CIN # L99999GJ1987PLC009768
Regd. Office: 9-10, GIDC Industrial Estate, WAGHODIA, Dist.: Vadodara, 391760
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Website: www.20microns.com

24th October, 2024

To :

BSE Limited **Listing Compliances** **Phiroze Jeejeebhoy Towers** **Dalal Street, Fort,** **MUMBAI – 400 001.** **SCRIP Code : 533022**	**National Stock Exchange of India Limited** **Listing Deptt.** **Exchange Plaza, Bandra – Kurla Complex,** **Bandra [East],** **MUMBAI – 400 051.** **SYMBOL : 20 MICRONS**

Sub: Additional Details Required for Corporate Announcement filed under Regulation 30 of SEBI (LODR) Regulations, 2015.- A copy of appeal filed by the NSE.

Pursuant to Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, SEBI Circular No.SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123 dated July 13, 2023 and in continuation of our disclosure dated 23rd October, 2024, we enclosed herewith a copy of appeal filed by the NSE.

We request you to please take the same on record.

Thanking you,

Yours faithfully
For 20 Microns Limited

KOMAL PANDEY
Digitally signed by KOMAL PANDEY
Date: 2024.10.24 12:05:51 +05'30'

[Komal Pandey]
Company Secretary
Membership # A-37092
Encl.: as above.

D - 3946/24

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1305 OF 2024

(Under Section 22F of the Securities Contracts (Regulation) Act, 1956)

(Arising out of the Order dated 28 November 2023 passed by the Ld. Securities Appellate Tribunal, Mumbai in Appeal No. 846 of 2023)

IN THE MATTER OF:
NATIONAL STOCK EXCHANGE OF INDIA LIMITED

...APPELLANT

VERSUS

20 MICRONS LTD. & ANR

...RESPONDENTS

WITH

I. A. No. 23491 of 2024
(Application seeking ex-parte ad-interim stay)

WITH

I.A. No. 23494 of 2024
(Application seeking exemption from filing certified copy of the Impugned Order)

WITH

I. A. No. 23498 of 2024
(Application seeking permission to file additional documents)

PAPERBOOK
(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE APPELLANT: RAVI TYAGI

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A

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2024

IN THE MATTER OF:
NATIONAL STOCK EXCHANGE OF INDIA LIMITED

...APPELLANT

VERSUS

20 MICRONS LTD. & ANR

...RESPONDENTS

OFFICE REPORT ON LIMITATION

1. The Appeal is / are within time.

2. The Appeal is barred by time and there is delay of ____ days in filing the same against the Order dated and the Application for condonation of days delay has been filed.

3. There is delay of _____ days in re-filing the Appeal and the Application for condonation of days delay in re-filing has been filed.

NEW DELHI

DATED: 25.../01/2024

(BRANCH OFFICER)

A1

PROFORMA FOR FIRST LISTING

SECTION:

The case pertains to (Please tick/ check the correct box):

[√] Central Act: (Title): Securities Contracts (Regulation) Act 1956

[√] Section: Section 22 F

[ ] Central Rule: (Title) N.A.

[ ] Rule No(s): N.A.

[ ] State Act: (Title) N.A.

[ ] Section: N.A.

[ ] State Rule: (Title) N.A.

[ ] Rule No(s): N.A.

[ ] Impugned Interim: (Date) N.A.

[√] Impugned Final Order/Decree:(Date) 28.11.2023

[√] High Court: N.A.

[ ] Name of Judges: Hon'ble Mr. Justice Tarun Agarwala Presiding Officer, and Ms. Meera Swarup Technical mamber

[ ] Tribunal/ Authority: (Name) : Securities Appellate Tribunal Mumbai

---

1. Nature of matter: [√] Civil [ ] Criminal
2. (a) Petitioner No.1: National Stock Exchange of India Ltd.
   (b) e-mail ID: N.A.
   (c) Mobile phone number: N.A.
3. (a) Respondent No.1. 20 Microns Ltd.
   (b) e-mail ID: N.A.
   (c) Mobile phone number: N.A.
4. (a) Main category classification: 1006 Company Law, MRTP,TRAI, SEBI, Idrai and RBI

A2

6. (a) Similar disposed of matter with citation, if any, & case details: No similar disposed of case.

(b). Similar pending matter with case details: No similar matter is pending

7. Criminal Matter:

(a) Whether accused/ convict has surrendered:

[ ] Yes [ ] No [√] N.A.

(b) FIR No. N.A. Date: N.A.

(c) Police Station: N.A.

(d) Sentence Awarded: N.A.

(e) Sentence Undergone: N.A.

8. Land Acquisition Matters:

(a) Date of Section 4 notification: N.A.

(b) Date of Section 6 notification: N.A.

(c) Date of Section 17 notification: N.A.

9. Tax Matters: Tax effect: N.A.

10. Special Category (first petitioner/ appellant only):

[ ] Senior citizen > 65 years [ ] SC/ST [ ] Woman/ child [ ] Disabled [ ] Legal Aid case

[ ] In custody [√] N.A.

11. Vehicle Number (in case of Motor Accident Claim matter): N.A.

Dated 25.01.2024

Name: RAVI TYAGI
Registration No. 3808
E-mail: tyagi.ravi26@gmail.com
Mob: 9313421729

SYNOPSIS

The present Civil Appeal is being preferred under Section 22F of the Securities Contracts (Regulation) Act, 1956 ("**SCRA**") challenging the Order dated 28 November 2023 ("**Impugned Order**") passed by the Ld. Securities Appellate Tribunal, Mumbai ("**Ld. Tribunal**") in Appeal No. 846 of 2023. The Ld. Tribunal while passing the Impugned Order has placed reliance on its earlier Order dated 27 April 2023 in the case of '*Nectar Life Sciences Ltd. vs. SEBI & Ors., Appeal No. 185 of 2023*' which order is currently under challenge before this Hon'ble Court in a Civil Appeal filed on behalf of the Appellant herein titled as '*National Stock Exchange of India Limited vs. Nectar Life Sciences Ltd & Anr., Civil Appeal No. 4794/2023.*' This Hon'ble Court vide its order dated 18 September 2023 passed in I.A. No. 172849 of 2023 of 2023 in Civil Appeal No. 4794 of 2023 had specifically directed that the order impugned therein shall not be treated as a precedent till such time the matter is adjudicated by this Hon'ble Court. The Order dated 18 September 2023 was brought to the knowledge of the Ld. Tribunal during the hearing and the same was also placed on record along with written submissions filed on behalf of the Appellant herein however, the Ld. Tribunal, despite there being a complete embargo on placing reliance on the Order dated 27 April 2023, proceeded to pass the erroneous Impugned Order, in utter disregard of the order dated 18 September 2023 of this Hon'ble Court. Moreover, the Appellant was never given any opportunity to file its detailed reply before the Ld. Tribunal.

C

While passing the Impugned Order, the Ld. Tribunal overlooked the fact that the Regulation 17(1C) of (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**"LODR Regulations"**) which is a general regulation, for all classes of directors, could not have been interpreted and applied in cases including the present case which are squarely covered under Regulation 17 (1A) of the LODR Regulations. Regulation 17 (1A) of the LODR Regulations was inserted vide SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018 with effect from 01 April 2019 pursuant to the report of a committee constituted by SEBI for improving the standards of Corporate Governance of listed entities (Kotak Committee). One of the key observations of the said committee report was that although the Companies Act, 2013 provides a particular age of 70 years beyond which the appointment of a Managing Director, Whole Time Director or Manager can be done by passing a special resolution however, there was no such provision with respect to the appointment of Non- Executive Directors. In view of the aforesaid, the Committee vide its report had recommended insertion of a specific provision in the LODR Regulations to regulate the appointment of a person or continuation of directorship of any person as a non-executive director **who has attained the age of Seventy-Five years**. Therefore, in general, the appointment, continuation, and removal of Non-executive Independent Directors is governed by Section 149 of the Companies Act, 2013 and Regulation 25 of the LODR Regulations however, Regulation 17 (1A) of the LODR Regulations was inserted to have a very limited

application, i.e., in case of appointment or continuation of directorship of a Non-executive Independent Director who has attained the age of Seventy- Five years. The Ld. Tribunal has gravely erred in law by relying upon the provisions of Regulation 17 (1C) of LODR Regulations, while interpreting the provisions of Regulation 17 (1A) of LODR Regulations, when the language of Regulation 17 (1A) of LODR Regulations was clear and unambiguous. The observation of the Ld. Tribunal that Regulation 17 (1A) and (1C) are to be read conjointly, is completely misplaced as, such a reading would render the sole objective of Regulation 17 (1A) of LODR Regulations otiose.

It is imperative to mention here that the Ld. Tribunal has erred in law by failing to apply the "Rule of plain meaning" and "Rule of literal interpretation" while interpreting the provisions of Regulation 17(1A) of LODR Regulations. It is submitted that according to these Rules, the words of a statute must be given their ordinary meaning unless doing so would lead to an absurd result. However, if the words of a statute are unclear or ambiguous, other aids to interpretation may be used to determine the meaning of the statute. One such aid to interpretation is the Principle of Harmonious Construction, which states that two provisions of the same statute should be interpreted in a way that gives effect to both provisions as per the intention of the legislature. That the observation of the Ld. Tribunal in the Impugned Order, that Regulation 17 (1A) and (1C) of LODR Regulations are to be read conjointly, is grossly misplaced as, such a reading would render the sole

existence and objective of Regulation 17 (1A) of LODR Regulations otiose and redundant. Furthermore, the Ld. Tribunal has erred in law by relying upon the provisions of Regulation 17 (1C) of LODR Regulations for interpreting the word "*unless*" as mentioned in Regulation 17 (1A) of LODR Regulations and thus ignoring the "Rule of literal construction" in the absence of any ambiguity in the language used in Regulation 17 (1A) of LODR Regulations.

The Ld. Tribunal has also completely overlooked the fact that a Non-Executive Director who has crossed the age of 75 years has a specific legal regime with one and only specific provision dealing with the same, i.e., Regulation 17 (1A) of LODR Regulations. The interpretation given by the Ld. Tribunal to the word "*unless*" loses sight of the scheme of how a Non-Executive Independent Director is treated under the law and which mandates an explanatory statement, a justification by the board, culminating in a prior special resolution. In the present case, Respondent No. 1 appointed Mr. Swaminathan Sivaram, aged 76 years, as a Non-Executive Director on 16 May 2023, without there being any casual vacancy in the board and later ratified the same on 10 August 2023 by a special resolution after a period of 2 months and 24 days.It is submitted that this Hon'ble Court vide its order dated 18 September 2023 has specifically stated that the order dated 27 April 2023 passed by the Ld. Tribunal should not be treated as a precedent and the said fact was duly brought to the knowledge of the Ld. Tribunal during the course of hearing and also by way of Written Submissions filed by the

Appellant before the Ld. Tribunal on 25 November 2023. However, the Ld. Tribunal has ignored and overlooked the submissions of the Appellant and continued to pass the Impugned Order.

It is most humbly submitted that the Impugned Order is bad in law, erroneous, misdirected and perverse and therefore it is most respectfully submitted that the Impugned Order cannot be sustained and is liable to be set aside.

LIST OF DATES

Date	Event
29 June 1987	Respondent No. 1 was incorporated under the provisions of Company Act, 1956.
05 October 2017	Kotak Committee formed by the Respondent No. 2 gave its report on Corporate Governance.
01 April 2019	In pursuance to the Kotak Committee Report, Regulation 17 (1A) of the LODR Regulations was inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, with effect from 01 April 2019.
16 May 2023	A meeting of the Board of Directors was held whereby a resolution was passed to appoint Mr. Swaminathan Sivaram, aged 76 years, as a Non-Executive Independent Director of Respondent No. 1.
30 June 2023	Vide the Corporate Governance Report for the quarter end 30 June 2023, it came to the knowledge of the Appellant that the appointment of Mr. Swaminathan Sivaram was done without passing of a special resolution of the shareholders to that effect in terms of the Regulation 17(1A) of the LODR Regulations.
26 July 2023	The listing compliance department of the Appellant addressed an email to Respondent No. 1 informing Respondent No. 1 that as per Regulation 17 (1A) of the LODR Regulations, no listed entity shall appoint a person or continue the directorship of any person as a Non-Executive Director who has attained the age of 75 years 'unless' a special resolution is passed to that effect, with

	the explanatory statement annexed to the notice for motion of appointment of such person.
27 July 2023	The Respondent No. 1 replied to the email of the Appellant dated 26 July 2023 and stated that the approval of the shareholders for appointment of a person on the Board of Directors is taken at the next general meeting or within a period of three months, from the date of appointment whichever is earlier, under Regulation 17 (1C) of LODR Regulations.
09 August 2023	The listing compliance department of the Appellant issued another email to Respondent No. 1 seeking clarification for appointment of Mr. Swaminathan Sivaram as a Non-Executive Independent Director without seeking approval of the shareholders of Respondent No. 1 as prescribed under LODR Regulations.
10 August 2023	The appointment of Mr. Swaminathan Sivaram was ratified by way of a special resolution of the shareholders to that effect, after a passage of 2 months and 24 days.
12 August 2023	In response to the above clarification sought by the Appellant on 09 August 2023, Respondent No. 1 addressed a response thereby informing that the shareholders have approved the approval of Mr. Swaminathan Sivaram as an Independent Director of Respondent No. 1 and further placed reliance upon the judgment of Nectar Life Science Limited dated 27 April 2023, wherein the Ld. Tribunal had observed that the word "unless" in Regulation 17 (1A) of LODR does not mean "prior approval" and once again reiterated that the approval of the shareholders could be

	sought pursuant to appointment within a period of 3 months.
21 August 2023	The Appellant levied a penalty of Rs. 2000/- per day on Respondent No. 1 for non-compliance of Regulation 17 (1A) of LODR Regulations for a period of 46 days for the quarter ending 30 June 2023.
24 August 2023	The Respondent No. 1 paid the fine levied amounting to Rs. 1,08,560/- under protest and subject to the decision of the Ld. Tribunal.
18 September 2023	This Hon'ble Court in '*National Stock Exchange of India Limited vs. Nectar Life Sciences Ltd & Anr., Civil Appeal No. 4794/2023*' in its order dated 18 September 2023, has observed that "*we are of the view that interest of justice would be sub-served by observing that the impugned judgment is not to be treated as a precedent in the meantime till we consider the matter on merits*".
25 November 2023	The Respondent No. 1 filed an Appeal before the Ld. Tribunal against the levy of fine upon Respondent No. 1. The Appellant herein filed its Written Submissions before the Ld. Tribunal on 25 November 2023 as the Respondent No. 1 was never given any opportunity to file its reply before the Ld. Tribunal.
28 November 2023	The Ld. Tribunal passed the Impugned Order in favour of Respondent No. 1 and erroneously allowed the appeal of Respondent No. 1 by relying upon its own order dated 27 April 2023 in '*Nectar Life Sciences Ltd. vs. SEBI & Ors., Appeal No. 185 of 2023*', which was expressly barred by

	this Hon'ble Court to be used as a precedent till the matter is considered on merits.
25.01.2024	Hence the present Civil Appeal.

BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved on : 22.11.2023

Date of Decision : 28.11.2023

Appeal No. 845 of 2023

20 Microns Limited
9-10, G.I.D.C. Industrial Estate,
Waghodia,
Baroda GJ 391 760 India ...Appellant

Versus

1. BSE Limited
   Phiroze Jeejeebhoy Towers,
   Dalal Street,
   Mumbai – 400 001.

2. Securities and Exchange Board of India,
   SEBI Bhavan, Plot No. C-4A, G-Block,
   Bandra-Kurla Complex, Bandra (East),
   Mumbai – 400 051. ...Respondents

Mr. Anand Kankani, CS with Mr. Prakhar Godre, CS and Ms. Muskan Mubarakali Kadiwar, i/b A Kankani & Associates for the Appellant.

Mr. Sagar Divekar, Advocate with Mr. Abhimanyu Bhapankar, Advocate for the Respondent Nos. 1 (BSE).

Mr. Ravishekhar Pandey, Advocate with Mr. Nishit Dhruva, Ms. Shefali Shankar, Ms. Rasika Ghate, Mr. Harsh Sheth, Advocates i/b MDP & Partners for the Respondent Nos. 2 (SEBI).

AND
Appeal No. 846 of 2023

20 Microns Limited
9-10, G.I.D.C. Industrial Estate,
Waghodia,
Baroda GJ 391 760 India ...Appellant

Versus

1. National Stock Exchange of India Limited
   Exchange Plaza,
   Bandra Kurla Complex,
   Bandra East,
   Mumbai – 400 051.

2. Securities and Exchange Board of India,
   SEBI Bhavan, Plot No. C-4A, G-Block,
   Bandra-Kurla Complex, Bandra (East),
   Mumbai – 400 051. ...Respondents

Mr. Anand Kankani, CS with Mr. Prakhar Godre, CS and Ms. Muskan Mubarakali Kadiwar, i/b A Kankani & Associates for the Appellant.

Mr. Ankit Lohia, Advocate with Mr. Shlok Bodas, Advocate i/b Parinam Law Associates for the Respondent Nos. 1 (NSE).

Mr. Ravishekhar Pandey, Advocate with Mr. Nishit Dhruva, Ms. Shefali Shankar, Ms. Rasika Ghate, Mr. Harsh Sheth, Advocates i/b MDP & Partners for the Respondent Nos. 2 (SEBI).

