

THE GAZETTE OF INDIA
EXTRAORDINARY
PART – III – SECTION 4
PUBLISHED BY AUTHORITY
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION

Mumbai, the 22nd June, 2020

**SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND
DISCLOSURE REQUIREMENTS) (SECOND AMENDMENT) REGULATIONS, 2020**

No. SEBI/LAD-NRO /GN/ 2020/18 — 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 (Issue of Capital and Disclosure Requirements) Regulations, 2018, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2020.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018,-
 - I. After regulation 164 the following new regulation shall be inserted, namely, -

“Pricing in preferential issue of shares of companies having stressed assets

164A. (1) In case of frequently traded shares, the price of the equity shares to be allotted pursuant to the preferential issue shall not be less than the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

(2) No allotment of equity shares shall be made unless the issuer company meets any two of the following criteria:

- a) the issuer has disclosed all the defaults relating to the payment of interest/repayment of principal amount on loans from banks / financial institutions/ Systemically Important Non-Deposit taking Non-banking financial companies/ Deposit taking Non-banking financial companies and /or listed or unlisted debt securities in terms of SEBI Circular dated November 21, 2019 and such payment default is continuing for a period of at least 90 calendar days after the occurrence of such default;
- b) there is an Inter-creditor agreement in terms of Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated June 07, 2019;
- c) the credit rating of the financial instruments (listed or unlisted), credit instruments / borrowings (listed or unlisted) of the listed company has been downgraded to “D”.

(3) The issuer company making the preferential issue shall ensure compliance with the following conditions:

- a) The preference issue shall be made to a person not part of the promoter or promoter group as on the date of the board meeting to consider the preferential issue. The preference issue shall not be made to the following entities:
 - (i) undischarged insolvent in terms of the Insolvency and Bankruptcy Code, 2016;
 - (ii) ‘wilful defaulter’ as per the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;
 - (iii) a person disqualified to act as a director under the Companies Act, 2013;
 - (iv) a person debarred from trading in securities or accessing the securities market by the Board;
Explanation: The restriction under (iv) shall not apply to the persons or entities mentioned therein who were debarred in the past by the Board and the period of debarment is already over as on the date of the board meeting considering the preferential issue.
 - (v) a person declared as a fugitive economic offender;
 - (vi) a person who has been convicted for any offence punishable with imprisonment-
 - A. For two years or more under any Act specified under the Twelfth Schedule of the Insolvency and Bankruptcy Code, 2016

B. For seven years or more under any law for the time being in force:

Provided that such restriction shall not be applicable to a person after the expiry of a period two years from the date of his release from imprisonment.

- (vii) A person who has executed a guarantee in favour of a lender of the issuer and such guarantee has been invoked by the lender and remains unpaid in full or part.

(4) The resolution for the preferential issue and exemption from open offer shall provide for the following:

- a) The votes cast by the shareholders in the 'public' category in favour of the proposal shall be more than the number of votes cast against it. The proposed allottee(s) in the preferential issue that already hold specified securities shall not be included in the category of 'public' for this purpose:

Provided that where the company does not have an identifiable promoter; the resolution shall be deemed to have been passed if the votes cast in favour are not less than three times the number of the votes, if any, cast against it.

(5) The proceeds of such preferential issue shall not be used for any repayment of loans taken from promoters/ promoter group/ group companies. The proposed use of proceeds shall be disclosed in the explanatory statement sent for the purpose of the shareholder resolution.

(6) a) The issuer shall make arrangements for monitoring the use of proceeds of the issue by a public financial institution or by a scheduled commercial bank, which is not a related party to the issuer:

(i) The monitoring agency shall submit its report to the issuer in the format specified in terms of Schedule XI (with fields as applicable) on a quarterly basis until at least ninety five percent of the proceeds of the issue have been utilized.

(ii) The board of directors and the management of the issuer shall provide their comments on the findings of the monitoring agency as specified in Schedule XI.

(iii) The issuer shall, within forty five days from the end of each quarter, publicly disseminate the report of the monitoring agency by uploading the same on its website as well as submit the same to the stock exchange(s) on which the equity shares of the issuer are listed.

- b) The proceeds of the issue shall also be monitored by the Audit Committee till utilization of the proceeds.

(7) The allotment made shall be locked-in for a period of three years from the last date of trading approval.

(8) The statutory auditor and the audit committee shall certify that all conditions under sub-regulations (1), (2), (3), (4) and (5) of regulation 164A are met at the time of dispatch of notice for general meeting proposed for passing the special resolution and at the time of allotment.”

Sd/-

AJAY TYAGI
CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Footnotes:

1. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 was published in the Gazette of India on September 11, 2018, vide notification No. SEBI/LAD-NRO/GN/2018/31.
2. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 was subsequently amended on -
 - (a) December 31, 2018 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2018, vide notification No. SEBI/LAD-NRO/GN/2018/57.
 - (b) March 29, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/05.
 - (c) April 5, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/08.

- (d) July 29, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/29.
- (e) September 23, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/35.
- (f) December 06, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/42.
- (g) December 26, 2019 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Sixth Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2019/47.
- (h) January 01, 2020 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Seventh Amendment) Regulations, 2019, vide notification No. SEBI/LAD-NRO/GN/2020/01.
- (i) May 08, 2020 by the Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2020, vide notification No. SEBI/LAD-NRO/GN/2020/11.
- (j) April 17, 2020 by the Securities and Exchange Board of India (Regulatory Sandbox) (Amendment) Regulations, 2020 vide notification No. SEBI/LAD-NRO/GN/2020/10.
- (k) June 16, 2020 by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2020, vide notification No. SEBI/LAD-NRO/GN/2020/17.
