WIRC

November-2017

FOCUS

THE INSTITUTE OF
Company Secretaries of India

भाभारतीतीय कम्पम्पनीनी सचिचिव संसंस्थास्थास्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory Body under an Act of Parliament

WESTERN
INDIA
REGIONAL
COUNCIL

WIRC

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WIRC of ICSI Premises :

13, 56 & 57, Jolly Maker Chambers No. 2 (1st & 5th Floors), Nariman Point, Mumbai – 400021, Email : wiro@icsi.edu, Phone Nos. : 022- 61307900 / 61307901 / 61307902

CS Prakash K Pandya
Chairman

Dear Professional Colleagues,

The month of November has witnessed two major events , the Annual Regional Conference of ICSI-WIRC held at Goa and the National Convention held at Thiruvanthapuram. Both these events where not only professionally enriching but also has enhanced the scope for the professionals to explore the new avenues of the profession. While Shri Manohar Parikkar, Hon'ble Chief Minister of Goa graced the Annual Regional Conference, the National Convention has seen galaxy of personalities from various spheres of the society.

Shri Suresh Prabhu,Hon'ble Minister for Commerce and Industry was to grace the Annual Regional Conference. But because of some sudden commitments he could not join us for the Annual Regional Conference. However he was kind enough to address the gathering by way of video conferencing. Today we are living in a fast world where the results are to be seen instantaneously and our profession is not an exception. Today a Company Secretary be in practice or employment is in need of constant updation with regard to the changing laws. The Companies Act and other allied legislations are amended from time to time at frequent intervals that a member should always be alert of the changes happening in the professional world. It is a matter of fact that the Board always expects a Company Secretary to be a Master of all, particularly the legislative changes.

Company Secretaries are in need of a 360 degree development in order to fit in to the frame of KMP, a coveted position given by the legislation. A professional cannot claim to be a KMP by virtue of qualification, but the talent and the professional acumen has to be kept up to date. The Professional requirement is changing at a jumbo pace and it is time for the members and students to keep themselves up to date.

As far as the activities of WIRC is concerned we are marching ahead with the Programs at Knowledge centres and other forums. It is happy to note that young members are taking keen interest in development of the profession. I am regularly getting views from members about the quality of programs organized in WIRC. Some are compliments and some are the shortcomings. We are not banking too much on the compliments and working on overcoming the shortcomings.

This is a crucial month for the students who are appearing for the December 2017 examinations. You have roughly three weeks in your hand and it is time to make the best of it. I am sure that most of you

would have started your revision by this time. Concentrate more on the subject which you have difficulty and start loving the difficult ones, then you will develop interest in the subject and eventually you will make best of it. How knows what is stored in your career and the one you find as difficult will be the path shower in your career. A 3-D effort (Discipline-Dedication-Determination) developed at this stage will have long standing in your life. I wish you all the very best and waiting to see a bunch of new Company Secretaries from the Western region coming to the industry and practice.

As you are aware WIRC is organizing the Oral Teaching Classes and Crash Courses. We have the best faculty members here and the fees charged from students is very reasonable. I will request all the students to take advantage of the same. You may get in touch with the WIRO for the queries with regard to admission.

I am also given to understand that the Head Office is recommencing the electronic version of MSOP for those who are unable to attend the MSOP devoting 15 long days because of work pressure. It is a good news for many senior qualified persons who are yet to become members of the institute. I request all of them to take benefit of the electronic MSOP and join the profession as an associate member. Having said that for the youngsters who have recently qualified have do the conventional MSOP and apply for associate Membership.

To the members at the expense of repetition in all the past issues, I once again request you all to join CSBF as it will come good at the time of your need.

I am in the penultimate month of demitting my office as the Chairman of Western Region of this August institute. The Institute from my student days has given immense opportunity to serve the profession as a volunteer, as a faculty for OTC and Training programmes, Secretary and Vice Chairman of the region and now the Chairman of this region. All these opportunity was bestowed on me because I am a Company Secretary and what more we need in our social life other than serving the profession and our alma meter. For this opportunity I have to thank my parents, faculty members, colleagues, seniors, WIRO Staff and the list is never ending. If I got all such opportunities, after hailing from a very normal background , I feel the new generation can create wonders. I find in all of you a success story and the profession and your alma meter is waiting for you to create the history.