CORAM : Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. Two appeals have been filed against the communication dated August 21, 2023 passed by BSE Limited ('BSE' for short) and National Stock Exchange of India Limited ('NSE' for short) wherein a fine was levied on account of non-compliance of Regulation 17(1A) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations' for short) pursuant to the appointment of Mr. Swaminathan Sivaram as an additional director in the category of non-executive independent director by way of a board resolution.

2. The facts leading to the filing of the present appeal is, that the appellant Company is a public limited company and its shares are listed on the BSE and NSE. The composition of the board of directors of the Company was that it had chairman-cum-managing director, a managing director, a director and four independent directors. The composition of the board of directors was in accordance with the LODR Regulations as it had consisted more than six directors and was in compliance with Regulation 17(1C) of the LODR Regulations. Under the LODR Regulations the Company was required to appoint three independent directors which was already existing and therefore the Company was in compliance with the LODR Regulations.

However, the second term of two independent directors was to expire on August 12, 2024.

3. Considering the good corporate governance practice that was being conducted by the Company the Nomination and Remuneration Committee of the Company made a recommendation to the board of directors for appointment of Mr. Swaminathan Sivaram as an additional director in the category of non-executive independent director subject to the approval of the members by way of special resolution in the 36th Annual General Meeting of the Company.

4. Based on the said recommendation the board of directors appointed Mr. Swaminathan Sivaram as an additional director in the category of non-executive independent director subject to the approval of members by way of special resolution in the 36th Annual General Meeting of the Company. It may be noted here that Mr. Swaminathan Sivaram had already attained the age of 75 years and therefore his appointment was subject to the approval of the members by way of special resolution.

5. The 36th Annual General Meeting of the Company was held on August 10, 2023 in which the resolution of the board of directors was approved by way of a special resolution by the

members of the Company. By the impugned order dated August 21, 2023 the respondent BSE communicated to the appellant that they were not in compliance with Regulation 17(1A) of the LODR Regulations and accordingly imposed a fine of Rs. 1,08,560/-. Similar fine was also imposed by NSE.

6. We have heard Shri Anand Kankani, CS with Shri Prakhar Godre, CS and Ms. Muskan Mubarakali Kadiwar for the appellant, Shri Sagar Divekar with Shri Abhimanyu Bhapankar, the learned counsel for the BSE, Shri Ankit Lohia with Shri Shlok Bodar, the learned counsel for NSE and Shri Ravishekhar Pandey, Shri Nishit Dhruva, Ms. Shefali Shankar, Ms. Rasika Ghate and Shri Harsh Sheth, the learned counsel for the respondent no. 2 SEBI.

7. At the outset out we find that no reason whatsoever has been given in the impugned order as to why and how the Company has violated the provisions of Regulation 17(1A) of the LODR Regulations. The impugned order cannot be sustained on this short ground itself. The learned counsel for the respondents submitted that the fine was imposed on account of non-compliance of Regulation 17(1A) which provides that an additional director can only be appointed only after approval is given by the members of the Company through a special

resolution and that an appointment cannot be made prior to taking the approval through a special resolution from the members of the Company.

8. Therefore, the core issue is, whether approval is required to be taken from the shareholders of the Company through a special resolution before a person who has attained the age of 75 years can be appointed.

9. Before we deal with the aspect it would be necessary to refer to a few provisions of Companies Act and LODR Regulations.

10. Section 149 of the Companies Act, 2013 provides that every Company shall have board of directors consisting of individuals as directors.

11. Section 152(2) of the Companies Act provides as under:-

> *"Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting".*

The aforesaid provision indicates that directors can only be appointed by the Company in the Annual General Meeting.

12. Section 161(1) of the Companies Act provides as under:

"The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an Additional Director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier."

13. A perusal of the aforesaid provisions indicates that the board of directors can appoint any person as an additional director who shall hold office up to the date of the next Annual General Meeting.

14. A reading of Section 152(2) and 161(1) of the Companies Act makes it clear that a director can only be appointed by the shareholders of the Company in an Annual General Meeting. However, the board of directors can appoint any person as an additional director who will hold office up to the date of the next Annual General Meeting.

15. In the instant case, the board of directors appointed Mr. Swaminathan Sivaram as an additional director till the date of the next Annual General Meeting and subject to the approval given by the members of the Company through a special resolution.

16. Regulation 17(1A) and 17(1C) of the LODR Regulations are extracted here under :-

Regulation 17(1A)

"No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy-five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person."

Regulation 17(1C)

"The listed entity shall ensure that approval of shareholders for appointment or re-appointment of a person on the Board of Directors or as a manager is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier."

17. Regulation 17(1A) provides that no listed company shall appoint a person as a non-executive director who has attained the age of 75 years unless a special resolution is passed by the members of the Company. Regulation 17(1C) provides that the listed entity shall ensure that approval of shareholders for appointment of a person on the board of directors is taken at the next general meeting or within a period of 3 months from the date of appointment whichever is earlier.

18. Thus, from a conjoint reading of Section 149, 152(2), 161(1) of the Companies Act 2013 read with Regulation 17(1A)

and 17(1C) of the LODR Regulations makes it apparently clear that the director is required to be appointed by the members of the Company. If a person is appointed as an additional director by the board of directors then his appointment is till the next annual general meeting. Regulation 17(1A) provides that if a person who has attained the age of 75 years then his appointment has to be made by a special resolution passed by the members and Regulation 17(1C) provides that appointment must be approved in the next general meeting or within three months from the date of the appointment whichever is earlier.

19. In the instant case, the appointment was made on May 16, 2023 by the board of directors which was approved in the next annual general meeting by the member of the Company through a special resolution and that this special resolution was passed on August 10, 2023 within three months from the date of appointment. Thus, from a conjoint reading of Regulation 17(1A) and 17(1C) of the LODR Regulations appointment of an additional director can be made by the board of directors which is required to be approved by the members of the Company through a special resolution and such approval is required to be made within three months.

20. In ***Nectar Life Sciences Ltd. vs. SEBI & Ors., Appeal no. 185 of 2023 decided on April 27, 2023*** this Tribunal considered the provisions of Regulations 17(1A) with other provisions and held that the word "unless" as depicted in Regulation 17(1A) does not mean "prior approval" nor the requirement of passing a special resolution was a qualificatory condition for appointment as a director.

21. In view of the aforesaid, the contention of the respondent that no person can be appointed as a non-executive independent director unless prior approval of the shareholders was made by a special resolution is erroneous.

22. Regulation 17(1A) and 17(1C) has to be read harmoniously with the provisions of Section 152(2) and 161(1) of the Companies Act which will make it clear that a person above the age of 75 years can be appointed by the board of directors. Such appointment is required to be approved subsequently within the prescribed period by a special resolution in the next general meeting by the members of the Company which in the instant case was done within the prescribed period.

23. In view of the aforesaid, no penalty could have been imposed by the BSE and NSE for violation of Regulation 17(1A) of the LODR Regulations.

24. In view of the aforesaid, the impugned orders cannot be sustained and are quashed. The appeals are allowed with no order as to costs.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

28.11.2023
msb

True Copy

12

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2024

(Under Section 22F of the Securities Contracts (Regulation) Act, 1956)

(Arising out of the Order dated 28November 2023 passed by the Ld. Securities Appellate Tribunal, Mumbai in Appeal No. 846 of 2023)

IN THE MATTER OF:

NATIONAL STOCK EXCHANGE OF INDIA LIMITED
Exchange Plaza, Bandra Kurla Complex,
Bandra (East)
Mumbai-400051
Through Vice President- Regulatory

...APPELLANT

VERSUS

1. **20 MICRONS LTD.**
   9-10, G.I.D.C. Industrial Estate,
   Waghodia,
   Baroda GJ 391 570
   Through Director

2. **SECURITIES EXCHANGE BOARD OF INDIA**
   SEBI Bhavan, Plot No. C-4A, G-Block,
   Bandra Kurla Complex,
   Bandra East, Mumbai-400051
   Through Secretary

...RESPONDENTS

APPEAL UNDER SECTION 22F OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 AGAINST THE ORDER DATED 28NOVEMBER 2023 PASSED BY THE HON'BLE SECURITIES APPELLATE TRIBUNAL, MUMBAI IN APPEAL NO. 846 OF 2023

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE CIVIL APPEAL OF
THE APPELLANT ABOVENAMED

MOST RESPECTFULLY SHOWETH: -

1. The present Civil Appeal is being preferred under Section 22F of the Securities Contracts (Regulation) Act, 1956 ("**SCRA**") challenging the Order dated 28November 2023 ("**Impugned Order**") passed by the Ld. Securities Appellate Tribunal, Mumbai ("**Ld. Tribunal**") in Appeal No. 846 of 2023. The Appellant is filing the present Civil Appeal for quashing and setting aside the Impugned Order passed by the Ld. Tribunal wherein the Ld. Tribunal has erroneously allowed the appeal of Respondent No. 1 by relying upon its own order dated 27 April 2023 in '*Nectar Life Sciences Ltd. vs. SEBI & Ors., Appeal No. 185 of 2023*', wherein this Hon'ble Court has categorically held that the Impugned Order before it should not be treated as a precedent till the matter is decided on its

merits. This Hon'ble Court in '*National Stock Exchange of India Limited vs. Nectar Life Sciences Ltd & Anr., Civil Appeal No. 4794/2023*' in its order dated 18 September 2023, has observed that "*we are of the view that interest of justice would be sub-served by observing that the impugned judgment is not to be treated as a precedent in the meantime till we consider the matter on merits*". Despite being well aware of the fact that this Hon'ble Court has categorically barred the order dated 27 April 2023 of the Ld. Tribunal in '*Nectar Life Sciences Ltd. vs. SEBI &Ors., Appeal No. 185 of 2023*' to be treated as a precedent till the matter is considered on merits, the Ld. Tribunal has knowingly erred in passing the Impugned Order dated 28 November 2023 and held that: -

> "*19...Thus, from a conjoint reading of Regulation17(1A) and 17(1C) of the LODR Regulations appointment of an additional director can be made by the board of directors which is required to be approved by the members of the Company through a special resolution and such approval is required to be made within three months.*
>
> *20. In **Nectar Life Sciences Ltd. vs. SEBI &Ors., Appeal no.185 of 2023 decided on April 27, 2023** this Tribunal considered the provisions of Regulations 17(1A) with other provisions and held that the word "unless" as depicted in Regulation 17(1A) does not mean "prior approval" nor the requirement of passing a special resolution was a qualificatory condition for appointment as a director.*

21. In view of the aforesaid, the contention of the respondent that no person can be appointed as a non-executive independent director unless prior approval of the shareholders was made by a special resolution is erroneous.

..."

The Ld. Tribunal has held that no penalty could have been imposed for violation of Regulation 17(1A) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**"), and quashed the order of the Appellant imposing penalty on Respondent No. 1 for violation of Regulation 17(1A) of the LODR Regulations. It is submitted that the Ld. Tribunal while passing the Impugned Order has wrongly relied on 17(1C) of the LODR Regulation as the said regulation does not deal with the issue at hand.

2. The Appellant hereby submits that present Civil Appeal is filed without any delay and within the limitation as prescribed under Section 22F of SCRA.

3. **QUESTIONS OF LAW:**

The following questions of law arise for consideration before this Hon'ble Court:

A. Whether the Ld. Tribunal grossly erred in relying on its own order dated 27 April 2023 in '*Nectar Life Sciences Ltd. vs. SEBI & Ors., Appeal No. 185 of 2023*' while passing the Impugned Order and thereby ignoring and bypassing the order dated 18 September 2023 passed by this Hon'ble Court in '*National*

Stock Exchange of India Limited vs. Nectar Life Sciences Ltd & Anr., Civil Appeal No. 4794/2023' directing that the order dated 27 April 2023 passed by the Ld. Tribunal not to be treated as a precedent by the Ld. Tribunal?

B. Whether the Impugned Order passed by the Ld. Tribunal is bad in law as it is based upon an earlier order dated 27 April 2023 of the Ld. Tribunal which was expressly barred by this Hon'ble Court to be used as a precedent till the matter forming part of '*National Stock Exchange of India Limited vs. Nectar Life Sciences Ltd & Anr., Civil Appeal No. 4794/2023*' was considered on merits?

C. Whether the Ld. Tribunal erred in law in relying upon the provisions of Regulation 17 (1C) of LODR Regulations, while interpreting the provisions of Regulation 17 (1A) of LODR Regulations, when the language of Regulation 17 (1A) was clear and unambiguous?

D. Whether the Ld. Tribunal erred in holding that Regulation 17 (1A) of LODR Regulations and Regulation 17 (1C) of LODR Regulations are to be read conjointly in relation to the manner of appointment of a Non-Executive Director who has attained the age of 75 years, in the absence of any ambiguity or vagueness in the provisions of Regulation 17 (1A) of LODR Regulations warranting a conjoint reading of the two clauses?

E. Whether the Ld. Tribunal erred in law by failing to apply the "Rule of plain meaning" and "Rule of literal interpretation" while interpreting the provisions of Regulation 17(1A) of LODR Regulations?

F. Whether the Ld. Tribunal erred in law by relying upon the provisions of Regulation of 17(1C) of LODR Regulations for interpreting the word "unless" as mentioned in Regulation 17 (1A) of LODR Regulations and thus ignoring the "Rule of literal construction" in the absence of any ambiguity in the language used in Regulation 17(1A) of LODR Regulations?

G. Whether the Ld. Tribunal erred in placing reliance on the provisions of Section 149, 152(2) and 161(1) of the Companies Act, 2013 for the purposes of interpreting the word "unless" mentioned in Regulation 17 (1A) of LODR Regulations, in the absence of any lack of clarity in Regulation 17 (1A) of LODR Regulations?

H. Whether the Ld. Tribunal erred in interpreting the provisions of Sections 149, 152(2) and 161(1) of the Companies Act, 2013 for the purposes of construing the provision of Regulation 17 (1A) of LODR Regulations?

I. Whether the provisions of Regulation 17 (1A) and Regulation 17 (1C) of LODR Regulations could have been read conjointly when the provisions of Regulation of 17 (1A) of LODR Regulations were specific and relatable only to the Non-Executive Director, who had attained the age of 75 years whereas the provisions of Regulation 17 (1C) of LODR Regulations were general in nature and relatable to a person on the Board of Directors?

J. Whether the Ld. Tribunal failed to appreciate a conjoint reading of Regulation 17 (1A) and Regulation 17 (1C) of LODR Regulations would render the sole objective of Regulation 17 (1A) of LODR Regulations otiose?

K. Whether the findings of the Ld. Tribunal are exceptionally flawed since the Ld. Tribunal has failed to appreciate the fact that the provisions of the Companies Act, 2013 categorically deal with procedure for appointment or continuation of managing director, whole-time director, and manager beyond a certain age but no such provision is available with respect to appointment or continuation of a Non-Executive Director?

L. Whether the Ld. Tribunal has completely ignored the recommendations of the Kotak Committee, as also mentioned in the Short Note filed on behalf of the Appellant dated 25 November 2023 and overlooked the fact that the LODR Regulations is based on those recommendations that are in place to improve the standards of corporate governance of listed companies in India?

M. Whether the Ld. Tribunal's interpretation of the word "*unless*" in the Impugned Order, as depicted in Regulation 17(1A) of LODR Regulations is unwarranted, erroneous and misplaced?

N. Whether the Ld. Tribunal has failed to take into account the intent of the legislature into passing Regulation 17 (1C) of LODR Regulations?

O. Whether the Ld. Tribunal has passed the Impugned Order which utterly runs against the provisions of the LODR Regulations and misconstrued the same while mixing up the same with a cocktail of provisions the Companies Act, 2013, which does not even deal with the appointment of a Non-Executive Director?

