De Jure

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Twice is Nice

Rajani Associates
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We are all in the midst of a crisis and the Government and the regulatory authorities are ensuring that we do not endure additional adversity in our regulatory compliance and payments.

The regulatory authorities have extended time for submission of various filings for the financial year 2019-20, reduced tax to be deducted at source to put more money into our hands, removed few restrictions, relaxed compliances and is in the process of decriminalisation of various offences.

In two such welcome moves, SEBI has relaxed the pricing guidelines for preferential issue of shares of companies having stressed assets and increased the creeping acquisition limit to 10% for the current financial year, on June 16, 2020 and June 22, 2020.

Reading both these relaxations together and limiting only to the Takeover Regulations, if a company has stressed assets ("**Stressed Company**") and desires to raise funds from an investor, then the investor may acquire shares of the Stressed Company, even if it exceeds 25%, without the obligation to make an open offer. In addition to investment from the investor, the promoter may acquire additional shares of the Stressed Company of up to 10% without the obligation to make an open offer. Both these acquisitions must ensure that the minimum public shareholding is not breached.

SEBI has issued these relaxations with a view to provide a conducive environment to raise funds and reduce cumbersome regulatory approvals. This may be the needed ammunition to stabilise the capital markets.

The SEBI rightly stated in its consultation paper that stressed companies need funds to avoid bankruptcy but face difficulties in raising capital through conventional means. A fall in the share price of such companies after the disclosure of financial results or debt defaults makes it even more difficult for them to raise capital. Such companies need capital urgently from financial investors and they can do so via a preferential allotment of shares. However, the current pricing regulations make it difficult for companies to issue shares.

It is with this noble thought in mind, SEBI relaxed the preferential issue pricing guidelines for stressed companies and increased the creeping acquisition limit. This move by SEBI will enable a promoter to infuse funds into the company and for the company to service its liabilities and financial obligations. Companies will have immediate access to funds rather than availing debt or leveraging security in the present stressed markets.

With this twin relaxations, a company with stressed assets may raise funds from a financial or strategic investor (even if the investment exceeds the 25% threshold limit) and also issue additional shares to its promoter up to 10% of the share capital, both without the obligation of either the investor or the promoter making an open offer.

This fund raise will help the company to not only pay its debts but also revive itself and be saved from being declared as a non-performing asset and being dragged to insolvency.

The benefit of these two amended provisions are available, provided the issuer company, the investor and the promoter 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.

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