Yes, you can do it! Wishing you all the best once again. Will come back to you all yet again with my adieu message in the next month.

CS Prakash K.Pandya
Chairman
ICSI-WIRC

CS Jagdish Ahuja
Practising Company Secretary
Mumbai

THE MINIMUM PUBLIC SHAREHOLDING (MPS) DILEMMA FOR LISTED ENTITIES

MPS in case of Listed PSUs

It seems that the Government is still in the process of employing newer mechanism to increase the MPS in listed entities up to 25%. If you remember just 3 years back in October 2014 our Government notified the rules for minimum 25% shareholding in all **listed State owned** entities.

It was then expected that over 30 listed PSUs will raise their public shareholding to minimum 25% to promote wider investor base and also provide a boost to the government's plan to raise funds from disinvestment programs. We all know that the Government is in need of resources to reduce its budget deficit. It also needs resources to make investment in infrastructure projects, education, public health and for poverty alleviation programs. We all know that many of the existing PSUs are working inefficiently and incurring huge losses. Disinvestment can lead to the improvement of efficiency of these enterprises.

Prior to this, the listed PSUs were only required to have 10% public holding whereas the minimum public holding in **non-PSU listed companies** was already 25 per cent earlier too. It is learnt that at present, six PSUs viz. Hudco, Coal India, Hindustan Copper, SJVNL, MMTC, Neyveli Lignite are yet to reach the minimum 25 per cent public shareholding requirement that was stipulated by SEBI in mid-2014. To facilitate smooth offloading, the Government has extended the deadline for listed PSUs to achieve the minimum 25 per cent public shareholding norm by a year to August 2018. There is nothing to worry for the Government backed PSUs as long as Government control in such PSU is more than 50%. So, offloading stake up to 25% is a safe move as it is not going to lead to privatization.

MPS in case of listed entities

Currently, Regulation 38 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations") mandates a listed entity to comply with the Minimum Public Shareholding("MPS") requirements specified in rules 19(2) and 19A of the Securities Contracts (Regulation) Rules, 1957. Further, the recognised Stock Exchanges are mandated to monitor such compliance by listed entities. Regulation 38 of the Listing Regulations, stipulates the procedure that needs to be followed by SE with respect to non-compliant listed entities, their promoters and directors. The procedure to be followed is stated in SEBI Circular referenced CFD/CMD/CIR/P/2017/115 dated October 10, 2017. It seems that SEBI has directed SEs to be tough while ensuring MPS norms

The listed entities have two options two achieve MPS target. Such entities can either delist the company shares by offering to buyback all its shares in public or alternatively, dilute its shareholding to bring it to the level of 75% or below.

The modes of dilution available with these companies are either through FPOs, IPPs, auction method or through preferential allotment. In order to facilitate compliance, SEBI had in the past even amended its rules, to help promoters of such companies to meet its divestment deadline and allowed the rights/bonus shares route as well to dilute its shareholding.

MPS in case of scheme of arrangement

As per SEBI, a listed entity will have one year's time post a 'scheme of arrangement' to comply with the minimum shareholding requirements subject to certain conditions. Scheme of arrangement is a court-approved agreement between a company and its shareholders or creditors. As per norms, at least 25 percent of the post-scheme paid-up share capital of the transferee entity should have been allotted to the public shareholders in the transferor entity. Further subject to certain conditions, those entities would have more time to comply with the minimum public shareholding stipulation. Such an entity should "increase the public shareholding to at least 25 percent within a period of one year from the date of listing of its securities and an undertaking to this effect is incorporated in the scheme", SEBI said in a circular. This would be subject to certain conditions including that the entity concerned has a valuation in excess of Rs 1,600 crore as per the valuation report. Besides, the value of post-scheme shareholding of public shareholders of the listed entity in the transferee entity should not be less than Rs 400 crore.