4. **BRIEF FACTS:**

The brief facts leading to the filing of the present Civil Appeal are as under:

i. The Appellant, i.e., National Stock Exchange of India Ltd. is a recognised stock exchange having its registered office at Exchange Plaza, C/1, G-Block, Bandra-Kurla Complex, Bandra (East), Mumbai – 400051. The Appellant is the leading stock exchange of India and was established in the year 1992 as the first dematerialized electronic exchange in the country.

ii. Respondent No. 1, i.e., 20 Microns Ltd. is a public limited company established under the provisions of the Companies Act, 1956 and is listed on the platform of the Appellant.

iii. Respondent No.2, i.e., Securities Board Exchange of India is the regulatory body for monitoring, functioning of the stock exchanges in the country and is known for playing a vital role in smooth functioning of the market and stock exchange.

iv. The composition of the Board of Directors of the Respondent No.1 was that it had chairman-cum-managing director, a managing director, a director and four independent directors. It is submitted that the second term of the two independent director was expiring on 12.08.2024. therefore, there was no vacancy at the relevant time in the Board of Directors of the Respondent No.1 company.

v. On 16 May 2023, a meeting of the Board of Directors was held whereby a resolution was passed to appoint Mr. Swaminathan Sivaram, aged 76 years, as a Non-Executive Independent Director of Respondent No. 1 Company, however, no special resolution of the shareholders was passed to that effect in terms of Regulation 17 (1A) of LODR Regulations. A copy of the Board Resolution is annexed herewith and marked as **ANNEXURE A-1** (47 - 48)

vi. Mr. Swaminathan Sivaram took charge as an Independent Non-Executive Director of the company forthwith, till seeking approval of the shareholder at the ensuing Annual General Meeting. It is pertinent to mention here that this appointment was a proactive step taken by Respondent No. 1 Company, as admittedly there was no vacancy created for the appointment of a Non-Executive Independent Director, and the term of other Non-Executive Independent Directors of Respondent No. 1 Company, i.e., Mr. Ramkishan Devidyal and Mr. Atul Patel is to expire on 12 August 2024, which was one year and three months future appointment of Mr. Swaminathan Sivaram.

vii. Upon perusing the Corporate Governance Report for the quarter end 30 June 2023, it came to the knowledge of the Appellant that the appointment of Mr. Sivaram was done without passing of a special resolution of the shareholders to that effect in terms of the Regulation 17(1A) of the LODR Regulations. In view of the aforesaid, the listing compliance department of the Appellant

addressed an email dated 26 July 2023 to Respondent No. 1 Company thereby informing Respondent No. 1 Company that as per Regulation 17(1A) of LODR Regulations, no listed entity shall appoint a person or continue the directorship of any person as a Non-Executive Director who has attained the age of 75 years 'unless' a special resolution is passed to that effect, with the explanatory statement annexed to the notice for motion of appointment of such person. The Appellant further requested the Respondent No. 1 Company to share the special resolution passed, if any, for such appointment. A copy of the Corporate Governance Report for the quarter end 30 June 2023 is annexed herewith and marked as **ANNEXURE A- 2.** (Pg-63) A copy of the email dated 26 July 2023 from the Appellant to Respondent No. 1 Company is annexed herewith and marked as **ANNEXURE A-3** (64)

viii. Respondent No. 1 replied via letter dated 27 July 2023 to the email of the Appellant dated 26 July 2023 and stated that the approval of the shareholders for appointment of a person on the Board of Directors is taken at the next general meeting or within a period of three months, from the date of appointment whichever is earlier, under Regulation 17 (1C) of LODR Regulations. It is submitted that this reliance on Regulation 17 (1C) of LODR Regulations is completely misplaced as the same was against the intention of the legislature while enacting 17(1C) and that it is Regulation 17 (1A) of LODR Regulations which needs to be complied in case a person

appointed for as a Non-Executive Director is of the age of 75 years. The relevant part of the LODR Regulations is being reproduced herein for the ready reference of this Hon'ble Court:

17(1A) - No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

17(1C) -The listed entity shall ensure that approval of shareholders for appointment [or re-appointment] of a person on the Board of Directors [or as a manager]is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier;]

A copy of the reply dated 27 July 2023 to the email of the Appellant dated 26 July 2023 from Respondent No. 1 Company to the Appellant is annexed herewith and marked as **ANNEXURE A-4** (65-66)

ix. Thereafter, on 09 August 2023, the listing compliance department of the Appellant issued another email to Respondent No. 1 Company seeking clarification for appointment of Mr. Swaminathan Sivaram as a Non-Executive Independent Director without seeking approval of the shareholders of Respondent No. 1 Company as prescribed under LODR

Regulations. A copy of the email dated 09 August 2023 is annexed herewith and marked as **ANNEXURE A-5** (67)

x. On 10 August 2023, after a passage of 2 months and 24 days, the appointment of Mr. Swaminathan Sivaram was ratified by way of a special resolution of the shareholders to that effect. However, Respondent No. 1 Company failed to comply with Regulation 17 (1A) of LODR Regulations which is a necessary pre-requisite precedent to be followed and adhered to. A copy of the Minutes of the AGM dated 10 August 2023 is annexed herewith and marked as **ANNEXURE A-6** (68-75)

xi. In response to the above clarification sought on 09 August 2023, on 12August 2023, Respondent No. 1 addressed a response thereby informing that the shareholders have approved the approval of Mr. Swaminathan Sivaram as an Independent Director of Respondent No. 1 Company and further placed reliance upon the judgment of Nectar Life Science Limited dated 27April 2023, wherein the Ld. Tribunal had observed that the word "unless" in Regulation 17(1A) of LODR does not mean "prior approval" and once again reiterated that the approval of the shareholders could be sought pursuant to appointment within a period of 3 months. A copy of the response dated 12 August 2023 is annexed herewith and marked as **ANNEXURE A-7** (76-78

xii. In conspectus of the circumstances *supra*, the Appellant, vide its order dated 21 August 2023 levied a penalty of Rs. 2000/- per day for non-compliance of Regulation 17 (1A) of LODR Regulations for a period of 46 days for the quarter ending 30 June 2023. It is pertinent to mention here that Respondent No. 1 paid the fine levied amounting to Rs. 1,08,560/- on 24 August 2023 under protest and subject to the decision of the Ld. Tribunal. A copy of the letter dated 21 August 2023 vide penalty was levied on Respondent No. 1 Company is annexed herewith and marked as **ANNEXURE A-8.** (79-81) A copy of the payment acknowledgement is annexed herewith and marked as **ANNEXURE A-9.** (82-84)

xiii. Being aggrieved by the levy of penalty of Rs. 1,08,560/-, the Respondent No. 1 approached the Ld. Tribunal by way of an appeal seeking relief to quash and set aside the order dated 21 August 2023 of the Appellant and also refund the fine paid to the Appellant.

xiv. The Ld. Tribunal, without affording the Respondent therein an opportunity to file a detailed reply and bring its stand on record, on 28 November 2023 passed the Impugned Order in favour of Respondent No. 1 and has erroneously allowed the appeal of Respondent No. 1 by relying upon its own order dated 27 April 2023 in '*Nectar Life Sciences Ltd. vs. SEBI & Ors., Appeal No. 185 of 2023*', which is pending adjudication before this Hon'ble

Court and has been specifically directed as not to be treated as a precedent. This Hon'ble Court in '*National Stock Exchange of India Limited vs. Nectar Life Sciences Ltd & Anr., Civil Appeal No. 4794/2023*' in its order dated 18 September 2023, has observed that "*we are of the view that interest of justice would be sub-served by observing that the impugned judgment is not to be treated as a precedent in the meantime till we consider the matter on merits*". Despite being well aware of the fact that this Hon'ble Court has categorically barred the order dated 27 April 2023 of the Ld. Tribunal in '*Nectar Life Sciences Ltd. vs. SEBI & Ors., Appeal No. 185 of 2023*' to be treated as a precedent till the matter is considered on merits, the Ld. Tribunal has knowing erred in passing the Impugned Order dated 28 November 2023 and held that: -

> "*19...Thus, from a conjoint reading of Regulation17(1A) and 17(1C) of the LODR Regulations appointment of an additional director can be made by the board of directors which is required to be approved by the members of the Company through a special resolution and such approval is required to be made within three months.*
>
> *20. In* ***Nectar Life Sciences Ltd. vs. SEBI & Ors., Appeal no.185 of 2023 decided on April 27, 2023*** *this Tribunal considered the provisions of Regulations 17(1A) with other provisions and held that the word "unless" as depicted in Regulation 17(1A) does not mean*

"prior approval" nor the requirement of passing a special resolution was a qualificatory condition for appointment as a director.

21. In view of the aforesaid, the contention of the respondent that no person can be appointed as a non-executive independent director unless prior approval of the shareholders was made by a special resolution is erroneous.

..."

The Ld. Tribunal has held that no penalty could have been imposed for violation of Regulation 17(1A) LODR Regulations, and quashed the order of the Appellant imposing penalty on Respondent No. 1 for violation of Regulation 17(1A) of LODR Regulations.

xv. It is submitted that this Hon'ble Court vide order dated 18 September 2023 has specifically stated that the order dated 27 April 2023 passed by the Ld. Tribunal should not be treated as a precedent and the said fact was duly brought to the knowledge of the Ld. Tribunal during the course of hearing and also by way of written submissions filed by the Appellant before the Ld. Tribunal. A copy of the Written Submissions dated 25 November 2023 is annexed herein and is marked as **ANNEXURE A-10** (85-123)

xvi. It is most humbly submitted that the Impugned Order is bad in law, erroneous, misdirected and perverse and therefore it is most respectfully

submitted that the Impugned Order cannot be sustained and is liable to be set aside.

5. **GROUNDS:**

That the Appellant is materially aggrieved and prejudiced by the Impugned Order and is liable to be set aside on the following grounds:

A. BECAUSE the Ld. Tribunal has grossly erred in relying on its own order dated 27 April 2023 in '*Nectar Life Sciences Ltd. vs. SEBI & Ors., Appeal No. 185 of 2023*', while passing the Impugned Order and thereby ignoring and bypassing the order dated 18 September 2023 passed by this Hon'ble Court in '*National Stock Exchange of India Limited vs. Nectar Life Sciences Ltd & Anr., Civil Appeal No. 4794/2023*' wherein this Hon'ble Court has directed that the Order dated 27 April 2023 passed by the Ld. Tribunal not be treated as precedent till the matter is considered on merits.

B. BECAUSE the Impugned Order passed by the Ld. Tribunal is bad in law as it is based upon an earlier Order dated 27 April 2023 of the Ld. Tribunal which was expressly barred by this Hon'ble Court to be used as a precedent till the matter forming part of '*National Stock Exchange of India Limited vs. Nectar Life Sciences Ltd & Anr., Civil Appeal No. 4794/2023*' was considered on merits.

C. BECAUSE the Ld. Tribunal is setting a bad precedent and a wrong example by overlooking and ignoring the express order of this Hon'ble Court and

continuing to rely on its own Order dated 27 April 2023, the operation of which has been effectively stayed by this Hon'ble Court. It is submitted that the entire reasoning of this Hon'ble Court in directing that the order dated 27 April 2023 is not to be treated as precedent is that the said interpretation of law would render the provisions of law infructuous.

D. BECAUSE the Ld. Tribunal while passing the Impugned Order has acted in utter disregard of the statutory provisions and has overlooked the operative part of the relevant provisions of the law and is consequently setting a wrong precedent. It is respectfully submitted that the Ld. Tribunal has erred in law by relying upon the provisions of Regulation 17 (1C) of LODR Regulations, while interpreting the provisions of Regulation 17 (1A) of LODR Regulations, when the language of Regulation 17 (1A) of LODR Regulations was clear and unambiguous.

E. BECAUSE the Ld. Tribunal while passing the Impugned Order has failed to consider that the provision of Regulation 17(1A) of LODR Regulations are mandatory in nature and provides a pre-requisite condition that is required to be fulfilled before appointing any person who is more than age of 75 years as Non-Executive Director.

F. BECAUSE the Ld. Tribunal while passing the Impugned Order has failed to consider that in terms of Regulation 17 (1A) of LODR Regulations, passing of a special resolution before appointing a Non-Executive Director is a

qualifying pre-requisite condition that needs to be fulfilled and the non-compliance of the same will lead to non-compliance of the said provision. It is respectfully submitted that the legislature while incorporating the phrase "*unless a special resolution is passed to that effect*" has made it categorically clear that the appointment must be preceded by a special resolution. The use of word "*unless*" makes it clear that no appointment can be done without there being a special resolution prior in time.

G. BECAUSE Mr. Swaminathan Sivaram had already attained the age of 75 years at the time of his appointment as a Non-Executive Director and admittedly no prior special resolution was passed to that effect. In view of the same, the appointment of Mr. Sivaram is in violation of Regulation 17 (1) (A). In fact, Mr. Sivaram had crossed the age of 75 years and was 76 years old at the time of his appointment as a Non-Executive Director.

H. BECAUSE there was admittedly no vacancy created for the appointment of a Non-Executive Independent Director and the appointment of Mr. Swaminathan Sivaram was a proactive step taken on the part of Respondent No. 1 Company. It is submitted that the appointment of Mr. Swaminathan Sivaram is a clear violation of Regulation 17 (1A) of LODR Regulations done by Respondent No. 1 Company. It is further submitted that the listed companies are duty bound to comply with the statutory requirements as enshrined under the SEBI Act and more importantly LODR Regulations and

it is not just a statutory obligation on the part of the listed companies to comply with the LODR Regulations but it is also a contractual obligation on the part of the listed company as the listed companies have to sign an agreement to that effect.

I. BECAUSE the appointment of Mr. Swaminathan Sivaram was done via Board Resolution without passing of a prior special resolution, and later on, during the Annual General Meeting of the company, the members approved the appointment of Mr. Swaminathan Sivaram by passing a special resolution to that effect and the said act on the part of the Respondent is in clear violation of the Regulation 17 (1A) of the LODR Regulation.

J. BECAUSE the Ld. Tribunal in para 20 of the Impugned Order has referred to '*Nectar Life Sciences Ltd. vs. SEBI & Ors., Appeal No. 185 of 2023*' and has once again misplaced its finding and held that "*20...this Tribunal considered the provisions of Regulations 17(1A) with other provisions and held that the word "unless" as depicted in Regulation 17(1A) does not mean "prior approval" nor the requirement of passing a special resolution was a qualificatory condition for appointment as a director. 21. In view of the aforesaid, the contention of the respondent that no person can be appointed as a nonexecutive independent director unless prior approval of the shareholders was made by a special resolution is erroneous.*" It is respectfully submitted that there was no requirement for the Ld. Tribunal to interpret the

term "*unless*" as there was no ambiguity whatsoever in the language of the provision and therefore the interpretation given by Ld. Tribunal stands unwarranted and bad in law. It is further most humbly submitted that it is a settled principle of law that the words of a statute must prima facie be given their ordinary meaning. Moreover, as long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible and that can never be the intent of the legislature.

K. BECAUSE the Ld. Tribunal has proceeded to pass the Impugned Order relying on '*Nectar Life Sciences Ltd. vs. SEBI & Ors., Appeal No. 185 of 2023*', which is not only bad in law and contradictory to the provisions laid down under the legislature, but also sets a wrong precedent by absolutely disregarding the order dated 18 September 2023 of this Hon'ble Court whereby this Hon'ble Court has expressly held that the order dated 27 April 2023 of the Ld. Tribunal upon which the Ld. Tribunal is now relying upon in the present Impugned Order, is not to be treated as a precedent till the matter is considered on merits.

L. BECAUSE the Ld. Tribunal while passing the Impugned Order has failed to consider the findings given by the Kotak Committee which led to the amendment in LODR Regulations by way of which Regulation 17 (1A) was introduced. The Kotak Committee was constituted by Respondent No. 2 for

improving the standards of corporate governance of listed companies in India and the several recommendations of the said committee were duly accepted by Respondent No. 2. One of the key recommendations of the said committee report was that although the Companies Act, 2013 provides a particular age of 70 years beyond which the appointment of a Managing Director, Whole Time Director or Manager can be done by passing a special resolution and there was no such provision with respect to the appointment of Non- Executive Directors. Therefore, the Kotak Committee recommended the age of 75 years for Non-Executive Director stating that the appointment of Non-Executive Director has to be approved by a special resolution if the age of the said Director is more than 75 years at the time of appointment.

M. BECAUSE the Ld. Tribunal while passing the Impugned Order has failed to consider that the provision of Regulation 17(1A) of LODR Regulations was inserted after the recommendations of the Kotak Committee. It is submitted that the bottom line of the recommendation of Kotak Committee was that the age of a person may not be a detriment of efficiency or capability of a person or the basis for disqualification of a director, a higher level of shareholder endorsement is required for directors to continue in their position beyond a certain age.

N. BECAUSE the Ld. Tribunal has erroneously invoked Regulation 17 (1C) of LODR Regulations as the said regulation does not deal with the issue at hand.

It is submitted that the Regulation 17 (1C) of LODR Regulations is a general provision dealing with all type of Directors including the entire class of Independent Directors whereas the Regulation 17 (1A) of LODR Regulations carves out a separate sub-class from the entire class of Independent Directors and deals only with the appointment or re-appointment of persons who have attained the age of Seventy- Five years.

O. BECAUSE the provisions of Regulation 17 (1A) and 17 (1C) of LODR Regulations could not have been read conjointly, as given in the Order of the Ld. Tribunal, when the provisions of Regulation of 17(1A) were very specific and relatable only to the Non-Executive Director, who had attained the age of 75 years whereas the provisions of Regulation 17(1C) were general in nature and relatable to a person on the Board of Directors.

P. BECAUSE the Ld. Tribunal has failed to consider that in general, the appointment, continuation, and removal of Non-executive Independent Directors is governed by Section 149 of the Companies Act, 2013 and Regulation 25 of the LODR Regulations however, Regulation 17 (1A) of LODR Regulations was inserted to have a very limited application i.e., in case of appointment or continuation of directorship of a Non-executive Independent Director who has attained the age of Seventy- Five years.

Q. BECAUSE the Ld. Tribunal erred in holding that Regulation 17 (1A) and Regulation 17 (1C) of LODR Regulations are to be read conjointly in relation to the manner of appointment of a Non-Executive Director who has attained the age of 75 years, in the absence of any ambiguity or vagueness in the provisions of Regulation 17 (1A) warranting a conjoint reading of the two clauses. It is humbly submitted that the observation of the Ld. Tribunal that Regulation 17 (1A) and (1C) are to be read conjointly, is completely erroneous and misplaced as, such a reading would render the sole objective of Regulation 17 (1A) of LODR Regulations otiose.

R. BECAUSE the Ld. Tribunal while passing the Impugned Order has failed to consider that non-compliance of Regulation 17 (1A) of LODR Regulations took place the moment Mr. Swaminathan Sivaram, aged 76 years, was appointed as a Non-Executive Director and held the post for a period of 46 days before the approval was done via a special resolution at the 36th Annual General Meeting of Respondent No. 1 company and the same could not have been done by taking the shield of Regulation 17 (1C) of LODR Regulations.

