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SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
Mumbai, the 11th of September, 2018

SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) (SECOND AMENDMENT) REGULATIONS, 2018

No. SEBI/LAD-NRO/GN/2018/33. — In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, namely:

1. These regulations may be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2018.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of (Substantial Acquisition of Shares and Takeovers) Regulations, 2011,
 - (1) in regulation 2:
 - (a) in sub-regulation (1), in clause (j), the words “is made” shall be substituted with the following, namely:-

“is required to be made under these regulations”

- (b) in sub-regulation (1), after clause (j) and before clause (k), the following clause shall be inserted, namely:-

“(ja) “fugitive economic offender” shall mean an individual who is declared a fugitive economic offender under section 12 of the Fugitive Economic Offenders Act, 2018 (17 of 2018).”
 - (c) in sub-regulation (1), after clause (m) and before clause (n), the following clause shall be inserted, namely:-

“(ma) “listing regulations” means the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.”
 - (d) in sub-regulation (1), clause (r) shall be substituted with the following, namely:-

“(r) “postal ballot” means a postal ballot as provided for under Rule 22 of the Companies (Management and Administration) Rules, 2014 made under the Companies Act, 2013.”
 - (e) in sub-regulation (2), the words and figures “Companies Act, 1956 (1 of 1956)” shall be substituted with the words and figures “Companies Act, 2013 (18 of 2013)”
- (2) in regulation 5A,-
- (a) in sub-regulation (1), in the proviso, after the words “detailed public statement”, the following words and figures shall be inserted, namely:-

“and a subsequent declaration of delisting for the purpose of the offer proposed to be made under sub regulation (1) will not suffice”

(b) sub-regulation (3) shall be substituted with the following, namely:-

“(3) In the event of failure of the delisting offer made under sub-regulation (1), the open offer obligations shall be fulfilled by the acquirer in the following manner:

(i) the acquirer, through the manager to the open offer, shall within five working days from the date of the announcement under sub-regulation (2), file with the Board, a draft of the letter of offer as specified in sub-regulation (1) of regulation 16; and

(ii) shall comply with all other applicable provisions of these regulations.

Provided that the offer price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the scheduled date of payment of consideration to the shareholders and the actual date of payment of consideration to the shareholders.

Explanation: For the purpose of this sub-regulation, scheduled date shall be the date on which the payment of consideration ought to have been made to the shareholders in terms of the timelines in these regulations.”

(3) after regulation 6A and before regulation 7, the following regulation shall be inserted, namely;-

“6B. Notwithstanding anything contained in these regulations, no person who is a fugitive economic offender shall make a public announcement of an open offer or make a competing offer for acquiring shares or enter into any transaction, either directly or indirectly, for acquiring any shares or voting rights or control of a target company.”

- (4) in regulation 7, in sub-regulation (2), the words “total shares of” appearing after the words “additional ten per cent of the”, shall be substituted by the words “voting rights in”.
- (5) in regulation 9,-
 - (a) the words “listing agreement”, wherever occurring, shall be substituted by the words “listing regulations”.
 - (b) in sub-regulation (5), in clause (c), in the explanation, the words and figures “subsection (1A) of 81 of the Companies Act, 1956 (1 of 1956)” shall be substituted by the words and figures “clause (c) of sub-section (1) of section 62 of the Companies Act, 2013 (18 of 2013)”.
- (6) in regulation 10,-
 - (a) the words “listing agreement”, wherever occurring, shall be substituted by the words “listing regulations or as the case may be, the listing agreement.”
 - (b) in sub-regulation (1), in clause (a), after sub-clause (iii) and before sub-clause (iv), the following explanation shall be inserted, namely:-

“Explanation: For the purpose of this sub-clause, the company shall

include a body corporate, whether Indian or foreign.”