Penal provisions as per SEBI Circular (CFD/CMD/CIR/P/2017/115 dated October 10, 2017) in case of non-compliance with MPS norms

Following penal provisions are noteworthy in the context of violation of the norms:

- The Recognised stock exchange shall impose a fine of RS 5,000/- per day of non-compliance on the listed entity

MPS in case of listed entities

- The Recognised stock exchange shall intimate the depositories to freeze the entire shareholding of the promoter and promoter group in such listed entity till the date of compliance by such entity

- The promoters, promoter group and directors of the listed entity shall not hold any new position as director in any other listed entity till the date of compliance by such entity.

- In cases where the listed entity continues to be non-compliant for a period of more than one year:

  › The recognized stock exchange shall impose an increased fine of RS 10,000/- per day of non-compliance on the listed entity and such fine shall continue to be imposed till the date of compliance by such listed entity

  › The recognized stock exchange shall intimate the depositories to freeze all the securities held in the Demat account of the promoter and promoter group till the date of compliance by such entity.

- The recognized stock exchange may also consider compulsory delisting of the non-compliant listed entity

- In case it is observed that the listed entity has adopted a method for complying with MPS requirements which is not prescribed by SEBI and approval for the same has not been obtained from SEBI, the recognized stock exchanges shall refer such cases to SEBI.

Recent Case Law of interest

Recently SEBI imposed a penalty of RS 13 Lakhs on **Tea Time Ltd**. for enormous delay in complying with the MPS norms. SEBI had given a time period of 3 years to all listed entities to comply with MPS of 25%.This time period ended on 3rd June 2013. However, Tea Time Ltd. complied with the norms on September 9, 2015 when it completed the allotment of bonus shares to its public shareholders. There was a delay of more than 26 months in meeting the norms.

Conclusion

Thus it can be seen from the above discussion that achieving MPS norms is of utmost importance to PSU & Non-PSU listed entities and it is a welcome move for investors and win-win situation for all stakeholders.

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FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 – An Overview

Background

The history of Indian legislation to regulate foreign exchange (forex) in India can be traced back to 1947 as initially, the Foreign Exchange Regulation Act, 1947 was enacted on 11 March 1947, which was subsequently replaced by the Foreign Exchange Regulation Act, 1973 (FERA) on 11 September 1973. FERA was introduced at a time when forex reserves of the country were low, with the objective to consolidate and amend the law regulating certain payments dealing in forex and securities, transactions indirectly affecting forex and the import and export of currency for conservation of the forex resources and their proper utilisation for the economic development of the country. It embodied the rationale that forex being a scarce commodity had to be safeguarded by the government. It imposed strict regulations on dealings in forex, violation of which was made out to be a criminal offence.

With the liberalization of the Indian economy in 1991, foreign investment in various sectors was permitted. FERA was then seen as a draconian legislation which had outlived its utility. The Foreign Exchange Management Act, 1999 (FEMA) was thus enacted and made effective from 1 June 2000. FEMA was enacted with objectives similar to FERA. However, this Act makes offences related to forex, a civil offence and regulates forex matters consistent with the emerging framework of the World Trade Organisation (WTO).

It is worth mentioning that the Indian Rupee is not yet fully convertible on the capital account which implies that capital account transactions such as investments, loans etc. among persons resident in India and persons resident outside India, are restricted by regulations framed by the Reserve Bank of India (RBI) in this regard.

Foreign investment in India is governed by the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (FDI Regulations 2000), read with the Consolidated Foreign Direct Investment (FDI) policy issued by the Department of Industrial Policy and Promotion, Ministry of Commerce, government of India. These Regulations provide for sectoral limits for foreign investment, pricing and reporting requirements etc. for capital account transactions.

