

De Jure

July 2, 2020

A Cure for Stress



Rajani Associates
simple solutions

On April 22, 2020, SEBI proposed to relax the pricing norms for preferential issues by financially stressed listed companies as well as grant exemption from making an open offer, if the acquisition were to result in the acquirer acquiring more than 25% voting rights in the investee company ("**Consultation Paper**"). SEBI invited public comments to the Consultation Paper.

On June 22, 2020, SEBI notified the proposed relaxation by adding a new regulation, i.e. Regulation 164A to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**ICDR**") and sub-regulation (2B) to Regulation 10 of the SEBI (Substantial Acquisition of Shares And Takeovers) Regulations, 2011 ("**SAST**").

Regulation 164A of ICDR states that pricing in preferential issue of shares of companies having stressed assets may be calculated for 2 weeks preceding the relevant date, as against the 26 weeks and 2 weeks formula. Regulation 10(2B) of SAST exempts the obligation to make an open

offer of acquisition of shares or voting rights or control by way of preferential issue compliance with Regulation 164A of ICDR.

Needless to add, these relaxations are subject to certain conditions, such as the issuer company and the acquirer satisfy the conditions set out in the relevant Amendment Regulations, such as the company undertakes a preferential issue, default for 90 days, credit rating downgraded to D and shares locked-in for 3 years.

SEBI would have received few suggestions from the public and based on such suggestions, has expanded the applicability of the relaxations, while at the same time introducing few additional conditions.

Two important additional amendments from the few other amendments are made to the ICDR, which were not part of the Consultation Paper. They are:

- the preferential issue may not be made to a person who has executed a guarantee in favour and such

guarantee has been invoked and remains unpaid;
and

- the proceeds of the preferential issue must not be used for repayment of promoter loans.

We, Rajani Associates, also suggested a few changes to SEBI, which were set out in our De Jure of May 12, 2020, such as reduce 2 quarters to 1 quarter for disclosing defaults, extend this relaxation and exemption to companies which have been referred to IBC and limiting the lock-in period to 18 months. The Notification reflects one of our suggestions, i.e. to reduce 2 quarters to 90 days (1 quarter) for disclosing defaults.

All in all, a very commendable amendment to revive companies facing financial stress and avoid their path to insolvency.

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