- (c) in sub-regulation (1), in clause (h), the words and figures “sub-section (2) of section 87 of the Companies Act, 1956 (1 of 1956)” shall be substituted by the words and figures “sub-section (2) of section 47 of the Companies Act, 2013 (18 of 2013)”.
 - (d) in sub-regulation (4), in clause (c), in the first proviso, in sub-clause (i), the words and figures “section 77A of the Companies Act, 1956 (1 of 1956),” shall be substituted by the words and figures “section 68 of the Companies Act, 2013 (18 of 2013)”.
 - (e) in sub-regulation (4), in clause (c), in the first proviso, in sub-clause (iii), the words and figures “section 77A of the Companies Act, 1956 (1 of 1956),” shall be substituted by the words and figures “section 68 of the Companies Act, 2013 (18 of 2013)”.
- (7) in regulation 17, in sub-regulation (3), after the proviso the following explanation shall be inserted, namely:-

“Explanation: The cash component of the escrow account as referred to in clause (a) above may be maintained in an interest bearing account, subject to the merchant banker ensuring that the funds are available at the time of making payment to the shareholders.”

- (8) in regulation 18,-
- (a) in sub-regulation (2), before the first proviso, the following explanation shall be inserted, namely:-

“Explanation:

 - (i) Letter of offer may also be dispatched through electronic mode in

accordance with the provisions of Companies Act, 2013.

(ii) On receipt of a request from any shareholder to receive a copy of the letter of offer in physical format, the same shall be provided.

(iii) The aforesaid shall be disclosed in the letter of offer.”

(b) in sub-regulation (4), the words “three working days” shall be substituted by the words “one working day”.

(9) in regulation 20, in sub-regulation (9), in the proviso, the words “three working days” shall be substituted by the words “one working day”.

(10) in regulation 22, in sub-regulation (2), the words “one hundred per cent of the” shall be substituted by the words “the entire”.

(11) in regulation 24, in sub-regulation (1), in the first proviso, the words “one hundred per cent of the” shall be substituted by the words “the entire”.

(12) in regulation 29, in sub-regulation (3), after the words “or the acquisition” and before the words “of shares or voting rights”, the words “or the disposal” shall be inserted.

(13) in regulation 32, in sub-regulation (1), after the words “issue such directions” and before the words “as it deems fit”, the words “or any other order” shall be inserted.

(14) in regulation 33,

(a) the words and symbol “shall have the power to issue directions through guidance notes or circulars:” shall be substituted by the words “may issue clarifications or guidelines from time to time”.

(b) the proviso shall be omitted

(15) in regulation 35, in sub-regulation (1), the word “stand” shall be substituted by the word “stands”.

Sd/-
AJAY TYAGI
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA

Footnotes:

1. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 were published in the Gazette of India on 23rd September, 2011 vide No. LAD-NRO/GN/2011 12/24/30181.
2. The Principal Regulations were subsequently amended on:
 - (a) March 26, 2013 by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2013 vide No. LAD-NRO/GN/2012 13/36/7368.
 - (b) October 8, 2013 by the SEBI (Listing of Specified Securities on Institutional Trading Platform) Regulations, 2013 vide No. LAD-NRO/GN/2013-14/28/6720.
 - (c) May 23, 2014 by the SEBI (Payment of Fees) (Amendment) Regulations, 2014 vide Notification No. LAD-NRO/GN/2014-15/03/1089.
 - (d) March 24, 2015 by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2015 vide No. LAD-NRO/GN/2014-15/28/542.

- (e) May 5, 2015 by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2015 vide No. SEBI/LAD-NRO/OIAE/GN/2015-16/004.
- (f) August 14, 2015 by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2015 vide No. SEBI/LAD-NRO/GN/2015-16/009.
- (g) December 22, 2015 by the SEBI (Substantial Acquisition of Shares and Takeovers) (Fourth Amendment) Regulations, 2015 vide No. SEBI/LAD-NRO/GN/2015-16/026.
- (h) February 17, 2016 by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2016 vide No. SEBI/LAD-NRO/GN/2015-16/035.
- (i) May 25, 2016 by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2016 vide No. SEBI/ LAD-NRO/GN/2016-17/002.
- (j) March 6, 2017 by SEBI (Payment of Fees and Mode of Payment) (Amendment) Regulations, 2017 vide No. SEBI/LAD/NRO/GN/2016-17/037 read with notification dated March 29, 2017 vide No. SEBI/LAD/NRO/GN/2016-17/38.
- (k) August 14, 2017 by SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2017 No. SEBI/LAD-NRO/GN/2017-18/015.
- (l) June 01, 2018 by SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2018 No. SEBI/LAD-NRO/GN/2018/20.