The government's current focus is on ease of doing business in India and further liberalizing the foreign investment regime. The FDI Regulations 2000 had undergone several amendments since its inception. To provide a consolidated reference point for the FDI Regulations, the RBI has on 7 November 2017 notified the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 (FDI Regulations 2017) which supersede the hitherto prevalent FDI Regulations 2000.

FDI Regulations 2017 have brought in several changes in connection with foreign investment in India. This article aims to summarize the key highlights of FDI Regulations 2017.

Key Highlights of the FDI Regulations 2017

I. Key Delineations:

1. 'Capital instrument': The definition of 'capital', 'preference shares', 'debentures' and 'warrants' which were earlier considered as FDI instruments, have been clubbed under the single definition of 'Capital Instruments' which means equity shares (including partly paid-up shares), debentures (fully, compulsorily and mandatorily convertible), preference shares (fully, compulsorily and mandatorily convertible) and share warrants issued by an Indian company.

2. 'Share warrants' are now defined to mean those issued by an Indian company in accordance with the Regulations issued by the Securities and Exchange Board of India (SEBI). Thus, it seems only listed companies are eligible to issue share warrants to non-residents.

3. 'Foreign Direct Investment' (FDI) has been defined to mean investment through capital instruments by a non-resident in an unlisted Indian company or in 10% or more of the post issue paid-up equity capital on a fully diluted basis (i.e. total shares that would be outstanding if all possible sources of conversion are exercised) of a listed Indian company.

4. 'Foreign Portfolio Investment' (FPI) means any investment made by a non-resident through capital instruments where such investment is less than 10% of the post issue paid-up share capital on a fully diluted basis of a listed company or less than 10% of the paid-up value of each series of capital instruments of a listed company.

For computation of 10% limits, investment by the investor group (i.e. the same set of beneficial owners) will be considered. To make investments under the FPI route, FPI license from the Securities and Exchange Board of India (SEBI) under the SEBI (FPI) Regulations, 2014 will need to be obtained.

In case FPI holding increases to 10% or more of the total paid-up equity capital on a fully diluted basis, such investments shall be re-classified as FDI subject to the conditions to be specified by SEBI and RBI in this regard and make requisite compliances. It would be interesting to understand whether FPI holding can increase beyond 10% in the first place considering strict guidelines followed by the custodians / intermediaries / SEBI by keeping a regular track of FPI holding. FPIs are now allowed to remit sales proceeds (net of taxes) directly outside India.

In case if existing FDI (i.e. investments made before enactment of FDI Regulations 2017) falls below 10% of the post issue paid-up equity capital on a fully diluted basis of an Indian company, it would be still be classified as FDI.It has been clarified that that a person resident outside India i.e. a non-resident, may hold foreign investment either as FDI or FPI in any particular Indian company and not under both routes.

5. 'Listed Indian Company' means an Indian company which has any of its capital instruments listed on a recognized stock exchange in India. Investment in capital instrument of listed Indian company is permitted by FPI and other non-resident investors subject to prescribed conditions.

II. Dealing in Capital Instruments:

6. To align with the requirements of the Companies Act, 2013, capital instruments shall be issued to non-residents within 60 days from the date of receipt of the consideration (which was 180 days under the FDI Regulations 2000). In case of partly paid equity shares, the period of 60 days shall be reckoned from the date of receipt of each call payment.
If capital instruments are not issued within 60 days from the date of receipt of the consideration, the same shall be refunded to the person concerned by outward remittance through banking channels or by credit to his NRE/ FCNR(B) accounts, as the case may be, within 15 days from the date of completion of 60 days. RBI's prior approval will be required to make interest payment required as per Companies Act, 2013, to non-resident investors, in cases where subscription money is refunded beyond the prescribed time.

7. Now any type of capital instruments (earlier only equity shares was allowed) can be issued against swap of capital instruments if the Indian investee company is engaged in sectors covered under automatic route for FDI without RBI approval.
An Investment Vehicle is also allowed to issue its units to a person resident outside India against swap of capital instruments of a Special Purpose Vehicle proposed to be acquired by such Investment Vehicle.