S. BECAUSE the Ld. Tribunal while passing the Impugned Order has failed to consider the basic law of interpterion of statute that while interpreting any provision of law, the background and objective of the legislature in bringing the said provision has to be looked into so that the true intent of the legislature can be brought out.

T. BECAUSE the Ld. Tribunal has erred in law by failing to apply the "Rule of plain meaning" and "Rule of literal interpretation" while interpreting the provisions of Regulation 17 (1A) of LODR Regulations. It is submitted that according to these Rules, the words of a statute must be given their ordinary meaning unless doing so would lead to an absurd result. However, if the words of a statute are unclear or ambiguous, other aids to interpretation may be used to determine the meaning of the statute. One such aid to interpretation is the Principle of Harmonious Construction, which states that two provisions of the same statute should be interpreted in a way that gives effect to both provisions as per the intention of the legislature. That the observation of the Ld. Tribunal in the Impugned Order, that Regulation 17 (1A) and (1C) of LODR Regulations are to be read conjointly, is grossly misplaced as, such a reading would render the sole objective of Regulation 17 (1A) of LODR Regulations otiose.

U. BECAUSE the Ld. Tribunal has erred in law by relying upon the provisions of Regulation 17 (1C) of LODR Regulations for interpreting the word "*unless*" as mentioned in Regulation 17 (1A) of LODR Regulations and thus ignoring the "Rule of literal construction" in the absence of any ambiguity in the language used in Regulation 17 (1A) of LODR Regulations.

V. BECAUSE the legislature while accepting the recommendations of the Kotak Committee was clear that while appointing any person who is more than 75

years of age, the opinion and prior consent of the stakeholder/ shareholders of a listed company is imperative and therefore the requirement of prior approval was made mandatory.

W. BECAUSE the Ld. Tribunal while passing the Impugned Order has misplaced its reliance on Sections 149, 152 (2) and 161(1) of the Companies Act, 2013 as the same is not applicable to the present issue at hand. It is pertinent to mention here that there is no provision in the Companies Act, 2013 or LODR Regulations regarding the appointment of Non-Executive Directors when the said person has attained the age of 75 years. It is submitted that at this juncture, the applicability of sole provision dealing with such situations, i.e., Regulation 17 (1A) of LODR Regulations comes into the picture and the Ld. Tribunal's decision in placing reliance on Section 149, 152 (2) and 161(1) of the Companies Act, 2013 for the purposes of interpreting the word "*unless*" mentioned in Regulation 17 (1A) of LODR Regulations in the absence of any lack of clarity in Regulation 17 (1A) is highly erroneous and misplaced.

X. BECAUSE the Ld. Tribunal while passing the Impugned Order has failed to consider that any listed company is not just under an obligation to comply with the requirements as provided under the Companies Act, 2013 but the listed companies are also duty bound to comply with the statutory requirements as enshrined under the SEBI Act and more importantly LODR Regulations. It is also most humbly submitted that the listed company is not just a statutory

obligation on the part of the listed companies to comply with the LODR Regulations but it is also a contractual obligation on the part of the listed company as the listed companies have to sign an agreement to that effect.

Y. BECAUSE the Ld. Tribunal while passing the Impugned Order has failed to consider that the provision of Regulation 17 (1A) of LODR Regulation has to be read not just in addition to the provisions of the Companies Act, 2013 but also in isolation from the provisions under the Companies Act, 2013. It is submitted that the reason why the Regulation 17 (1A) of LODR Regulations must be read in isolation is that it is the only regulation which covers the situation where a person who is more than age 75 years of age has to appointed at the post of Non- Executive Independent Director. It is submitted that the Regulation 17 (1A) of LODR Regulations carves out a unique situation dealing with specific sub-class of the Independent Directors

Z. BECAUSE the Ld. Tribunal failed to afford an opportunity to the Appellant to file its detailed reply before it, and then failed to consider the Short Note on behalf of the Appellant herein, wherein the reasons for imposition of penalty on Respondent No. 1 are clearly enumerated and highlighted, as is the current position of Nectar Life Science order dated 27 April 2023 before this Hon'ble Court.

6. That the Appellant has not filed any other appeal before any other Court of law challenging the Impugned Order dated 28 November 2023 passed by the Ld. Tribunal.

7. **PRAYER:**

a) allow the present Civil Appeal;

b) quash and set aside the Impugned Order dated 28 November 2023 passed by the Ld. Securities Appellate Tribunal, Mumbai in Appeal No. 846 of 2023; and

c) pass such further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPELLANT AS IN DUTY BOUND SHALL FOREVER PRAY.

FILED BY:

DRAFTED ON: 24.01.2024
FILED ON: 25.01.2024

(RAVI TYAGI)
ADVOCATE-ON-RECORD
FOR THE APPELLANT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2024

IN THE MATTER OF:

NATIONAL STOCK EXCHANGE OF INDIA LIMITED

...APPELLANT

VERSUS

20 MICRONS LTD. & ANR

...RESPONDENTS

AFFIDAVIT

I, Joginder Singh, son of Mr. Jai Prakash Nehra, working as Vice President, Northern Regional Office- National Stock Exchange, at National Stock Exchange, 4th Floor, Jeevan Vihar Building, Parliament Street resident, New Delhi – 110 001, aged about 45 years, do hereby solemnly affirm and declare as under:-

1. I am Vice President, Northern Regional Office of the Appellant in the above Civil Appeal and I am well conversant with the facts and circumstances of the case and competent to depose the present affidavit.

2. That I have read the accompanying Civil Appeal containing pages 12 to 38, paragraph 1 to 7, synopsis and list of dates pages 8 to 11 and Application for Stay, pages 124 to 132, Application for placing on record additional documents, pages 126 to 142, Application for exemption for filing certified copy of the Impugned Order, pages 133 to 135, and understood the contents thereof. The facts stated therein are true and correct to my knowledge and belief and record of the case, which I believe to be true.

3. That the annexures filed herewith are true copies of their respective originals.

4. I say that the contents of the above affidavit in paragraph no 1 to 3 are true and correct to the best of my knowledge and belief.

DEPONENT

VERIFICATION:

Verified at [illegible] on this the 25th day of January, 2024 that the contents of my above affidavit are true and correct to my knowledge that no part of it is false and nothing has been concealed there from.

DEPONENT

APPENDIX

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(c) "material subsidiary" shall mean a subsidiary, whose income or net worth exceeds [81][ten] percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

Explanation.- The listed entity shall formulate a policy for determining 'material' subsidiary.

[82][(d) "senior management" shall mean the officers and personnel of the listed entity who are members of its core management team, excluding the Board of Directors, and shall also comprise all the members of the management one level below the Chief Executive Officer or Managing Director or Whole Time Director or Manager (including Chief Executive Officer and Manager, in case they are not part of the Board of Directors) and shall specifically include the functional heads, by whatever name called and the Company Secretary and the Chief Financial Officer.]

Board of Directors.

17. (1) The composition of board of directors of the listed entity shall be as follows:

(a) board of directors shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty per cent. of the board of directors shall comprise of non-executive directors;

[83][Provided that the Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020;

Explanation: The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.]

(b) where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors: Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

Explanation.- For the purpose of this clause, the expression "related to any promoter" shall have the following meaning:

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[81] Substituted ibid for the word "twenty", w.e.f. 1.4.2019.

[82] Substituted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2023 w.e.f. 17.1.2023. Prior to the substitution, the clause read as follows:

""senior management" shall mean officers/personnel of the listed entity who are members of its core management team excluding board of directors and normally this shall comprise all members of management one level below the [81]("chief executive officer/managing director/whole time director/manager (including chief executive officer/manager, in case they are not part of the board) and shall specifically include company secretary and chief financial officer.]"

[83] Inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, w.e.f. 1.4.2019.

(i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;
(ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

[84][(c) The board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors.

Explanation: The top 1000 and 2000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year.]

[85][(d) where the listed company has outstanding SR equity shares, atleast half of the board of directors shall comprise of independent directors.]

[86][(1A) No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.]

[87][***]

[88][(1C). The listed entity shall ensure that approval of shareholders for appointment [89][or re-appointment] of a person on the Board of Directors [90][or as a manager] is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.]

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[84] Inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, w.e.f. 1.4.2019.
[85] Inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2019, w.e.f. 29.7.2019.
[86] Inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, w.e.f. 1.4.2019.
[87] Omitted by the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2022, w.e.f. 22.3.2022. Prior to the omission, sub-regulation (1B) read as follows:
"(1B). With effect from [April 1, 2022,] the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall -
(a) be a non-executive director,
(b) not be related to the Managing Director or the Chief Executive Officer as per the definition of the term "relative" defined under the Companies Act, 2013:
Provided that this sub-regulation shall not be applicable to the listed entities which do not have any identifiable promoters as per the shareholding pattern filed with stock exchanges.
Explanation - The top 500 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year."
[88] Inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021 read with the corrigendum, w.e.f. 1.1.2022.
[89] Inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2023, w.e.f. 17.1.2023.
[90] Inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2022, w.e.f. 24.1.2022.

[91][Provided that a public sector company shall ensure that the approval of the shareholders for appointment or re-appointment of a person on the Board of Directors or as a Manager is taken at the next general meeting;]

[92][Provided [93][further] that the appointment or a re-appointment of a person, including as a managing director or a whole-time director or a manager, who was earlier rejected by the shareholders at a general meeting, shall be done only with the prior approval of the shareholders:

Provided further that the statement referred to under sub-section (1) of section 102 of the Companies Act, 2013, annexed to the notice to the shareholders, for considering the appointment or re-appointment of such a person earlier rejected by the shareholders shall contain a detailed explanation and justification by the Nomination and Remuneration Committee and the Board of directors for recommending such a person for appointment or re-appointment.]

[94][(1D) With effect from April 1, 2024, the continuation of a director serving on the board of directors of a listed entity shall be subject to the approval by the shareholders in a general meeting at least once in every five years from the date of their appointment or reappointment, as the case may be:

Provided that the continuation of the director serving on the board of directors of a listed entity as on March 31, 2024, without the approval of the shareholders for the last five years or more shall be subject to the approval of shareholders in the first general meeting to be held after March 31, 2024:

Provided further that the requirement specified in this regulation shall not be applicable to the Whole-Time Director, Managing Director, Manager, Independent Director or a Director retiring as per the sub-section (6) of section 152 of the Companies Act, 2013, if the approval of the shareholders for the reappointment or continuation of the aforesaid directors or Manager is otherwise provided for by the provisions of these regulations or the Companies Act, 2013 and has been complied with:

Provided further that the requirement specified in this regulation shall not be applicable to the director appointed pursuant to the order of a Court or a Tribunal or to a nominee director of the Government on the board of a listed entity, other than a public sector company, or to a nominee director of a financial sector regulator on the board of a listed entity:

Provided further that the requirement specified in this regulation shall not be applicable to a director nominated by a financial institution registered with or regulated

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[91] Inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2023, w.e.f. 17.1.2023.

[92] Inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2022, w.e.f. 24.1.2022.

[93] Inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2023, w.e.f. 17.1.2023.

[94] Inserted by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 w.e.f. 15.7.2023.

by the Reserve Bank of India under a lending arrangement in its normal course of business or nominated by a Debenture Trustee registered with the Board under .. subscription agreement for the debentures issued by the listed entity.

(1E) Any vacancy in the office of a director shall be filled by the listed entity at the earliest and in any case not later than three months from the date such vacancy:

Provided that if the listed entity becomes non-compliant with the requirement under sub-regulation (1) of this regulation, due to expiration of the term of office of any director, the resulting vacancy shall be filled by the listed entity not later than the date such office is vacated:

Provided further that this sub-regulation shall not apply if the listed entity fulfils the requirement under sub-regulation (1) of this regulation without filling the vacancy.]

(2) The board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.

[95][(2A) The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director.

Explanation I – For removal of doubts, it is clarified that the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum.

Explanation II - The top 1000 and 2000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.]

(3) The board of directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity, prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliances.

(4) The board of directors of the listed entity shall satisfy itself that plans are in place for orderly succession for appointment to the board of directors and senior management.

(5) (a) The board of directors shall lay down a code of conduct for all members of board of directors and senior management of the listed entity.

(b) The code of conduct shall suitably incorporate the duties of independent directors as laid down in the Companies Act, 2013.

(6) (a) The board of directors shall recommend all fees or compensation, if any, paid to non-executive directors, including independent directors and shall require approval of shareholders in general meeting.

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[95] Inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, w.e.f. the dates specified in the provision.

(b) The requirement of obtaining approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government.

(c) The approval of shareholders mentioned in clause (a), shall specify the limits for the maximum number of stock options that may be granted to non-executive directors, in any financial year and in aggregate.

[96][(ca) The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.]

(d) Independent directors shall not be entitled to any stock option.

[97][(e) The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if-
(i) the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or
(ii) where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:

Provided that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director.

Explanation: For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013.]

(7) The minimum information to be placed before the board of directors is specified in Part A of Schedule II.

(8) The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.

(9) (a) The listed entity shall lay down procedures to inform members of board of directors about risk assessment and minimization procedures.

(b) The board of directors shall be responsible for framing, implementing and monitoring the risk management plan for the listed entity.

[98][(10) The evaluation of independent directors shall be done by the entire board of directors which shall include -

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[96] Inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, w.e.f. 1.4.2019.
[97] Inserted ibid.
[98] Substituted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, w.e.f. 1.4.2019. Prior to the substitution, sub-regulation (10) read as follows:

(a) performance of the directors; and
(b) fulfillment of the independence criteria as specified in these regulations and their independence from the management:

Provided that in the above evaluation, the directors who are subject to evaluation shall not participate.]

[99][(11). The statement to be annexed to the notice as referred to in sub-section (1) of section 102 of the Companies Act, 2013 for each item of special business to be transacted at a general meeting shall also set forth clearly the recommendation of the board to the shareholders on each of the specific items.]

[100][Maximum number of directorships.
17A. The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time -

(1) A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020:

Provided that a person shall not serve as an independent director in more than seven listed entities.

(2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.

[101][Explanation,—] For the purpose of this [102][regulation], the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.]

Audit Committee.

18. (1) Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:
(a) The audit committee shall have minimum three directors as members.

"(10) The performance evaluation of independent directors shall be done by the entire board of directors:

Provided that in the above evaluation the directors who are subject to evaluation shall not participate."

[99] Inserted ibid.

[100] Inserted by the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, w.e.f. 1.4.2019.

[101] The paragraph appearing at the end of regulation 17A converted to an Explanation by the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5.5.2021.

[102] Substituted for "sub-regulation" by the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5.5.2021.

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20 MICRONS® LIMITED

ANNEXURE 41

Regd. Office : 9-10, GIDC Ind Estate, Waghodia - 391 760 Dist. Vadodara, Gujarat, INDIA.
Tele./Fax: +91 265 2330755 Web: www.20microns.com E-mail: baroda@20microns.com
CIN : L99999GJ1981PLC003764

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF 20 MICRONS LIMITED AT THEIR MEETING HELD ON 16TH MAY, 2023 AT 11:30 AM AT THE CONFERENCE ROOM OF 347, GIDC INDUSTRIAL ESTATE, WAGHODIA, DIST. : VADODARA – 391 760.

(a)To consider and approve appointment of Mrs. Sejal R Parikh (DIN: 00140489) as Whole-time Director for a period of 3 [three] years and payment of remuneration to her in terms of the provisions of the Companies Act, 2013.

"RESOLVED THAT pursuant to provision of Section 197, 198 and other applicable section of the Companies Act, 2013 read with rules made thereunder and including modification(s) or re-enactment(s) made thereunder and recommendation made by the Nomination and Remuneration Committee and subject to all necessary approvals, if any, including the Shareholders, Mrs. Sejal R. Parikh (DIN 00140489) be and is hereby appointed as the Whole-time Director of the Company, for a period of 3 [three] years w.e.f. 01st April, 2023 on the terms and conditions as stipulated below:

I. Basic Salary: Rs.1,88,625/- per month with annual increment up to 25% in the Basic Salary as may be decided by the Nomination & Remuneration Committee from time to time.

II. Perquisites: Not exceeding 20% of the Basic Salary. The detailed components of the perquisites shall be worked out by the Company in consultation with CFO.

III. In addition to the salary as described in (I) above, she shall be eligible for the following perquisites, which shall not be included in the computation of ceiling on remuneration specified hereinabove.

(i) Provident Fund: Contribution to Provident Fund, Superannuation Fund or Annuity Fund to the extent these either singly or put together are not taxable under the Income Tax Act, 1961.

(ii) Gratuity: The Company shall pay gratuity as per the Company's Rules.

(iii) Encashment of leave at the end of the tenure

IV. She may be entitled to other benefits as may be available to senior executives.

V For all other terms and conditions not specifically spell out above, the rules and order of the Company shall apply.

VI. Her office shall be liable to retire by rotation.

Notwithstanding anything to the contrary herein contained, where, in any financial year the Company, has no profits or its profits are inadequate, the Company shall pay remuneration by way of salary and perquisites and allowances as specified above subject to the limits as may be prescribed or amended in future from time to time under the provisions of the Companies Act, 2013, Schedule thereof and the Rules framed there under as well as any other statutory provisions as may be applicable.

For 20 Microns Limited

Kemal

(Kemal Pandey)
Company Secretary

1

20 MICRONS® LIMITED

Regd. Office : 9-10, GIDC Ind. Estate, Waghodia - 391 760 Dist. Vadodara, Gujarat, INDIA.
Tel./Fax: +91 265 2337705 Web: www.20microns.com E-mail: baroda@20microns.com
CIN : L99999GJ1987PLC009768

RESOLVED FURTHER THAT, any of the Directors of the Company or CFO or Company Secretary of the Company to do all such acts or things including intimation of above appointment to Registrar of companies, Gujarat and to do such acts to give effect to above resolution."

