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Valuation of Securities of a Company under the SEBI Regulations

ABSTRACT:

Introduction of section 247 of the Companies Act, 2013 recognized valuation by the registered valuer. It opens a new area of opportunity for the valuation professional in the country which happened due to introduction of this new section. The SEBI, a statutory regulatory body, got established on April 12, 1992. Its prime object is to regulate and to monitor the Indian capital and securities markets, ensures that developing regulations and guidelines protect investors' interests. This paper delves into the rules and guidelines under SEBI that are at play, in relation to the valuation of companies.

KEY WORDS:

Registered Valuer, SEBI, shares & debentures, capital market, securities,

INTRODUCTION

The issue, transfer of equity shares or other securities involves the valuation of the underlying company invariably. The principles and rules for valuing companies lie at the intersection of law and accounting. Various statutes and regulators are involved in this crucial activity. Some of the regulatory/ statutory issues are mentioned below:

- 1 The Company law ensures that companies do not short-change their existing shareholders by issuing securities below their fair market value.
- 2 The Reserve Bank of India has issued a number of rules and regulations under the Foreign Exchange Management Act, 1999 (FEMA) on account of the following reasons:

- a To staunch the outflow of foreign exchange on account of non-residents underpaying for Indian securities, or
- b Selling Indian securities to Indian residents at prices exceeding their fair market value.
- 3 The Securities and Exchange Board of India (SEBI) endeavours to prevent investors, especially retail investors, from being offered securities at a value higher than the applicable fair market value.
- 4 The Income tax authorities to ensure fair valuation of securities that are issued or bought and sold in order to prevent tax evasion.
- 5 Under the provisions of The Insolvency & Bankruptcy Code, 2016(IBC) requires valuation report from a registered valuer at the time of proposal at the time of the proposal of voluntary winding up of a company in order to find the fair value and liquidation of value of the company etc.

SEBI

The Securities and Exchange Board of India (SEBI) is the primary regulator for Indian stock exchanges and was established on 12th April 1992 under the SEBI Act of 1992 and came into force on 30th January, 1992.

Securities and Exchange Board of India (SEBI) framed various regulations, guidelines and compliances procedures while valuing the shares of a company. SEBI

Guidelines means the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999, as amended and includes all regulations and clarifications issued there under. It regulates and monitors the Indian capital and securities markets, ensuring that the regulations, guidelines and standards in order to protect the investors' interests in our country.

SEBI AND THE REGISTERED VALUER

SEBI has framed various regulations in order to define the valuer but by and large, it has recognized valuers appointed under Section 247 of the Companies Act, 2013.

- 1 SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations") provides that a "valuer" is a person:
 - a Registered under Section 247 of the Companies Act, 2013
 - b Other relevant rules framed for the valuer, or
 - c As specified by SEBI.
- 2 The SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 ("Security Receipts Regulations") follows almost the same approach by defining a registered valuer is a person Under section 247 of the Companies Act, 2013
- 3 The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations")

follow the definition of valuer given in the ICDR Regulations.

- 4 The SEBI (Appointment of Administrator and Procedure for Refunding to the Investors) Regulations, 2018 (“Administrator Regulations”) state that the term “registered valuer” shall have the meaning provided under the Companies (Registered Valuers and Valuation) Rules, 2017.

VALUATION OF SECURITIES OF A COMPANY UNDER THE REGULATIONS OF SEBI The SEBI requires the valuation report from a registered valuer under the following situations:

- a CONVERSION PRICE OF DEBT: Refer to Clause 158(6)(b) of the ICDR Regulations, the conversion price of debt, derived at as part of a debt restructuring scheme, shall be certified by two independent valuers;
- b PREFERENTIAL ISSUE OTHER THAN CASH: Refer to Clause 163(3) of the ICDR Regulations, specified securities may be issued on a preferential basis for consideration other than cash, the valuation of the assets in consideration for which the equity shares of a company may be issued, shall be done by an independent valuer which shall be submitted to the stock exchanges where the equity shares of the issuer are listed;
- c SHARES NOT FREQUENTLY TRADED: Refer to Clause 165 of the ICDR Regulations, where the shares of an issuer are not frequently traded, the price determined by the issuer

shall take into account the valuation parameters that are customary for valuation of shares in such companies. The issuer is required to provide a certificate from an independent valuer certifying compliance with this Clause, to the relevant stock exchange.

- 2 SEBI (Appointment of Administrator & Procedure for refunding to the Investors) Regulations, 2018.

- a EVALUATION OF THE PROPERTY OF DEFAULTER: Refer Clause 7(2)(b) provides that the Administrator shall engage the services of a registered valuer to evaluate the properties of defaulter that are attached by the Recovery Officer and needs certified valuation report in accordance as per the SEBI guidelines;

- b SALE OF THE PROPERTIES: Refer the Clause 8(1) provides that the Administrator shall undertake the process of sale of properties after conducting independent valuation of such properties by a registered valuer.

- 3 SEBI (Listing obligations and Disclosure Requirements) Regulations, 2015. 4 As per the provisions of Clause 87C (1), the valuation of listed security receipts is to be valued on a quarterly basis by an independent valuer. As per the provisions of Clause 87C (1), the valuation of listed security receipts is to be valued on a quarterly basis by an independent valuer..

- 4 SEBI (Issue & Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008. The provisions of clause 38G (1) states that valuation of listed security receipts is to be valued on a quarterly basis by an independent valuer.

SEBI GUIDELINES FOR VALUATION OF SECURITIES

SEBI, a statutory regulatory body, regulates and monitors the Indian capital and securities markets, ensure developing a suitable regulations and guidelines and to protect the investors and is responsible for regulating the Indian capital market.

"When trading in an equity/equity related security i.e., convertible debentures, equity warrants, etc. in a month is both less than Rs. 5 lacs and the total volume is less than 50,000 shares, it shall be considered as a thinly traded security and valued accordingly".

SEBI issued guidelines vide the circular

no MFD/CIR/8/92/2000 dated September 18, 2000 in respect of the valuation of securities, identification and provisioning for nonperforming assets i.e., debt securities

CONCLUSION

SEBI was established in order to bring about fairness and security in trading. Since its inception, it has introduced SEBI guidelines and regulations to improve the situation. It improves the stock market, makes it safer and more reliable for trading. It strengthens the stock market's regulatory system, empowers the Indian securities market, attracting more investors to trading platforms. Furthermore, its role in regulating businesses involved in the stock exchange that protects the interests of traders. Overall, the SEBI is a strong regulatory body that helps to reduce the risk of fraud in the stock exchanges and capital markets in the country and it has come close to investor protection.