8. A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) holding capital instrument on repatriation basis (under automatic route) may transfer the same by way of sale or gift to any non-resident subject to prescribed conditions. Under the earlier FDI Regulations 2000, prior RBI approval was required (irrespective of whether the NRI held such instrument on repatriation or non-repatriation basis).

III. Pricing guidelines:

9. Unlike the earlier Regulations, pricing guidelines for issue / transfer of capital instruments, form a part of the FDI Regulations 2017 itself. These are summarized below:-

	Type of Company / issue	Pricing guideline
Issue of capital instruments	Listed Indian Company	Price worked out in accordance with the relevant SEBI guidelines
	Company going through a delisting Process	As per the SEBI (Delisting of Equity Shares) Regulations, 2009
	Unlisted Indian Company	Valuation of capital instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant
	Shares issued to Non -Resident pursuant to subscription to MOA in compliance with Companies Act, 2013	At face value and no valuation required
		In case of issue of convertible capital instruments, the price at the time of conversion should not in any case be lower than the fair value worked out as mentioned above, at the time of issuance of such instruments.
Transfer of capital instruments from a Resident to a Non-Resident	**Price not less than the:**	
	Listed Indian Company	Price worked out in accordance with the relevant SEBI guidelines / price at which a preferential allotment of shares can be made under the SEBI Guidelines, as applicable
	Company going through a delisting Process	Price worked out as per the SEBI (Delisting of Equity Shares) Regulations, 2009
	Unlisted Indian Company	Valuation of capital instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant
	The guiding prin ciple would be that the person resident outside India is not guaranteed any assured exit price at the time of making such investment/ agreement and shall exit at the price prevailing at the time of exit.	

Transfer of capital instruments from a Resident to a Non-Resident	**Price not less than the:**	
	Listed Indian Company	Price worked out in accordance with the relevant SEBI guidelines / price at which a preferential allotment of shares can be made under the SEBI Guidelines, as applicable
	Company going through a delisting Process	As per the SEBI (Delisting of Equity Shares) Regulations, 2009
	Unlisted Indian Company	Price not less than the valuation of capital instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant
Transfer of capital instruments from a Non-Resident to another Non-Resident	There are no pricing guidelines prescribed under FEMA for transfer of capital instruments by a non-resident to another non-resident.	
In case of swap of capital instruments	Indian Company & Overseas entity issuing shares	Irrespective of the amount, valuation involved in the swap arrangement will have to be made by a Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country

The above pricing guidelines shall not be applicable for investment in capital instruments by a person resident outside India on non-repatriation basis.

IV. Downstream investment:

10. Downstream investment means investment made by an Indian entity or an Investment Vehicle in the capital instruments or the capital, as the case may be, of another Indian entity, i.e. indirect foreign investment. The definition of 'Downstream Investment' has been amended to include investment by Limited Liability Partnership (LLP) / Investment Vehicle in downstream Indian company or LLP

V. M&A / financing transactions:

11. Earlier, general permission was available to Indian companies to issue only 'shares' to a person resident outside India upon merger / demerger/ amalgamation. Under the FDI Regulations 2017, Indian companies can now issue to the existing non-resident shareholders of the transferor company any 'capital instrument' pursuant to merger / demerger/ amalgamation sanctioned by the National Company Law Tribunal. Thus, Indian company can issue other securities such as convertible debentures in addition to shares.

Further, any transfer of capital instrument from one non-resident to another non-resident pursuant to liquidation, merger, demerger and amalgamation of entities outside India is now permitted under automatic route unless the Indian company is engaged in a sector requiring government approval.

12. Now there is no requirement to obtain No Objection Certificate from the income-tax authority for bonus issue of non-convertible redeemable preference shares or debentures out of general reserves, as a part of a scheme of arrangement by an Indian company.

13. Non-residents are permitted to pledge shares of any Indian company or units of an investment vehicle in favour of Non-Banking Financial Companies to secure credit facilities being extended to such Indian company without a specific RBI approval, provided the Authorised Dealer (AD) is satisfied of the bona fides of the credit facility.

