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Issue 23

The Companies Act, 2013 has provided various new definitions and new provisions which did not exist in the erstwhile Companies Act, 1956. Such new concepts have been introduced in view of the global corporate governance trends and to make the Companies accountable for their stakeholders.

This issue of **InSync** aims at explaining few such concepts introduced for the first time in the Companies Act, 2013.

Remuneration

The term Remuneration was not defined under Companies Act, 1956. The same has been expressly provided under Section 2(78) of the Companies Act, 2013.

It means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income Tax Act, 1961. This will act as a guiding force towards calculating the limits of the remuneration of 11% to be paid to the managerial personnel.

**Remuneration
expressly defined first
time under Companies
Act, 2013 under Section
2(78)**

**Will act as the guiding
force to calculate the
limit of remuneration
for **Managerial
Personnel****

"Deemed Public

Deemed Public Issues &

Issues" defined by SEBI

SEBI says that any issue of Securities made to 200 persons or more shall be a Deemed Public Issue.

Provides relaxation from any non-compliance made in the past year, provided an Exit Route is provided.

SEBI Board decides for making regulations for Exit Route to Shareholders in case their is change in the terms or objects in prospectus

Relaxation in Delisting Norms for Small Companies

Mandating Business responsibility Reporting for Top 500 Companies

Exemptions from Takeover of Shares in case their is Forfeiture of Shares

Exit Opportunities to Shareholders

SEBI in its Board meeting held on November 30, 2015 took some major decisions which would have a long term impact on the working of the corporate. The decisions have been brought out by way of a press release. The major decisions taken by SEBI Board are as under:

A. Deemed Public Issue

Post April 01, 2014, any offer or allotment of securities shall be considered as public issue if the number of offerees / allottees exceeds 200 persons in a financial year under the Companies Act, 2013 as against the cap of 49 persons provided in the Companies Act, 1956.

The Board has approved that in respect of the cases involving issuance of securities to more than 49 persons but up to 200 persons in a financial year, the Companies may avoid penal action if they had provided the investors with an option to surrender the securities and get the refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon.

The exit may be provided by the company itself or by the promoters or by such persons as arranged by the company / promoters. The companies may adjust the amounts already paid to the allottees either as interest / dividend or otherwise from the amount of refund to be paid to the investors. In case of transfer of securities by the original allottees, option for refund may be provided to the current holders of the securities.

The refunds made by the company following the option for refund exercised by investors would be certified by independent practicing Chartered Accountants / practicing Company Secretaries / practicing Cost Accountants.

The proposal has taken into account the interest of investors while recognising their right to stay invested in

case they feel it is beneficial to them.

B. Exit opportunity to dissenting shareholders

The Board approved the proposal to initiate public consultation process regarding exit opportunity to dissenting shareholders under Companies Act, 2013 in case of change in objects or varying the term of contracts referred to in the prospectus. The present decision is an outcome of the Section 27 of the Companies Act, 2013 which mandates on companies to provide an Exit Route to its shareholders who dissent from any variation in the terms of contract or objects in prospectus on the basis of which they had subscribed the initial public offer. The Rules/ Regulations would pose new mandate on companies changing their object clauses in future. The Companies Act, 2013 had left out the process to make a mandate for exit on to the shoulders of SEBI.

The said aspect was also pointed out by InSync in its 13th issue dated 21st September 2015. At least the present decision would remove any ambiguity towards change in the object clauses for listed companies.

C. Delisting of Small Companies

Delisting Regulations provide that the shares of the company have not been traded for the preceding one year. Board has approved the proposal that the condition of no trading for preceding one year may be relaxed and the small companies, whose trading of equity shares during the twelve calendar months is less than 10% of the total number of shares of such company, would also be eligible for simplified procedure of delisting.

However, the exit price shall not be less than the floor price determined for the purpose of Reverse Book Building for not frequently traded securities in terms of Delisting Regulations read with SEBI Takeover Regulations.

D. Business Responsibility Reporting by Listed Entities

The same has been made mandatory on Top 500 Listed Companies rather than top 100 listed companies.

E. Forfeiture of partly paid-up shares - Exemption from Takeover Regulations

The Board approved the proposal to amend SEBI (SAST) Regulations, 2011 for providing general exemption from open offer obligations arising due to passive increase in voting rights as a result of expiry of call notice period and forfeiture of shares.

F. Few Other decisions were also made viz.

1. Listing of Stock Exchanges
2. Review on comments of the Committee on Clearing Corporations
3. Initiation for Consultation paper for disclosure requirements for issuance and listing Green Bonds
4. Proposal for seeking approval for initiation of public consultation process on introduction of "Primary Market Debt Offering through private placement on electronic Book"
5. The Board approved the proposal to initiate public consultation process for revival of public issuance of convertible securities by listed entities.

A link to the SEBI Press Release is provided here under.

SEBI Press Release dated November 30, 2015

For any clarification or delineation, feel free to contact us.



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