not filed the Draft Scheme with the concerned High Court. It has also been clarified that the revised requirements shall be applicable in cases wherein the companies have submitted the Draft Scheme with the stock exchanges under Clause 24(f) of Listing Agreement and such schemes have not yet been filed the concerned High Court for approval. Thus, the companies that have received approval to the Draft Scheme from the concerned stock exchanges but have not filed the Draft Scheme in the High Court are required to resubmit the same to SEBI for its approval in accordance with the Circular.

**- By Kailash Lad (Associate Partner), Ankit Mehta (Senior Associate)**

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