VI. Foreign Venture Capital Investors (FVCIs):

14. Investment in non-convertible instruments is permitted and they can directly repatriate sale proceeds offshore.

15. Investment in 'securities' issued by Indian company engaged in specified sectors / start-ups permitted, vis-à-vis the earlier position where they could invest only in 'equity' or 'equity linked instruments' or 'debt instruments'.

16. Reporting requirement for inflow/outflow of investments is done away with.

VII. Reporting requirements:

17. Start-ups issuing convertible notes are required to file Form CN with the AD bank within 30 days of issue. Likewise, residents buying or selling convertible notes are also required to file Form CN with the AD bank within 30 days of transfer. Format of Form CN and modalities of its submission are yet to be prescribed by RBI.

18. RBI will prescribe filing fee in consultation with government for case of delay in reporting for foreign investments. This could mean that upon payment of additional filing fees for delay in reporting would not attract further compounding proceedings by RBI.

VII. Other changes:

19. It has been clarified that LLP having foreign investment, engaged in a sector covered under the 100% automatic route for FDI and where there are no FDI-linked performance conditions, may be converted into a company under the automatic route.

20. The cap on rate of dividend on preference shares or convertible preference shares has been removed.

Conclusion

Notification of FDI Regulations 2017 is a welcome measure. There are several amendments aimed at further liberalizing the climate for foreign investment in India, which is expected to facilitate higher capital inflows and employment opportunities in the country and move towards further improvement of India's position in the World Bank's ease of doing business league.

CS Parul Bansal
Manager
Vinod Kothari & Company

SOLVING PARADOX OF SELECTIVE REDUCTION OF SHARE CAPITAL

Introduction

Section 66 of the Companies Act, 2013 ("Act, 2013") was enacted with the intention to allow companies to reduce their share capital in fair and equitable manner and in such a way that reduction does not impact the operations of the company and interest of creditors remains protected. Reduction of share capital helps in plummeting the liability of its members by scoring out un-paid share capital or extinguishing paid-up share capital which is either lost or is unrepresented by available assets or which is in excess of requirement of the company.

Since the provision aims at reducing the capital in fair and equitable manner, it is essential to examine the impact of selective reduction of share capital to see how it falls in line with the intent of the law.

Provision of Law

Section 66

(1) Subject to **confirmation by the Tribunal** on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, **by a special resolution**, reduce the share capital **in any manner and in particular, may**—

a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

b) either with or without extinguishing or reducing liability on any of its shares,—

i. cancel any paid-up share capital which is lost or is unrepresented by available assets; or

ii. pay off any paid-up share capital which is in excess of the wants of the company,

alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

(3) The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit:

Selective Reduction of Share Capital

When a company proposes to reduce its share capital such that shareholders of the company get divided into different class of shareholders and shares held by a particular class are extinguished by the company, the same is said to be selective reduction of capital. Where the intent of law is on protecting the interest of stakeholders by executing reduction in equitable and fair manner, selective reduction results into forceful reduction of shares held by particular class of shareholders leaving shares of other class intact.

Section 66 of the Act, 2013 permits companies to reduce their share capital in any manner; however, the same shall not be interpreted in a manner to undermine or abrogate the basic intent of the law. At the same time it shall not restrict companies from undergoing reduction in a fair and equitable manner. It is imperative to understand that what might be equitable and fair for one person may not be equitable and fair for the others and hence the process shall be carried out by companies with utmost care and keeping interest of stakeholders unharmed. Where selective reduction of capital is undertaken at fair price and in accordance with the provisions of law to provide exit opportunity and liquidity to public shareholders of an unlisted company, it seems fair, justifiable and equitable but on the other hand selective reduction to squeeze out a particular class of shareholders of a public listed company does not sound reasonable.