[b] To consider and approve appointment of Dr. Swaminathan Sivaram (DIN: 0009900) as an Independent Director of the Company.

"**RESOLVED THAT** pursuant to the provisions of Section 149, 150, 152 read with schedule IV and Section 161(1) read with Companies (Appointment and Qualification of Directors) Rules, 2014 and other applicable provisions, sections, rules of the Companies Act, 2013 Regulation 19 read with Part-D of Schedule-II of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and including modification(s) or re-enactment(s) made thereunder and as recommended by the Nomination and Remuneration Committee, subject to all necessary approvals, if any, including the Shareholders approval at the ensuing Annual General Meeting, Dr Swaminathan Sivaram (DIN: 00009900) be and is hereby appointed as an Independent Director of the Company, as an Additional Director (Non-Executive & Independent) on the Board of the Company to hold office till the conclusion of the next Annual General Meeting and subject to the approval of the members in the ensuing General Meeting, for appointment as an Independent Director to hold office for a period of 5 (five) consecutive years from the date of appointment."

RESOLVED FURTHER THAT, any of the Directors of the Company or CFO or Company Secretary of the Company to do all such acts or things including intimation of above appointment to Registrar of Companies Gujarat and to do such acts to give effect to above resolution."

CERTIFIED TRUE COPY
For 20 Microns Limited
For 20 Microns Limited

Komal
(Komal Pandey)
Company Secretary

[Komal Pandey]
Company Secretary
Membership no. A37092

Date: 05th September, 2023
Place: Vadodara

TRUE COPY

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ANNEXURE A-2

General information about company	
Scrip code	533022
NSE Symbol	20MICRONS
MSEI Symbol	NOTLISTED
ISIN	INE144M01027
Name of the entity	20 MICRONS LIMITED
Date of start of financial year	01-04-2023
Date of end of financial year	31-03-2024
Reporting Quarter	Quarterly
Date of Report	30-06-2023
Risk management committee	Not Applicable
Market Capitalisation as per immediate previous Financial Year	Top 2000 listed entities

CO

Annexure I

Annexure I to be submitted by listed entity on quarterly basis

I. Composition of Board of Directors

Disclosure of notes on composition of board of directors explanatory	-
Whether the listed entity has a Regular Chairperson	Yes
Whether Chairperson is related to MD or CEO	Yes

								Disqualification of Director under section 164 of the Companies Act, 2013																	
Sr	Title (Mr / Ms)	Name of the Director	PAN	DIN	Category 1 of directors	Category 2 of directors	Category 3 of directors	Date of Birth	Whether the director is disqualified?	Date of disqualification	Date of disqualification	Details of disqualification	Current status	Whether special resolution passed? [Refer Reg. 17(1A) of Listing Regulations]	Date of passing special resolution	Initial Date of appointment	Date of Re-appointment	Term of appointment	Tenure of director (in months)	No of Directorship in Other entities including this listed entity (Refer Regulation 17A of Listing Regulations)	No of memberships in Audit/ Stakeholder Committee(s) including this listed entity (Refer Regulation 26(1) of Listing Regulations)	Number of meetings of Audit/ Stakeholder Committee(s) held during the year (For the listed entity) (Refer Regulation 26(1) of Listing Regulations)	No of post of Chairperson in Audit/ Stakeholder Committee held in listed entities including this listed entity (Refer Regulation 26(1) of Listing Regulations)	Notes for not providing PAN	Notes for not providing DIN
1	Mr	[illegible]	[illegible]	[illegible]	Executive Director	Chairperson	MD	[illegible]	No				Active	NA		[illegible]	[illegible]		36	3	0	3	4		
2	Mr	[illegible]	[illegible]	[illegible]	Executive Director	Not Applicable	CEO-MD	[illegible]	No				Active	NA		[illegible]	[illegible]		36	1	0	3	0		
3	Mrs.	[illegible]	[illegible]	[illegible]	Executive Director	Not Applicable		[illegible]	No				Active	NA		[illegible]	[illegible]		3 83	1	0	0	0		
4	Mr	[illegible]	[illegible]	[illegible]	Non-Executive - Independent Director	Not Applicable		[illegible]	No				Active	No		[illegible]	[illegible]		48	3	3	4	4		

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I. Composition of Board of Directors

Disclosure of notes on composition of board of directors explanatory

Whether the listed entity has a Regular Chairperson

Sr	Title (Mr / Ms)	Name of the Director	PAN	DIN	Category 1 of directors	Category 2 of directors	Category 3 of directors	Date of Birth	Whether the director is disqualified?	Start Date of disqualification	End Date of disqualification	Details of disqualification	Current status	Whether special resolution passed? [Refer Reg. 17(1A) of Listing Regulations]	Date of passing special resolution	Initial Date of appointment	Date of Re-appointment	Date of cessation	Tenure of director (in months)	No of Directorship in listed entities including this listed entity (Refer Regulation 17A of Listing Regulations)	No of Independent Directorship in listed entities including this listed entity (Refer Regulation 17A(1) of Listing Regulations)	Number of memberships in Audit/ Stakeholder Committee(s) including this listed entity (Refer Regulation 26(1) of Listing Regulations)	No of post of Chairperson in Audit/ Stakeholder Committee held in listed entities including this listed entity (Refer Regulation 26(1) of Listing Regulations)	Notes for not providing PAN	Notes for not providing DIN
5	Mr	ATUL N PATEL	[illegible]	[illegible]	Non-Executive - Independent Director	Not Applicable		28-12-1950	No				Active	NA		27-09-2009	13-08-2014		60	2	4	1	0		
6	Mr	AJAY RANKA	[illegible]	[illegible]	Non-Executive - Independent Director	Not Applicable		24-[illegible]-1958	No				Active	NA		[illegible]	15-09-2019		60	1	1	0	0		
7	Mr	[illegible] VERMA	[illegible]	[illegible]	Non-Executive - Independent Director	Not Applicable		[illegible]	No				Active	NA		28-05-2013	18-08-2019		60	1	2	0	0		
8	Mr	[illegible]	[illegible]	[illegible]	Non-Executive - Independent Director	Not Applicable		[illegible]	No				Active	NA		16-06-2015	[illegible]		[illegible]	2	3	0	0		[illegible]

Audit Committee Details							
Whether the Audit Committee has a Regular Chairperson					Yes		
Sr	DIN Number	Name of Committee members	Category 1 of directors	Category 2 of directors	Date of Appointment	Date of Cessation	Remarks
1	00238853	RAMKISAN A DEVIDAYAL	Non-Executive - Independent Director	Chairperson	26-04-2008		
2	00089587	ATUL H PATEL	Non-Executive - Independent Director	Member	19-05-2011		
3	01676073	AJAY I RANGA	Non-Executive - Independent Director	Member	28-05-2019		
4	00041410	RAJESH C PAREKH	Executive Director	Member	10-05-2021		

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Nomination and remuneration committee							
Whether the Nomination and remuneration committee has a Regular Chairperson					Yes		
Sr	DIN Number	Name of Committee members	Category 1 of directors	Category 2 of directors	Date of Appointment	Date of Cessation	Remarks
1	00238835	RAMKISANKA DEVIDAYAL	Non-Executive - Independent Director	Chairperson	24-05-2014		
2	00009587	ATUL N PAREL	Non-Executive - Independent Director	Member	24-05-2014		
3	00522085	JAIDEEP B VERMA	Non-Executive - Independent Director	Member	28-05-2019		
4	00841610	RAJESH C PARIKH	Executive Director	Member	10-08-2021		

Stakeholders Relationship Committee							
Whether the Stakeholders Relationship Committee has a Regular Chairperson					Yes		
Sr	DIN Number	Name of Committee members	Category 1 of directors	Category 2 of directors	Date of Appointment	Date of Cessation	Remarks
1	00238853	RAMKRISHNA DEVIDAYAL	Non-Executive - Independent Director	Chairperson	19-05-2011		
2	00044610	RAJESH C PARIKH	Executive Director	Member	29-01-2009		
3	00041712	ATUL C PARIKH	Executive Director	Member	28-05-2017		

Risk Management Committee							
Whether the Risk Management Committee has a Regular Chairperson							
Sr	DIN Number	Name of Committee members	Category 1 of directors	Category 2 of directors	Date of Appointment	Date of Cessation	Remarks

Corporate Social Responsibility Committee							
Whether the Corporate Social Responsibility Committee has a Regular Chairperson					Yes		
Sr	DIN Number	Name of Committee members	Category 1 of directors	Category 2 of directors	Date of Appointment	Date of Cessation	Remarks
1	00046619	RAJESH C PAREKH	Executive Director	Chairperson	10-08-2021		
2	00238835	RAMKRIAN A DEVIDAYAL	Non-Executive - Independent Director	Member	25-05-2017		
3	00046689	SEJAL R PARIKH	Executive Director	Member	24-05-2018		

Other Committee						
Sr	DIN Number	Name of Committee members	Name of other committee	Category 1 of directors	Category 2 of directors	Remarks

Annexure I								
Annexure I								
II. Meeting of Board of Directors								
Disclosure of note on meeting of board of directors explanatory								
Sr	Date(s) of meeting (if any) in the previous quarter	Date(s) of meeting (if any) in the current quarter	Maximum gap between any two consecutive (in number of days)	Note for not providing Date	Whether requirement of Quorum met (Yes/No)	Total Number of Directors as on date of the meeting	Number of Directors present* (All directors including Independent Director)	No. of Independent Directors attending the meeting*
1	25-01-2023				Yes	7	7	4
2		16-05-2023	110		Yes	8	7	4

Annexure 1

IV. Meeting of Committees

Sr	Name of Committee	Date(s) of meeting (Enter dates of Previous quarter and Current quarter in chronological order)	Maximum gap between any two consecutive (in number of days)	Name of other committee	Reason for not providing date	Whether requirement of Quorum met (Yes/No)	Total Number of Directors in the Committee as on date of the meeting	Number of Directors Present (All Directors including Independent Director)	No. of Independent Director attending the meeting*	No. of members attending the meeting (other than Board of Directors)
		Disclosure of notes on meeting of committees explanatory								
1	Audit Committee	25-01-2023				Yes	4	4	3	0
2	Nomination and remuneration committee	28-04-2023	93			Yes	4	4	3	0
3	Audit Committee	16-05-2023	16			Yes	4	4	3	0

Annexure I			
V. Related Party Transactions			
Sr	Subject	Compliance status (Yes/No/NA)	If status is "No" details of non-compliance may be given here.
1	Whether prior approval of audit committee obtained	Yes	
2	Whether shareholder approval obtained for material RPT	NA	
3	Whether details of RPT entered into pursuant to omnibus approval have been reviewed by Audit Committee	NA	
Disclosure of notes on related party transactions			

Annexure 1		
VI. Affirmations		
Sr	Subject	Compliance status (Yes/No)
1	The composition of Board of Directors is in terms of SEBI (Listing obligations and disclosure requirements) Regulations, 2015	Yes
2	The composition of the following committees is in terms of SEBI(Listing obligations and disclosure requirements) Regulations, 2015 a. Audit Committee	Yes
3	The composition of the following committees is in terms of SEBI(Listing obligations and disclosure requirements) Regulations, 2015. b. Nomination & remuneration committee	Yes
4	The composition of the following committees is in terms of SEBI(Listing obligations and disclosure requirements) Regulations, 2015. c. Stakeholders relationship committee	Yes
5	The composition of the following committees is in terms of SEBI(Listing obligations and disclosure requirements) Regulations, 2015. d. Risk management committee (applicable to the top 500 listed entities)	NA
6	The committee members have been made aware of their powers, role and responsibilities as specified in SEBI (Listing obligations and disclosure requirements) Regulations, 2015.	Yes
7	The meetings of the board of directors and the above committees have been conducted in the manner as specified in SEBI (Listing obligations and disclosure requirements) Regulations, 2015.	Yes
8	This report and/or the report submitted in the previous quarter has been placed before Board of Directors.	Yes

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Annexure 1		
Sr	Subject	Compliance status
1	Name of signatory	KOMAL PANDEY
2	Designation	Company Secretary and Compliance Officer

Signatory Details	
Name of signatory	KOMAL PANDEY
Designation of person	Company Secretary and Compliance Officer
Place	WAGHODIA
Date	18-07-2023

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ANNEXURE A-3

Gmail

Fwd: Clarification - Corporate Governance Report

1 message

Komal Pandey <co_secretary@20microns.com> Wed, 26 Jul 2023 at 19:03
To: Aditya Tillu <cs@20nano.com>, Nishith Mehta <nishith@20microns.com>

Plz prepare reply and keep in CG folder

Sent from Outlook for Android

From: neaps@nse.co.in <neaps@nse.co.in>
Sent: Wednesday, July 26, 2023 6:58:34 PM
To: Komal Pandey <co_secretary@20microns.com>
Subject: Clarification - Corporate Governance Report

Dear Sir/ Madam,

This has reference to the Corporate Governance Report submitted by the Company to the Exchange for the quarter ended June 30, 2023

On analysis of the same, following is observed:
1. As per Reg. 17(1A) of SEBI LODR Regulations, 2015, No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy-five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.
It is observed that Mr. Swaminathan Sivaram is exceeding 75 years during the quarter ended June 30, 2023 and No Special Resolution is passed in this regard.
Hence, you are requested to kindly share Special Resolution along with the Explanatory Statement passed for appointment/ continuation of the directorship of the Mr. Swaminathan Sivaram.
2. Change in category of Director The category of the Director Mrs. Sejal Parikh is changed from Non-Executive Director (NED) for the quarter ended March 31 2023 to Executive Director (ED) for the quarter ended June 30, 2023.

You are therefore requested to furnish the relevant details/provide explanation to the Exchange on the above observation on immediate basis. The reply is to be submitted on the following Path in NEAPS:
Compliance -> Periodic Compliance -> Corporate Governance -> CG Adequacy and Accuracy

If adequate reply is not submitted, actions as prescribed vide SEBI Circular dated January 22, 2020 shall be taken for Non-Compliance with certain provisions of Listing Regulations.

This is a system generated email. Please do not reply to this email. In case of any query, please feel free to call on Toll free no. 1800 266 0058

Regards,
Listing Compliance Department
National Stock Exchange of India Limited

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ANNEXURE A-4

20 MICRONS LIMITED

CIN # L99999GJ1987PLC009788

Regd. Office: 9-10, GIDC Industrial Estate, WAGHODIA, Dist.: Vadodara, 391760

Ph. # 75 748 06950 E-Mail : co_secretary@20microns.com

Website : www.20microns.com

27th July, 2023

To:
National Stock Exchange of India Limited
Listing Deptt
Exchange Plaza, Bandra – Kurla Complex,
Bandra (East), MUMBAI – 400 051
SCRIP SYMBOL – 533022.

Dear Sir/Madam,

Re: Clarification - Corporate Governance Report for the quarter ended 30.06.2023.

This has reference to your E-mail dated 26.07.2023 for the clarification for the captioned report.

In this connection, we would like to inform/submit reply to your good office as under:

Sr. No	Observations	Reply to observations
1	As per Reg. 17(1A) of SEBI LODR Regulations, 2015, No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy-five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person. It is observed that Mr. Swaminathan Sivaram is exceeding 75 years during the quarter ended June 30, 2023 and No Special Resolution is passed in this regard. Hence, you are requested to kindly share Special Resolution along with the Explanatory Statement passed for appointment/ continuation of the directorship of the Mr. Swaminathan Sivaram.	As recommended by Nomination and Remuneration Committee and in the opinion of the Board, Mr. Swaminathan Sivaram is a person of integrity and possesses relevant expertise and experience. Hence the Board of Directors at their meeting held on 18th May, 2023 appointed Mr. Swaminathan Sivaram (DIN: 00009900) in the category of Additional Director (Non-Executive, Independent Director). As per the provisions of Reg. 17 (1C) of SEBI LODR Regulations, 2015, the listed entity shall ensure that approval of shareholders for appointment [re-appointment] of a person on the Board of Directors [or as a manager] is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier. In this regard, we would like to inform that at the 36th Annual General Meeting of the Company is scheduled to be held on Thursday, 10th August, 2023 at 11:00 am. Where the special resolution is proposed and it is as per the timeline prescribed as per Reg. 17(1C) of SEBI LODR Regulations, 2015. The date of special resolution mentioned as 16th

		May, 2023 was due to technical error as the format required to fill up was in the form of DD-MM-YYYY and we were not allowed to mention as "Not applicable" due to validation error.
2	Change in category of Director The category of the Director Mrs. Sejal Parikh is changed from Non-Executive Director (NED) for the quarter ended March 31 2023 to Executive Director (ED) for the quarter ended June 30, 2023.	Mrs. Sejal Parikh (DIN:00140489) was appointed as Non-Executive Director of the Company w.e.f.04.05.2017. Considering the active participation of Mrs. Sejal Parikh in the business activities and to broad base the executive directorship in present board structure, it was recommended by the Nomination and Remuneration committee and accordingly the Board of Directors at their meeting held on 16th May, 2023 proposed to appoint her as a Whole time Director of the Company for the term of 3 years w.e.f. 16th May, 2023 subject to approval of shareholders at the ensuing 36th Annual General Meeting.. Here once again we would like to draw your kind attention to Reg.17 (1C) of SEBI LODR Regulations, 2015 where timeline of 3 (three) months within the date of appointment is specified to get the approval of shareholders for appointment/reappointment of a person on the Board of Directors. We have also proposed the special resolution for appointment as the Whole-time at the ensuing 36th Annual General Meeting.

