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for

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**CORPORATE RESTRUCTURING,
INSOLVENCY, LIQUIDATION AND
WINDING-UP**

MODULE 2

PAPER 5

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LESSON 2

ACQUISITION OF COMPANY/BUSINESS

1. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2020

Securities and Exchange Board of India vide its notification dated 16th June, 2020 amended the Regulation 3 (2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

According to the amendment Regulation 3 (2) read as under:

Regulation 3 (2) : No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

Provided that the acquisition beyond five per cent but up to ten per cent of the voting rights in the target company shall be permitted for the financial year 2020-21 only in respect of acquisition by a promoter pursuant to preferential issue of equity shares by the target company.

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Provided further that, acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 [No. 31 of 2016] shall be exempt from the obligation under the proviso to the sub-regulation (2) of regulation 3.

Explanation.—For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

(i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.

(ii) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition .

2. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2020

Securities and Exchange Board of India vide its notification dated 22nd June, 2020 amended the Regulation 10 (2B) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

According to the amendment Regulation 10 (2B) read as under:

Regulation 10(2B) provides that any acquisition of shares or voting rights or control of the target company by way of preferential issue in compliance with regulation 164A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall be exempt from the obligation to make an open offer under sub-regulation (1) of regulation 3 and regulation 4.

Explanation-The above exemption from open offer shall also apply to the target company with infrequently traded shares which is compliant with the provisions of sub-regulations (2), (3), (4), (5), (6), (7) and (8) of regulation 164A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018. The pricing of such infrequently traded shares shall be in terms of regulation 165 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

LESSON 4

PROCESS OF MERGER AND ACQUISITION TRANSACTIONS

1. Provisions of Section 230(11) and 230(12) notified on 3rd February 2020

Central Government vide its Notification dated 03 February, 2020 appoints 03 February, 2020 the date on which the provisions of sub-sections (11) and (12) of section 230 of the Companies Act, 2013 came into force.

Provisions of Section 230(11) and 230(12) read as under:

(11) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed:

Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.

(12) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.

2. National Company Law Tribunal (Amendment) Rules, 2020

Central Government vide its Notification dated 03 February, 2020 amended the National Company Law Tribunal Rules, 2016. According to the amendment a new Rule 80A inserted in the National Company Law Tribunal Rules, 2016.

Rule 80A read as under:

Rule 80A: "Application under section 230. – An application under sub-section (12) of section 230 may be made in Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B."

Further, Application in cases of takeover offer of companies which are not listed: Rs. 5,000”

Application in cases of takeover offer of companies which are not listed shall be accompanied with following documents:

1. Affidavit verifying the petition
2. Memorandum of appearance with copy of the Board’s Resolution or the executed vakalatnama, as the case may be.
3. Documents in support of the grievance against the takeover.
4. Any other relevant document.

3. Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020

The Central Government vide its Notification dated 3rd February 2020 amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and inserted sub-rule (5) and sub-rule (6) in Rule 3 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

According to the Amendment Rule 3(5) read as under:

Rule 3(5) A member of the company shall make an application for arrangement, for the purpose of takeover offer in terms of sub-section (11) of section 230, when such member along with any other member holds not less than three-fourths of the shares in the company, and such application has been filed for acquiring any part of the remaining shares of the company.

Explanation I.—“shares” means the equity shares of the company carrying voting rights, and includes any securities, such as depository receipts, which entitles the holder thereof to exercise voting rights.

Explanation II.—Nothing in this sub-rule shall apply to any transfer or transmission of shares through a contract, arrangement or succession, as the case may be, or any transfer made in pursuance of any statutory or regulatory requirement.

According to the Amendment Rule 3(6) read as under:

Rule 3 (6): An application of arrangement for takeover offer shall contain:-

(a) the report of a registered valuer disclosing the details of the valuation of the shares proposed to be acquired by the member after taking into account the following factors:—

(i) the highest price paid by any person or group of persons for acquisition of shares during last twelve months;

(ii) the fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-à-vis the industry average, and such other parameters as are customary for valuation of shares of such companies.

(b) details of a bank account, to be opened separately, by the member wherein a sum of amount not less than one-half of total consideration of the takeover offer is deposited.”

Schedule of Fees, for Application for compromise arrangement and amalgamation is Rs. 5,000/-.