Though Act, 2013 lays responsibility of framing a scheme of reduction of share capital on the company and its shareholders, which should be in compliance with provisions of law, the same is subject to the confirmation of Hon'ble National Company Law Tribunal **("NCLT" or "Tribunal")**. Once, the same is approved by the shareholders by way of special resolution and is also confirmed from the Hon'ble NCLT, the requirement to obtain separate approval of such class of shareholders whose share capital is intended to be reduced or of any other authority does not arise. The obligatory requirement of getting the scheme approved from Hon'ble NCLT is to provide safeguard to the minority shareholders against any form of domination or suppression from the majority. The provisions authorize the Tribunal to approve scheme of reduction but does not lay any criteria for the same and hence the Tribunal is at its discretion to approve or reject or suggest modifications to such scheme considering the interest of public and other shareholders. Accordingly, the Hon'ble NCLT may, if satisfied, that the scheme contains adequate safeguard for the stakeholders and is based on the principle of fairness and equitability, sanction the same. Consequently, the responsibility to examine the scheme of selective reduction is fair and equitable vests with the Tribunal.

Analysis of Court Rulings

There have been few leading judgments in this matter including the one by the Apex Court of our country. It was held by the Hon'ble Supreme Court in the matter of Ramesh B. Desai v/s. Bipin Vadilal Mehta and ors that the judgment of the House of Lords in the case of British and American Trustee and Finance Corporation v. Couper is a leading authority on the subject of reduction of share capital by a company. House of Lords in the case of British and American Trustee and Finance Corporation v Couper stated as follows:

1. "It will be observed that neither of these statutes prescribes the manner in which the reduction of capital is to be effected, nor is there any limitation of the power of the Court to confirm the reduction except that it must first be satisfied that all the creditors entitled to object to the reduction have either consented or been paid or secured."

2. Further dealing with the case it was said "The interests of creditors are not involved, and I think it was the policy of the Legislature to entrust the prescribed majority of the shareholders with the decision whether there should be a reduction of capital, and if so, how it should be carried into effect."

3. "There can be no doubt that any scheme which does not provide for uniform treatment of shareholders whose rights are similar would be most narrowly scrutinized by the Court, and that no such scheme ought to be confirmed unless the Court be satisfied that it will not work unjustly or inequitably. But this is quite a different thing from saying that the Court has no power to sanction it.

4. With these safeguards, which certainly igare not inconsiderable, the Act apparently leaves the company to determine the extent, the mode, and the incidence of the reduction, and the application or disposition of any capital moneys which the proposed reduction may set free."

Further, the Hon'ble Bombay High Court while adjudicating appeal in the matter of Sandvik Asia Limited vs Bharat Kumar Padamsi considering the judgments laid down in above cases, held that the learned single Judge was in error in declining to grant sanction to the special resolution. The scheme of selective reduction of capital as approved by the company in accordance with the provisions of the law and the same being fair and equitable was held valid by the court.

Conclusion

Considering the above discussion on analysis of case laws and provisions of the law, company may reduce its capital in any manner including but not limited to selective reduction of capital in accordance with the applicable laws and with the approval of shareholders by way of special resolution subject to the following:

1. Scheme being fair and equitable;
2. Sanctioned by Hon'ble NCLT;
3. Fair consideration based upon independent valuation;
4. Satiating the creditors of the company w.r.t. their objection, if any;

In the flock of countless methods available with the companies and majority shareholder to remove selective shareholders, these judgments add on an additional way. Further, where the Tribunals are already loaded up with piles of cases, it would be interesting to see as to what extent the Tribunals will be able to examine the equitability and fairness of the schemes for selective reduction of capital.