Hope the matter is clarified in a totality to the satisfaction of your good offices. We regret for the inconvenience caused.

We now request your good offices to kindly take the captioned report on records.

Thanking you,

Yours faithfully
For 20 Microns Limited

komal pandey
Digitally signed by komal pandey
Date: 2023.07.27 17:16:41 +05'30'

[Komal Pandey]
Company Secretary
Membership # A-37092

TRUE COPY

Gmail

ANNEXURE - A5

Clarification - Corporate Governance Report

1 message

neaps@nse.co.in <neaps@nse.co.in> Wed, 9 Aug 2023 at 11:46
To: Komal Pandey <co_secretary@20microns.com>

Dear Sir/ Madam,

This has reference to the Corporate Governance Report submitted by the Company to the Exchange for the quarter ended June 30, 2023

On analysis of the same, following is observed:
1. This is further to respond received from you dated July 27, 2023
We would like to draw your attention, the company is not in compliant with the Provisions of Reg 17(1A) of SEBI LODR Regulations, 2015, As Mr. Swaminathan Sivaram is exceeds 75 years during the quarter ended June 30, 2023 and no Special Resolution is passed in this regard.

You are therefore requested to furnish the relevant details/provide explanation to the Exchange on the above observation on immediate basis. The reply is to be submitted on the following Path in NEAPS:
Compliance -> Periodic Compliance -> Corporate Governance -> CG Adequacy and Accuracy

If adequate reply is not submitted, actions as prescribed vide SEBI Circular dated January 22, 2020 shall be taken for Non-Compliance with certain provisions of Listing Regulations.

This is a system generated email. Please do not reply to this email. In case of any query, please feel free to call on Toll free no. 1800 266 0058

Regards,
Listing Compliance Department
National Stock Exchange of India Limited

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HELD AT _____ ON _____ TIME _____

Minutes of the 36TH Annual General Meeting of the Shareholders of 20 Microns Limited held on Thursday, the 10th day of August, 2023 at 11.00 AM, through Video Conferencing/Other Audio Visual Means. The venue of the meeting shall be deemed to be Conference Room of Plot no. 347, GIDC Industrial Estate, Waghodia, Dist. Vadodara-391760, Gujarat, India:

Commenced at 11.00 AM Concluded at 11.30 AM

DIRECTORS PRESENT:

Sr. No.	Name	Designation
1	Mr. Rajesh C. Parikh (DIN:00041610)	Chairman and Managing Director & Member
2	Mr. Atil C. Parikh (DIN:00041712)	CEO & Managing Director & Member
3	Mrs. Sejal R. Parikh (DIN:00140469)	Whole-time Director
4	Mr. Atul Patel (DIN:00009587)	Director & Member.
5	Dr. Ajay Ranka (DIN:01676073)	Director & Member
6	Mr. Jaideep Verma (DIN. 00323365)	Director
7	Mr. Ramkisan Devidayal (DIN: 00238653)	Director & Member Chairman of Audit, Nomination & Remuneration and Stakeholders Relationship Committees
8.	Dr.Swaminathan Sivaram (DIN:00009900)	Additional Director-Category Independent

Other panelists:

Sr. No.	Name	Designation
1	Mr. N R Patel	Chief Financial Officer & Member
2	Mrs. Komal Pandey	Company Secretary
3	Mr. Pranil Shah	Sr. Finance Controller & Member
4	Mr. Gaurav Parmar	Partner of Manubhai Shah & LLP., Statutory Auditors
5	Mr. Umesh Parikh	Partner of Parikh Dave & Associates, Scrutinizer and Secretarial Auditors

Chairman:
Mr. Rajesh C Parikh, Chairman and Managing Director of the Board chaired the meeting.

Quorum:
47 Members, were virtually present at the time of commencement of meeting. Accordingly, as the requisite Quorum was present as per Section 103 of the Companies Act, 2013, the meeting was called in order.

Introduction:
The Company Secretary, Mrs. Komal Pandey, while welcoming the Shareholders introduced the Directors. She also addressed the attendance of other panelists who has attended the meeting

Chairman address to the members:
Thereafter Mr. Rajesh Parikh Chairman & Managing Director addressed the shareholders and gave a brief about the performance and working of the Company, gave general background etc. of the Company.

CHAIRMAN'S INITIALS

HELD AT _____ ON _____ TIME _____

Inspection of Statutory Registers:
The Company Secretary, Mrs. Komal Pandey informed that necessary statutory registers and other documents as required under the applicable provisions of Companies Act, 2013 were made available for online inspection to the members throughout the meeting.

Notice of the Meeting and Auditors Reports:
With the consent of the members, the Notice of the Meeting and Directors' report which was already circulated to the members were taken as read and the Company Secretary informed the Shareholders that since there were no qualifications or adverse remarks in the Auditors' Report, the same was not required to be read in terms of the provisions of Section 145 of the Companies Act, 2013.

BUSINESS OF THE MEETING:
As advised by Chairman, Company Secretary proceeded with the business of the Meeting for the items as per the notice of the Annual General Meeting one by one.

Question / queries from shareholders and reply to the same:
Thereafter questions and queries were invited from Shareholder registered as Speaker. There were two shareholders who had requested as speaker for the meeting namely Mr. Kirit Shah and Mr. Darshit Shah. Out of them, Mr. Darshit Shah was present in the meeting.

Mr. Darshit Shah asked the management regarding few points such as products manufactured by 20 Microns Limited and 20 Microns Nano Minerals Limited, role of subsidiaries in business strategy, production capacity and its utilization and capex of the Company for the last two years and future prospectus.

All the questions were answered by the Chairman and Managing Director and CEO & Managing Director to the satisfaction of shareholder who was requested as speaker in the meeting.

Remote E voting and Voting by poll during AGM:
Company Secretary informed that pursuant to the provisions of Section 108 of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, the Company has provided remote e-Voting facility to the members of the Company in respect of Ordinary and Special business to be transacted at the 36th Annual General Meeting. The remote e-Voting commenced on 7th August, 2023 at 10.00 A.M. and ended on 9th August, 2023 at 5.00 P.M.

It was also announced that the members who were present in the AGM and had not cast their votes on the resolutions through remote e-voting were eligible to vote through remote e-voting till 15 minutes of the conclusion of this AGM to those members who had not cast their vote by remote e-Voting.

Scrutinizer report and result of e-voting:
It was informed that Mr. Umesh Parikh, Partner of Parikh Dave & Associate, Practicing Company Secretaries from Ahmedabad have been appointed as Scrutinizer to supervise the process of remote e-voting in fair and transparent manner.

The Company Secretary further informed that the result of voting would be declared within two working days of the conclusion of the Annual General Meeting after receipt of scrutinizer's report and the same will be available on the website of the Company and will also be intimated to the Stock Exchanges and NSDL along with Report of the Scrutinizer, as per the relevant provisions of the Companies Act, 2013 and the listing regulations.

CHAIRMAN'S INITIALS

HELD AT _____ ON _____ TIME _____

The Resolutions for Ordinary and Special Business as set out in the Notice of 36th Annual General Meeting duly approved by the members with requisite majority.

After completion of all the agenda items, Ms. Komal Pandey informed the shareholders who could not cast their votes during remote e-voting period could now exercise the same during next 15 minutes thereof.

After ensuring that all the members present had cast their votes, the Chairman concluded the meeting with vote of thanks to all the shareholders of the Company for attending the meeting. He also expressed his gratitude to the shareholders for the support extended to the Company.

Since no other matter was left to be transacted, the Company Secretary conveyed sincere thanks to the Directors and Members of the Company for sparing their valuable time for attending 36th Annual General Meeting of the Company.

Result of the remote e-Voting and Voting by poll during the AGM on the Ordinary and Special Business at the 36th Annual General Meeting of the Company held at 11.00 A.M. on Thursday, the 10th Day of August, 2023 through VC/OAVM at the common venue at the Conference Room of Plot no. 347, GIDC Industrial Estate, Waghodia, Dist.: Vadodara-391760, Gujarat, India

Ordinary Business:

Resolution No. 1 (ORDINARY RESOLUTION)

Consideration and adoption of Audited Standalone and Consolidated Financial Statements of the Company, Reports of Board of Directors' and Auditors' for the year ended on 31st March, 2023:-

Particulars	Remote E-voting		E-voting at AGM		TOTAL		Percentage
	Number	Shares	Number	Share s	Number	Shares	
Assent	93	183588 78	2	1025	95	183597 03	100.00
Dissent	2	55	0	0	2	55	Negligible
TOTAL	95	183587 33	2	1025	97	183597 58	100.00

Resolution No. 2 (ORDINARY RESOLUTION)

Declaration of final dividend on Equity shares @ Rs. 0.75 (15%) per share for the financial year ended 31st March, 2023.

Particulars	Remote E-voting		E-voting at AGM		TOTAL		Percentage
	Number	Shares	Number	Share s	Number	Shares	
Assent	93	183588 78	2	1025	95	1,83,59,7 03	100.00
Dissent	2	55	0	0	2	55	Negligible
TOTAL	95	183587 33	2	1025	97	18359758	100.00

Resolution No. 3 (ORDINARY RESOLUTION)

Re-appointment of Mr. Atil C. Parikh (DIN # 00041712) Director, who retires by rotation:

Particulars	Remote E-voting		E-voting at AGM		TOTAL		Percentage
	Number	Shares	Number	Share s	Number	Shares	
Assent	87	172980 76	2	1025	89	172991 01	98.56

CHAIRMAN'S INITIALS

HELD AT _____ ON _____ TIME _____

Dissent	7	254873	0	0	7	254873	1.45
TOTAL	94	17592949	2	1025	96	17593974	100.00

SPECIAL BUSINESS:

Resolution No. 4 (ORDINARY RESOLUTION)

Ratification of remuneration payable to Cost Auditors for the year ending on 31st March, 2024:

Particulars	Remote E-voting		E-voting at AGM		TOTAL		Percentage
	Number	Shares	Number	Shares	Number	Shares	
Assent	88	18356479	2	1025	90	18359504	100.00
Dissent	7	254	0	0	7	254	Negligible
TOTAL	95	18359733	2	1025	97	18359758	100.00

Resolution No. 5 (SPECIAL RESOLUTION)

Appointment of Mrs. Sejal Rajesh Parikh (DIN - 00140489) as the Whole-time Director:

Particulars	Remote E-voting		E-voting at AGM		TOTAL		Percentage
	Number	Shares	Number	Shares	Number	Shares	
Assent	88	18103800	2	1025	90	18104825	98.61
Dissent	6	254938	0	0	6	254938	1.39
TOTAL	94	18358738	2	1025	96	18359763	100.00

Resolution No. 6 (SPECIAL RESOLUTION)

Appointment of Mr. Sivaram Swaminathan (DIN - 00009909) as an Independent Director:

Particulars	Remote E-voting		E-voting at AGM		TOTAL		Percentage
	Number	Shares	Number	Shares	Number	Shares	
Assent	90	18358476	2	1025	92	18359501	100.00
Dissent	6	262	0	0	6	262	Negligible
TOTAL	96	18359738	2	1025	98	18359763	100.00

Resolution No. 7 (SPECIAL RESOLUTION)

Payment of Commission to the Non-Executive Directors of the Company.

Particulars	Remote E-voting		E-voting at AGM		TOTAL		Percentage
	Number	Shares	Number	Shares	Number	Shares	
Assent	85	18357157	2	1025	87	18358182	99.99
Dissent	9	1344	0	0	9	1344	0.01
TOTAL	94	18358501	2	1025	96	18358526	100.00

Resolution No. 8 (SPECIAL RESOLUTION)

Consider and approve Circular of acceptance of Unsecured Fixed Deposits by the Company from shareholders:

CHAIRMAN'S INITIALS

HELD AT ON TIME

Particulars	Remote E-voting		E-voting at AGM		TOTAL		Percentage
	Number	Shares	Number	Shares	Number	Shares	
Assent	87	18102677	2	1025	89	18103902	98.61
Dissent	8	255856	0	0	8	255856	1.39
TOTAL	95	18358733	2	1025	97	18359758	100.00

The Resolutions for Businesses as set out at Item No. 1 to 8 in the Notice of 36th Annual General Meeting duly approved by the members with requisite majority, are recorded hereunder:

RESOLUTION NO. 1 **ORDINARY RESOLUTION:**

To receive, consider and adopt the Standalone and Consolidated Audited financial statements of the Company for the year ended 31st March, 2023 including statement of Profit and Loss and Cashflow Statement for the year ended 31st March, 2023, Balance Sheet as at that date and the Directors' and Auditors' Reports thereon.

"RESOLVED THAT Standalone and Consolidated Audited Balance Sheet as at 31st March, 2023, Statement of Profit and Loss for the year ended 31st March, 2023 along with notes on Financial Statements, Cash Flow Statement for the year ended 31st March, 2023, Directors' and Auditors' Reports for the year 2022-23 as circulated to the members be and are hereby approved and adopted."

RESOLUTION NO. 2 **ORDINARY RESOLUTION:**

To declare a Final dividend of 15 % per equity share of Rs.5 each i.e. Rs.0.75 per equity share for the Financial Year 2022-23.

"RESOLVED THAT the final dividend of 15 % per Equity Share of Rs.5 each i.e. Rs.0.75 per Equity Share on 3,52,86,502 fully paid Equity Shares of Rs.5/- each, for the year ended 31st March, 2023 be and is hereby declared and approved and the same be paid and distributed among the Equity Shareholders, whose names appeared on the Register of Members of the Company as on 26th July, 2023 after giving effect to all valid transfers in respect of shares held in physical form and the members whose names appeared on the statement of beneficial owners furnished by NSDL and CDSL at the end of business hours on 26th July, 2023, in respect of shares held in dematerialised form."

RESOLUTION NO. 3 **ORDINARY RESOLUTION:**

To appoint a director in place of Mr. Atil C. Parikh (DIN: 00041712) who retires by rotation and being eligible, offers himself for reappointment.

"RESOLVED THAT Mr. Atil C. Parikh (DIN: 00041712), Director, who retires by rotation under the Articles 149 to 152 of the Articles of Association of the Company and being eligible offers himself for re-appointment be and is hereby re-appointed as Director of the Company."

CHAIRMAN'S INITIALS

HELD AT ON TIME

SPECIAL BUSINESS:

RESOLUTION NO. 4 **ORDINARY RESOLUTION:**
To ratify the remuneration of Cost Auditors for the financial year ending March 31, 2024.

"**RESOLVED THAT** pursuant to the provisions of Section 148 and other applicable provisions, if any, of the companies Act, 2013 read with the Companies (Audit and Auditors) Rules, 2014 (including any statutory modification(s) or re-enactment(s) thereof, for the time being in force), the remuneration of `Rs.90,000 p.a plus applicable taxes and out of pocket expenses, as recommended by the Audit Committee and as approved by the Board of Directors to be paid to M/s. Y.S. Thaker & Co., Cost Accountants (Registration Number 000318) appointed by the Board of Directors of the Company, to conduct the audit of cost records of the Company for the financial year ending March 31, 2024, be and is hereby ratified.

RESOLUTION NO. 5 **SPECIAL RESOLUTION: -**
Appointment of Mrs. Sejal R. Parikh as a Whole time Director of the Company.

"**RESOLVED THAT** pursuant to the provisions of Sections 196, 197, 198, schedule V and any other applicable provisions, if any, of the Act (including any statutory modification(s) or re-enactment thereof, for the time being in force) and the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014, as amended from time to time, Regulation 17(6)(e) of SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018 and other applicable provisions of SEBI Listing Regulations, for the time being in force), and the Article of Association of the Company and based on the recommendation of the Nomination and Remuneration Committee and the approval of the Board of Directors, the consent of members of the Company be and is hereby accorded for the appointment of Mrs. Sejal R. Parikh (DIN: 00140489) as a Whole time Director of the Company, liable to retire by rotation, for a period of 3 (three) years with effect from 16th May,2023 on the terms and conditions including the remuneration as set out in the explanatory statement annexed to the notice convening this AGM.

RESOLVED FURTHER THAT the Board of Directors be and is hereby authorised to alter and vary such terms and conditions as it may deem appropriate in relation to her appointment as the Whole time Director of the Company, in compliance with the applicable provisions of the Act, other applicable laws and SEBI Listing Regulations.

RESOLVED FURTHER THAT where in any financial year during her tenure, the Company has no profits or profits are inadequate, the remuneration as provided in explanatory statements shall be paid as minimum remuneration in compliance with applicable law notwithstanding that such remuneration may exceed the limits.

RESOLVED FURTHER THAT the Board of Directors of the Company (which term shall be deemed to hereinafter include any Committee of the Board constituted to exercise its powers, including the powers conferred by this Resolution), be and is hereby authorised to take all such steps as may be necessary, proper and expedient to give effect to this Resolution."

CHAIRMAN'S INITIALS

HELD AT _____ ON _____ TIME _____

RESOLUTION NO. 6 **SPECIAL RESOLUTION: -**

Appointment of Dr. Sivarama Swaminathan as an Independent Director of the Company.

"**RESOLVED THAT** pursuant to the provisions of Sections 149 and 152 read with Schedule IV and other applicable provisions, if any, of the Companies Act, 2013 ("the Act") and the Companies (Appointment and Qualification of Directors) Rules, 2014 and the applicable provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (including any statutory modification(s) or re-enactment(s) thereof, for the time being in force), Dr. Sivarama Swaminathan (DIN: 00009900), who was appointed as an Additional and Independent Director and who holds office of Additional Director (Category Independent Director) up to the conclusion of this Annual General Meeting and being eligible, and in respect of whom the Company has received a notice in writing under Section 160 of the Act, from a member proposing his candidature for the office of Director, be and is hereby appointed as an Independent Director of the Company, not liable to retire by rotation and to hold office for a term of 5 (five) consecutive years on the Board of the Company i.e. up-to 09.08.2028"

RESOLVED FURTHER THAT pursuant to the provisions of Regulation 17 (1A) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018 approval be and is hereby granted for re-appointment as well as continuing the directorship of Dr. Sivarama Swaminathan as an Independent Director of the Company who has attained the age of 75 years."

RESOLUTION NO. 7 **SPECIAL RESOLUTION: -**

Payment of Commission to the Non-Executive Directors.

"**RESOLVED THAT** pursuant to Section 197 (1) (ii) (A) of the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the consent of the Shareholders be and is hereby accorded to pay a commission up to 1% of the net profits of the Company, computed in the manner laid down in Section 198 of the Companies Act, 2013 to the Non-Executive Directors of the Company for FY 2022-23, 2023-24 and 2024-25 as may be considered decided by the by Board of Directors of the Company, in the manner as it may deem fit in its absolute discretion."

RESOLVED FURTHER THAT any one of Mr. Rajesh C Parikh, Chairman & Managing Director, Mr. Atil C Parikh, CEO & Managing Director, CFO & CS of the Company be and are hereby severally authorized to do such acts, deeds and things as may be considered necessary to implement this resolution."

RESOLUTION NO. 8 **SPECIAL RESOLUTION: -**

To consider and approve Circular of Unsecured Fixed Deposits Accepted by the Company from shareholders.

"**RESOLVED THAT** in terms of the provisions of Section 73(2) of the Companies Act, 2013 read with Companies (Acceptance of Deposits) Rules, 2014 as may be amended from time to time and the Fixed Deposit Schemes approved by the Shareholders of the Company in their

CHAIRMAN'S INITIALS

extraordinary general meeting held on 22.05.2014, 23.09.2016 22.09.2017 & 22.07.2022, consent of the members be and is hereby accorded to the Board of Directors of the Company to invite and accept fixed deposits from the members within limits prescribed in the Act and overall borrowing limits of the Company, as approved by the members from time to time and the draft of the Circular for inviting/accepting Deposits from the Members and the terms and conditions contained therein and as given in the Explanatory Statement annexed hereto, be and the same is hereby approved."

RESOLVED FURTHER THAT the Board of Directors be and is hereby authorised to amend the terms and conditions of the said scheme as and when required and to sign and execute deeds, applications, documents and writings that may be required on behalf of the Company and generally to do all such other acts, deeds, matters and things as may be necessary, proper and expedient or incidental for giving effect to this resolution."

Date: 29.08.2023
Place: Waghodia - Vadodara.

[Rajesh C. Parikh]
Chairman & Managing Director
DIN: 00041919

TRUE COPY

CHAIRMAN'S INITIALS

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20 MICRONS® LIMITED

ANNEXURE A7

CIN # L99999GJ1987PLC009768
Regd. Office: 9-10, GIDC Industrial Estate, WAGHODIA, Dist.: Vadodara. 391760
Ph. # 75 748 06350 E-Mail : co_secretary@20microns.com
Website : www.20microns.com

Date: 12th August, 2023

To,
Listing Compliance Department
National Stock Exchange of India Limited
Mumbai

Sub.: Clarification - Corporate Governance Report filed for the Quarter ended on 30.06.2023

Ref.: E mail dated 9th August, 2023

Dear Sir / Madam,

We are in receipt of your email dated 9th August, 2023 seeking clarification on compliance with provision of Regulation 17 (1A) of SEBI LODR Regulations, 2015.

Following has been mentioned in the email:

We would like to draw your attention, the company is not in compliant with the Provisions of Reg 17(1A) of SEBI LODR Regulations, 2015, As Mr. Swaminathan Sivaram is exceeds 75 years during the quarter ended June 30, 2023 and no Special Resolution is passed in this regard.

In this matter we would like to submit our reply as under:

1. The Board of Directors at their meeting held on 16.05.2023 has appointed Mr. Swaminathan Sivaram (DIN: 00009900) as an ***Additional Director*** (Category Independent Director) on the Board. The same has also been intimated to both the stock exchanges under Regulation 30 vide letter dated 17.05.2023.

2. Regulation 17 (1A) of SEBI LODR Regulations, 2015 is reproduced for reference:

   *No listed entity shall **appoint** a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years **unless a special resolution** is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.*

3. The Oxford meaning of word "unless" is **"except if"**. Also in Cambridge dictionary the meaning of "unless" is given as "used to say what will or will not happen if something else does not happen or is not true; except if:" Thus, it is only conditional requirement and by no means it can be construed as prior requirement.

4. In the various provisions of LODR where the Market regulator intends to get prior approval of shareholders/ Board, categorically the word 'prior' has been mentioned. Inter alia some of the provisions are mentioned hereunder:

   Second proviso to 17 (1C):
   Provided further that the appointment or a re-appointment of a person, including as a managing director or a whole-time director or a manager, who was earlier rejected by the shareholders at a general meeting, shall be done only with the prior approval of the shareholders;

23 (2):
All related party transactions and subsequent material modifications shall require prior approval of the audit committee of the listed entity.

23(4):
All material related party transactions and subsequent material modifications as defined by the audit committee under sub-regulation (2), shall require prior approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not.

24(6):
Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved.

26(6):
No employee including key managerial personnel or director or promoter of a listed entity shall enter into any agreement for himself/herself or on behalf of any other person, with any shareholder or any other third party with regard to compensation or profit sharing in connection with dealings in the securities of such listed entity, unless prior approval for the same has been obtained from the Board of Directors as well as public shareholders by way of an ordinary resolution;

5. Before insertion of Regulation 17 (1A) of LODR, as per the provisions of the Companies Act and LODR Regulations shareholders are required to pass only Ordinary resolution for appointment of any person as Non-executive Director on the Board. Thus, to add specific requirement of getting resolution passed by way of **Special resolution instead of ordinary resolution** for non executive directors whose age is more than 75 years Regulation 17 (1A) of LODR would have been added.

6. We also like to state herewith the order pronounced by SAT on 27th April, 2023 in the matter of Nectar Life Sciences Ltd. In the same SAT has categorically mentioned as follows:
The word "unless" depicted in Regulation 17(1A) does not mean "prior approval" nor the requirement of passing a special resolution is a qualificatory condition for appointment of a person as a Director.

7. Thus, the basic requirement of Regulation 17 (1A) is that if any person is appointed as Non-Executive Director on the Board of the Company whose age is more than 75 years, his/ her appointment is subject to approval of shareholders by way of a special resolution. It is not intended or not specifically mentioned to get prior approval by way of special resolution.

To conclude, the appointment of Mr. Swaminathan Sivaram (DIN: 00009900) as an Additional Director (Category Independent Director) on the Board w.e.f. 16.05.2023 which now has been approved by the shareholders by way of passing special resolution at their Annual General Meeting held on 10.08.2023 is in compliance with the requirement of provision of regulation 17 (1A) of SEBI LODR Regulations 2015.

In view of above, as there has been no non-compliance on the part of company no action shall be initiated against the Company, its directors or promoters.

Please let us know for further clarifications required, if any, from our end in the above matter.

Thanking you,
Yours faithfully,
For, 20 MICRONS LIMITED

KOMAL PANDEY
Digitally signed by KOMAL PANDEY
Date: 2023.06.12 10:38:52 +05'30'

CS Komal Pandey
Company Secretary
Membership # A-37092

TRUE COPY

NSE

ANNEXURE – A8

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National Stock Exchange Of India Limited

NSE/LIST-SOP/COMB/FINES/8861 **August 21, 2023**

The Company Secretary
20 Microns Limited
9/10, GIDC Industrial Estate,
Waghodia, Vadodara,
Gujarat - 391760

Dear Sir/Madam,

Subject: Notice for non-compliance with SEBI (LODR) Regulations, 2015 ("Listing Regulations") and/or Regulation 76 of SEBI (Depositories and Participants) Regulations, 2018 ("Depository Regulations")

Your attention is drawn towards SEBI Circular No. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020 (hereinafter referred to as 'SOP Circular'), specifying Standard Operating Procedure for imposing fines and suspension of trading in case of non-compliance with Listing and/or Depository Regulations. On verification of the Exchange records, it has been observed that your Company has not complied/delayed complied with certain Listing Regulation(s) and/or Depository Regulations. The details of non-compliance(s)/delayed compliance(s), total fine payable by your Company and the particulars about manner in which fine should be remitted to the Exchange is enclosed as **Annexure**.

You are requested to inform the Promoters about identified non-compliance/delayed compliance and to ensure compliance with respective regulation(s) and/or make the payment of fines within 15 days from the date of this notice, failing which the Exchange may initiate following actions as per SOP Circular:

1. Initiate freezing of entire shareholding of the Promoters in the Company as well as in other securities held in the Demat account of the Promoters.

2. Trading in securities of your Company shall take place on 'Trade for Trade' basis, in case of consecutive defaults with Regulations 17(1), 18(1) and 27(2) of the Listing Regulations and Regulation 76 of Depository Regulations i.e., Shifting of trading in securities to Z Category as per SOP Circular.

Further, as per SOP Circular, your Company is also required to ensure that the said non-compliance which has been identified by the Exchange and subsequent action taken by the Exchange in this regard shall be placed before the Board in the next Board Meeting and comments made by the Board shall be duly informed to the Exchange for dissemination.

This Document is Digitally Signed

Signer: MAHAVIR DESAI
Date: Mon, Aug 21, 2023 16:35:39 IST
Location: NSE

NSE

NSE

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National Stock Exchange Of India Limited

In case of any clarification, you may contact any of the below mentioned Exchange Officers from Listing Compliance Department: -

- Mr. Aniket Raut
- Mr. Kunal Rohra

Yours faithfully
For National Stock Exchange of India Limited

Mandar Desai
Manager

This Document is Digitally Signed

Signer: MANDAR DESAI
Date: Mon, Aug 21, 2023 20:35:00 IST
Location: Mumbai

NSE

NSE

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National Stock Exchange Of India Limited

[illegible]

Annexure

Regulation	Quarter	Fine amount per day (Rs.)/Fine amount per instance	Days of non-compliance/ No. of instance(s)	Fine amount (Rs.)
17(1A)	30-June-2023	2000	46	92000
			Total Fine	**92000**
			GST (@18%)	**16560**
			Total	**108560***

*** In case the Company is non-compliant as on the date of this letter then fine amount will keep on increasing every day till the date compliance is achieved.**

Notes:

- **If the fine amount is paid before receipt of this letter, then inform the Exchange accordingly.**
- **Please update the payment details on below mentioned path:**
  NEAPS > Payment > SOP Fine Payment.
- **The above payment may be made vide RTGS / NEFT / Net Banking favouring 'National Stock Exchange of India Limited'. The bank details towards the payment of fine are as follows:**

BENEFICIARY NAME	NATIONAL STOCK EXCHANGE OF INDIA LIMITED
BANK NAME	IDBI BANK LTD
A/C NO	Please refer Unique Account Code used for making Annual Listing fees to the Exchange
BRANCH	BANDRA KURLA COMPLEX, MUMBAI
RTGS/IFSC CODE	IBKL0001000

- **The fine paid as prescribed above will be credited to IPFT as envisaged in the circular.**
- **The company may file a request for waiver of fines. However, before filing an application for waiver of fines, the company is requested to refer to the below policies available on the Exchange's website. For ready reference you may refer below links:**
  i. **Policy on exemption of fine:**
  https://archives.nseindia.com/content/equities/Policy_for_exemption_SOP_Equity.pdf
  ii. **Policy on processing of waiver application:**
  https://static.nseindia.com//s3fs-public/inline-files/Policy_on_processing_of_waiver_application_segregation_of_commonly_listed_entities.pdf
- **The request for waiver of fine can be submitted to Exchange through NEAPS portal at on given link: NEAPS>>Compliance>>Fine Waiver>>Waiver Request along with documentary evidence.**

This Document is Digitally Signed

Signer: [illegible]
Date: [illegible]
Location: [illegible]

NSE

TRUE COPY

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ANNEXURE – A9

20 MICRONS®

L I M I T E D

CIN # L99999GJ1987PLC009768
Regd. Office: 9-10, GIDC Industrial Estate, WAGHODIA, Dist.: Vadodara, 391760
Ph. # 75 748 06350 E-Mail : co_secretary@20microns.com
Website : www.20microns.com

25th August, 2023

To:

National Stock Exchange of India Limited
Listing Deptt.
Exchange Plaza, Bandra – Kurla Complex,
Bandra (East),
MUMBAI – 400 051.
SYMBOL : 20 MICRONS

SUB: DETAILS OF PAYMENT OF FINES FOR NON-COMPLIANCE WITH REGULATIONS OF SEBI (LODR) REGULATIONS, 2015 UNDER THE PROTEST SUBJECT TO THE DECISION OF THE APPEALANT QUORUM.

REF.: Vide letter dated 21st August, 2023- NSE/LIST-SOP/COMB/FINES/0951

Dear Sir/Madam,

This bears reference to your letter dated 21st August, 2023 with respect to alleged violation of Regulation 17(1A) of SEBI (LODR) Regulations 2015, pursuant to which a fine of Rs.106560/- (Rupees One Lakh Eight Thousand Five Hundred and Sixty Only) is levied on the Company.

Without prejudice to the rights of the company and without accepting any finding arrived at in the captioned letter, we hereby deposit the said penalty amount under protest.

It is clarified that we dispute and deny the findings of the letter. **"HOWEVER, THE FINE IS BEING PAID UNDER THE PROTEST AND SUBJECT TO THE DECISION OF THE APPELLATE QUORUM."**

Further, we would like submit details of payment of fines as follow:

Remittance details:

SYMBOL	Regulation & Quarter	Amount paid (Rs.)	TDS deducted, if any (Rs.)	Net Amount paid (Rs.)	GST No.
20 MICRONS	Regulation-17 (1A) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015- Quarter ended 30th June, 2023	106560	9200	99360	24AAAC20560B1ZS

Remitted by:

Cheque/DD No.	Date	UTR No. for RTGS /NEFT
973078	24/06/2023	SBIN623236265448

The payment advice is also attached herewith for your reference.

Thanking you,

Yours faithfully
For 20 Microns Limited

komal pandey
Digitally signed by komal pandey
Date: 2023.06.25 12:55:40 +05'30'

[Komal Pandey]
Company Secretary
Membership # A-37692

Encl.: As

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20 Microns Limited (HO)
09-10, GIDC Ind. Estate Waghodia
Dist. Vadodara Gujarat, India - 391760.
Ph ; Fax : E-Mail -

Advice No : 1200003689 | Advice Dt : 24-08-2023

PAYMENT ADVICE

To,
NATIONAL STOCK EXCHANGE LIMITED

EXCHANGE PLAZA C-1, BLOCK-G,
BANDRA - KURLA COMPLEX BANDRA (E) MUMBAI
Maharashtra, India - .
Ph : Fax :

Currency INR
Cheque No 573076 Cheque Dt. 24-08-2023

Bank

Please find enclosed here with our payment in settlement of your Invoice(S) details are given below :-

Sr No	Invoice No	Date	Remarks	Pay Mode	Passed Amount	TDS	Amount Paid
1	1200003689	24.08.2023	573076	H101	108,560.00	9,200.00	99,360.00
							99,360.00

Amount in Words :
NINETY-NINE THOUSAND THREE HUNDRED SIXTY

PREPARED BY CHECKED BY AUTHORISED BY RECIEVED BY

TRUE COPY

85 ANNEXURE -A10

BEFORE THE HON'BLE SECURITIES APPELLATE TRIBUNAL

MUMBAI

APPEAL NO. 846 OF 2023

20 Microns Limited ...Appellant

Versus

National Stock Exchange of India Limited & Anr. ...Respondent

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BEFORE THE HON'BLE SECURITIES APPELLATE TRIBUNAL

MUMBAI

APPEAL NO. 846 OF 2023

20 Microns Limited ...Appellant

Versus

National Stock Exchange of India Limited & Anr. ...Respondent

SHORT NOTE ON BEHALF OF RESPONDENT NO. 1 - NSE

I. Introduction:

The captioned Appeal has been filed against the fine imposed upon the Appellant for noncompliance of Regulation 17(1A) of Securities and Exchange Board of India (Listing and Obligations and Disclosure Requirements), 2017 ("**LODR**") by Respondent No.1.