MEMBERS RESTORED FROM 1/09/2017 TO 30/09/2017

S. NO.	A/F	MEM.NO.	MEM. NAME	PLACE
1	A	32078	MS. SWAPNA KHOPKAR	WIRC
2	A	29485	MR. DEEPAK NAUTIYAL	WIRC
3	A	27847	MS. BHAVIKA DHANSUKH GOHIL	WIRC
4	A	16507	MS. KALPANA BATHULA	WIRC
5	A	9019	MR. N R SRINIVASAN	WIRC
6	A	29639	MS. GAURI SHASHIKANT PAWAR	WIRC
7	A	11089	MR. HIRANAND ASANDAS SAVLANI	WIRC
8	A	11748	MR. SIVAKUMAR KRISHNAMURTHY	WIRC
9	A	40542	MR. SURESH KUMAR R JAKHOTIYA	WIRC
10	A	39390	MR. JALPA SANJAY KUMAR SHAH	WIRC
11	A	38539	MS. HENA BHARAT JUTHANI	WIRC
12	A	20326	MS. RITIKA MANSINGHKA	WIRC

CERTIFICATE OF PRACTICE CANCELLED DURING THE MONTH OF SEPTEMBER 2017

S. NO.	NAME	MEMB NO	COP NO	REGN
1	MS. PUJAN NARAYANLAL RAVAL	ACS 49420	18539	WIRC
2	MR. SHANSHANK JAIN	ACS 45948	17931	WIRC
3	MS. MINOO SIDDHARTH KUMAR NAIDU	ACS 33097	12132	WIRC
4	MS. SISODIYA JANAKIBEN JAYDEERSINH	ACS 36702	13728	WIRC
5	MS. URVASHI HARSHIL SHAH	ACS 25112	11735	WIRC
6	MR. HASMUKH BHUDAR BHAI PRAJAPATI	ACS 48018	17544	WIRC
7	MR. MANOJ MAHEHWARI	FCS 7878	14640	WIRC

News from ICSI - WIRC Chapter	
Program Date	04TH NOVEMBER 2017
Topics	STUDY CIRCLE MEETING ON "OVERVIEW OF COMPEITION LAW"
Name of Chief Guest / Speakers	MR. PRANAV SATYAM, DEPUTY DIRECTOR, COMPETITION COMMISSION OF INDIA

News from ICSI - WIRC Chapter	
Program Date	23.11.2017 TO 29.11.2017
Topics	08TH BATCH OF 5 Days Skill Development
Name of Chief Guest / Speakers	EMINENT FACULTIES FOR 5 DAYS SKILL DEVELOPMENT.

News from ICSI - WIRC Chapter	
Program Date	11TH NOVEMBER 2017
Topics	SEMINAR ON "RESTORATION OF COMPANIES"
Name of Chief Guest / Speakers	CS OMKAR V DEOSTHALE

News from ICSI - WIRC Chapter	
Program Date	11TH NOVEMBER 2017
Topics	STUDY CIRCLE MEETING ON "LOAN, LOAN DOCUMENTATION & LEGAL ASPECTS"
Name of Chief Guest / Speakers	CS SUNDERLATA KAVITKAR

News from ICSI - WIRC Chapter	
Program Date	18TH NOVEMBER 2017
Topics	STUDY CIRCLE MEETING ON "KEY TAKEAWAYS OF KOTAK COMMITTEE REPORT ON CORPORATE GOVERNANCE"
Name of Chief Guest / Speakers	CS GAURAV PINGLE

News from ICSI - WIRC Chapter	
Program Date	4.11.2017
Topics	STUDY CIRCLE MEETING ON "OVERVIEW OF COMPETITION LAW"
Speakers	MR PRANAV SATYAM

PUNE Chapter News from ICSI - WIRC Chapterof ICSI	
Program Date	11.11.2017
Topics	SEMINAR ON "RESTORATION OF COMPANIES"
Speakers	CS OMKAR V DEOSTHALE

News from ICSI - WIRC Chapter	
Program Date	11.11.2017
Topics	SCM ON "LOAN, LOAN DOCUMENTATION AND LEGAL ASPECTS"
Speakers	CS SUNDERLATA KAVITKAR

News from ICSI - WIRC Chapter	
Program Date	18.11.2017
Topics	SCM ON "KEY TAKEAWAYS OF KOTAK COMMITTEE REPORT ON CORPORATE GOVERNANCE"
Speakers	CS GAURAV PINGLE

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