Regulation 17(1A) of LODR is reproduced hereinbelow for ease of reference:

> *"17. (1) The composition of board of directors of the listed entity shall be as follows:*
> *(1A) No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person."*
> *("Emphasis Supplied")*

II. Facts of Appeal:

a) On 16th May 2023 in a meeting held between the board of directors, a resolution was passed to appoint Dr. Swaminathan Sivaram (DIN:

0009900) who had attained the age of 76 years, as an Independent Non - Executive Director of the company, however no special resolution of the shareholders was passed for this appointment in terms of Regulation 17(1A) of LODR.

b) Dr Swaminathan Sivaram took charge as an Independent Non-Executive Director of the company forthwith, till seeking approval of the shareholder at the ensuing Annual General Meeting.
(*Exhibit – I/Pg. 78/Appeal Memo*).

c) The appointment of Dr. Swaminathan Sivaram was a proactive step taken by the Company, as there was admittedly no vacancy created for the appointment of an Independent Non Executive Director.

d) The term of other Independent Non Executive Directors of the Company viz. Mr. Ramkishan Devidayal and Mr. Anil Patel is to expire on 12th August 2024 which was one year three months is future of appointment of Dr. Swaminathan Sivaram.
(*Para 5.11 & 5.12/Pg. 9 & 10/Appeal Memo*)

e) However, in the notice issued by the Company for its 36th Annual General Meeting of the shareholders appointment of Dr Swaminathan Sivaram was proposed under the category of special business.
(Exhibit – J/Pg. 88/Appeal Memo)

f) The shareholders on 10th August 2023 after a passage of 2 months and 24 days by way of a special resolution approved the appointment of Dr

Swaminathan Sivaram. However, the Appellant failed to comply with regulation 17(1A) of LODR which is a condition precedent.

g) The Appellant filed its Corporate Governance Report for the quarter end 30th June 2023.

h) Upon perusing the Corporate Governance Report for the quarter end 30th June 2023 it came to Respondent No.1's knowledge that the appointment of Dr Swaminathan Sivaram was done without passing of a special resolution. In view of the aforesaid on 26th July 2023 the listing compliance department of Respondent No.1 addressed an email to the Appellant, thereby informing the Appellant that as per Regulation 17(1A) of the LODR Regulations, no listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, with the explanatory statement annexed to the notice for motion of appointment of such person. Respondent No.1 further requested the Appellant to share the special resolution passed if any for such appointment. ***(Exhibit – D/Pg. 49/Appeal Memo)***

i) On 27th July 2023, the Appellant replied to above email thereby misplacing its reliance upon Regulation 17(1C) of LODR and stating that the approval of the shareholders for appointment of a person on the Board of Directors is taken at the next general meeting or within a period of three months, from the date of appointment whichever is earlier. ***(Exhibit – E/Pg. 52/Appeal Memo)***

j) On 9th August 2023, the listing compliance department of Respondent No.1 issued another email to the Appellant seeking clarification for appointment of Dr Swaminathan Sivaram as an Independent Director of the Appellant without seeking approval of the shareholders of the Appellant as prescribed under the LODR. *(Exhibit – F/Pg. 49/Appeal Memo)*

k) In response to the above clarification on 12th August 2023, the Appellant addressed a detailed response thereby informing that the shareholders have approved the approval of Dr Swaminathan Sivaram as an Independent Director of the Appellant and further placed reliance upon the Judgment of Nectar Life Science Limited dated 27th April 2023, wherein this Hon'ble Tribunal had observed that the word "*unless*" in Regulation 17(1A) of LODR does not mean "*prior approval*" and once again reiterated that the approval of the shareholders could be sought pursuant to appointment within a period of three months. *(Exhibit – F/Pg. 53/Appeal Memo)*.

l) In view of the aforesaid, after considering all the facts and circumstances and considering the noncompliance of Regulation 17(1A) of LODR, the Appellant was compelled to levy penalty of Rs 2,000/- (*Rupees Two Thousand only*) per day for noncompliance of Regulation 17(1A) of LODR for 46 days for the quarter ending 30th June 2023. *(Exhibit – A/Pg. 27/Appeal Memo)*

m) Being aggrieved by the above, the Appellant has approached this Hon'ble Tribunal.

III. Rationale behind inclusion of Regulation 17(1A) in LODR:

a) SEBI on 2nd June 2017 had formed a committee under the chairmanship of Mr. Uday Kotak with the aim of improving standards of corporate governance of listed companies in India. This committee had submitted its report in October 2017 (**"Kotak Committee Report"**).

b) The basic principle underlying the governance of a corporate entity is that the superintendence, control and direction of its business and affairs lie with its board of directors, with the executive management being delegated powers for smooth and efficient operational functioning. Accordingly, the board of directors as a whole is responsible to all stakeholders for meeting the requisite standards of corporate governance. The responsibilities of the board of directors are accentuated in a listed entity given the wider ambit of stakeholder interests.

c) The Committee observed that while aspects relating to the composition and role of the board of directors of listed entities have been subjected to gradual reform, a holistic re-assessment is required to further strengthen the same.

d) In view of the aforesaid in relation to Non Executive Directors the committee passed the following recommendation:

> *"The Committee recognizes that while age itself may not be a determinant of efficiency or capability of a person or the basis for disqualification of a director, a higher level of shareholder endorsement may be required for directors to continue in their position beyond a certain age. The Committee further noted that non-executive roles on a board also require significant commitment of time. In this regard, the Committee is of the view that checks and balances should*

be considered in connection with the age of Non-executive Directors (hereinafter referred to as "NEDs") similar to the provisions of the Companies Act for executive directors.

Therefore, the Committee recommends that a provision requiring a special resolution on a similar basis should be inserted for listed entities for the appointment/continuation of NEDs on attaining the age of 75 years for the relevant term. All shareholders should be permitted to vote on such a resolution"

e) The Committee further prosed an amendment to SEBI LODR w.e.f. 1st October 2019 which is as follows:

Proposed amendments to SEBI LODR Regulations w.e.f. October 1, 2019:

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	Reg.17: Board of Directors: Insertion of a new sub-Regulation (1A): (1A) No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

The relevant portion of the Kotak Committee Report is annexed hereto as "**Annexure – 1**".

f) Considering the above recommendation SEBI amended the LODR on 1st April 2019 and inserted Regulation 17(1A) in LODR for reasons stated in the Kotak Committee Report.

Respondent No.1 is bound by directions, regulation as well as circulars of SEBI

g) SEBI is a body corporate established under Section 3 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and was established to carry on functions as stipulated under Section 11 of the SEBI Act, including regulating the business of all the stock exchanges

and any other security markets, prohibiting fraudulent and unfair trade practices relating to securities market, etc. It is pertinent to note that SEBI is the regulatory authority of NSE and NSE is bound by the directions as well as circulars if any issued by SEBI.

Interpretation of Regulation 17(1A) of LODR

h) A bare perusal and ex facie reading of Regulation 17(1A) of LODR evidence that no listed entity is permitted to appoint a person or even continue the appointment of a person as a non executive director, if that person has attained the age of 75 years, unless a special resolution is passed for such appointment.

i) Reading regulation 17(1A) in its entirety makes it crystal clear that the regulation uses the phrases "*unless a special resolution is passed*". In this phrase the word "*passed*" signifies the mandatory nature of the special resolution which has to be passed prior to the appointment of a person who has attained the age of 75 years as a non executive director.

j) Respondent No.1 further places its reliance upon the judgment of this Hon'ble Tribunal in Hardy Oil Pvt. Ltd. [2006 SCC OnLine SAT 35] (*Para 11*). The judgment is hereto marked as "**Annexure – 2**".

k) There is absolutely no ambiguity in language of Regulation 17(1A) of LODR, it is most humbly submitted that it is settled principle of law that the words of a statute must prima facie be given their ordinary meaning. Moreover, as long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible and that can never be the intent of the Legislature.

l) The provision of Regulation 17(1A) of LODR Regulation has to be read not just in addition to the provisions of the Companies Act, 2013 but also in isolation from the provisions under the Companies Act, 2013. It is submitted that the main object of Regulation 17(1A) of LODR is to be read in isolation because it is the only regulation which applies to a situation where a person who has attained the age of 75 years has to appointed at the post of Non- Executive Director or his appoinment has to be continued as a Non-Executive Director.

m) The literal rule of interpretation, also known as the golden rule, states that the words of a statute must be given their ordinary meaning unless doing so would lead to an absurd result. However, if the words of a statute are unclear or ambiguous, other aids to interpretation may be used to determine the meaning of the statute. One such aid to interpretation is the principle of harmonious construction, which states that two provisions of the same statute should be interpreted in a way that gives effect to both provisions as per the intention of the legislature.

n) The Hon'ble Bombay High Court, while dealing with a similar situation in Section 196(3)(a) of the Companies Act, 2013 i.e. disqualification for appointment or continuation as Managing Director of company who is below the age of 21 years and above the age of 75 years observed the following:

> *"17. In our view, Mr. Aspi Chinoy, the learned Senior Counsel appearing on behalf of the Appellant has correctly submitted that the amended section as a matter of public policy contains mandatory prohibition/bar against any Company from continuing the Managing Director in employment once he has attained the age of 70 years. The*

language of section 196(3)(a) is plain, simple and unambiguous and it applies to all the Managing Directors who have attained the age of 70 years and the section does not make any distinction between the Managing Directors who have been appointed before 1-4-2014 and those after 1-4-2014. The moment therefore Managing Director attains the age of 70 years, disqualification mentioned in section 196(3)(a) would operate immediately. In our view, it is not open now to alter its clear terms by a process of interpretation for excluding the Managing Directors appointed prior to 1-4-2014 from the purview of prohibition contained in section 196(3). The disqualifications which have been mentioned in section 196(3) are introduced as a matter of public policy and they contain mandatory prohibition/bar for continuing the Managing Director in employment, once he has attained the age of 70 years. It is well settled position in law that while interpreting any provision it is not open for the Court to add to or delete words from the provision or change the plain statutory language of the provision."
(Emphasis Supplied)

Hereto marked as "**Annexure – 3**" is a copy of Judgment of the Hon'ble Bombay High Court in Sridhar Sundararajan v. Ultramarine and Pigments Ltd., [2016 SCC OnLine Bom 10591]

<u>Reliance of Appellant on the Judgment of this Hon'ble Tribunal in Nectar Life Science Limited dated 27th April 2023</u>

o) It is humbly submitted that by way of an order dated 18th September 2023, the Hon'ble Supreme Court of India has observed that interest of justice would be sub-served by observing that the impugned judgment (*judgment dated 27th April 2023 of this Hon'ble Tribunal in the matter of Nectar Life Science Limited*) is not to be treated as a precedent, till the matter is considered on merits. Hereto annexed as "**Annexure – 4**" is a copy of the order dated 18th September 2023 passed by the Hon'ble Supreme Court of India in Civil Appeal 4794 of 2023.

p) It is humbly submitted that the interpretation of the word "*Unless*" in Regulation 17(1A) of LODR is pending interpretation by the Hon'ble Supreme Court of India.

q) Hence it is most respectfully stated that any order or judgment passed by considering the judgment dated 27th April 2023 of this Hon'ble Tribunal in the matter of Nectar Life Science Limited will be bad in law.

r) In addition to the above the judgment dated 27th April 2023 of this Hon'ble Tribunal in the matter of Nectar Life Science Limited was based on completely different set of facts, there is no casual vacancy occurred in the present case of the Appellant, and hence the judgment of Nectar is not applicable to the present Appeal

IV. CONCLUSION:

a) In view of the aforesaid it is most respectfully submitted that the Appellant has acted in contravention of the provisions of LODR. Regulation 17(1A) of LODR makes it crystal clear that no person can be appointed as a director of a listed company or appointment of any person as a director of a listed company shall not be continued once that person has attained the age of 75 years unless a special resolution is passed by the shareholder of that listed company.

b) It is pertinent to note that the Respondent No.1 has only levied penalty for the period where no special resolution was passed, in compliance with the LODR. In addition to the above the interpretation of the word "*unless*" is pending interpretation before the Hon'ble Supreme Court of India. Hence

it is humbly submitted that the reliefs as prayed for by the Appellant may not be granted and the Appeal may be dismissed.

Date: 25th November 2023
Place: Mumbai

Parinam Law Associates
Advocates for the Respondent No.1 – NSE

required to disclose the list of competencies/expertise that its board members actually possess. Some illustrative parameters that may be considered in this context are listed in **Annexure 4**.

Further, it is recommended that initially, a listed entity should be required to disclose competencies of its board members against every identified competency/expertise without disclosing names in the annual report for financial year ending March 31, 2019. However, detailed disclosures of competencies of every board member, along with their names, should be required w.e.f. March 31, 2020 (i.e. for annual report for the financial year ending March 31, 2020).

Proposed amendments to SEBI LODR Regulations (w.e.f. FY ending March 31, 2019/March 31, 2020 as applicable):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Schedule V: Annual Report** (C) Corporate Governance Report: The following disclosures shall be made in the section on the corporate governance of the annual report. (2) Board of Directors: ..... Insertion of a new sub-clause (h): (h) A chart or a matrix setting out the skills/expertise/competence of the board of directors specifying the following: (i) List of core skills/expertise/competencies identified by the board of directors as required in the context of its business(es) and sector(s) for it to function effectively and those actually available with the board; and (ii) Names of directors who have such skills/expertise/competence, with effect from financial year ended March 31, 2020.

5. Approval for Non-executive Directors on Attaining a Certain Age

Current regulatory provisions:

The Companies Act provides that a person may be appointed/continue as Managing Director (*hereinafter referred to as "MD"*), whole-time director or manager on attaining the age of 70 years by passing a special resolution. However, no such provision exists for non-executive directors. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee recognizes that while age itself may not be a determinant of efficiency or capability of a person or the basis for disqualification of a director, a higher level of shareholder endorsement may be required for directors to continue in their position beyond a certain age. The Committee further noted that non-executive roles on a board also require significant commitment of time. In this regard, the Committee is of the view that checks and balances should be considered in connection with the age of Non-executive Directors (*hereinafter referred to as "NEDs"*) similar to the provisions of the Companies Act for executive directors.

Therefore, the Committee recommends that a provision requiring a special resolution on a similar basis should be inserted for listed entities for the appointment/continuation of NEDs on attaining the age of 75 years for the relevant term. All shareholders should be permitted to vote on such a resolution.

Proposed amendments to SEBI LODR Regulations (w.e.f. October 1, 2019):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Reg 17. Board of Directors.** **Insertion of a new sub-Regulation (1A):** **(1A)** No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

6. Minimum Number of Board Meetings

Current regulatory provisions:

Currently, both the Companies Act and the SEBI LODR Regulations require at least four meetings of the board every year with a maximum gap of one hundred and twenty days between any two meetings. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee believes that the four meetings of the board tend to focus primarily on financial results and other matters relating to regular compliance. Hence, boards may be required to meet more frequently to focus on other critical aspects of a listed entity such as its management and corporate governance. Accordingly, it is recommended that the minimum number of meetings of board of directors be increased to five every year.

Additionally, the Committee is of the view that aspects like strategy, succession planning, budgets, risk management, ESG (environment, sustainability and governance) and board evaluation are critical to the medium-term and long-term future of a listed entity – and in order to ensure that there is adequate attention paid thereto, the Committee recommends that, at least once a year, the above-referred aspects should be specifically discussed by the board.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 17. Board of Directors. **(2)** The board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.	**Reg 17. Board of Directors** **(2)** The board of directors shall meet at least ~~four~~ five times a year, with a maximum time gap of one hundred and twenty days between any two meetings and at least once a year, the board shall specifically discuss strategy, budgets, board evaluation, risk management, ESG (environment, sustainability and governance) and succession planning.

2006 SCC OnLine SAT 35 : [2006] SAT 35 : (2006) 73 CLA 25

Securities Appellate Tribunal Mumbai

BEFORE N.K. SODHI, PRESIDING OFFICER AND R.N. BHARDWAJ, MEMBER

In the matter of:

Hardy Oil Pvt. Ltd., ... Appellant;

Versus

1. Securities & Exchange Board of India.
2. Burren Energy India Ltd.
3. Unocal Bharat Limited ... Respondents.

Appeal No. 132 of 2005

Decided on March 8, 2006

Shri Harish Salve, Sr. Advocate with Mr. Shyam Mehta, Advocate, Ms. Meenakshi Gouri, Shri Akshay Patil, Advocate, Shri Sunil Mathew, Advocate, Shri A. Jankiraman, C.A., Shri. R. Sethuraman, C.A. for the appellant

Shri Rafiq Dada, Sr. Advocate with Ms. Deye Gupta, Advocate for Respondent no. 1.

Shri Soli Cooper, Senior Advocate with Shri Tejas Karia, Advocate and Shri Indranil Deshmukh, Advocate for Respondents nos. 2 and 3.

N.K. Sodhi, Presiding Officer:— Burren Energy India Ltd., (hereinafter called "Burren") was incorporated in December, 2004 as a private limited company under the Companies Act, 1985 of England and Wales with its registered office in London. It is a wholly owned subsidiary of Burren Energy plc. This company was formed to acquire the entire equity share capital of Unocal Bharat Ltd., (for short "UBL"). UBL was incorporated in Mauritius in July, 1996 according to the law prevalent in that country and its entire issued share capital was acquired in September, 1996 by Unocal International Corporation (for short "UIC"). UIC is a company incorporated in California in USA which is a 100% subsidiary of Unocal Inc. UBL has no activities but holds 26.01% of the issued share capital of Hindustan Oil Exploration Co. Ltd., (hereinafter called "the target company") which is a company incorporated in India under the Companies Act, 1956. On February 14, 2005, Burren entered into a share purchase agreement with UIC to acquire the entire equity share capital of UBL which owns and holds 1,52,81,633 equity shares of Rs. 10/- each representing 26.01% in the paid up share capital of the target company. This agreement was entered into in England for cash at a negotiated acquisition price of US$ 26,10,000. The acquisition was unconditional and absolute transfer of shares of a foreign shareholder to a foreign company outside India at the holding company level and the shares of UBL were also registered in the name of Burren on the same day. The net result of this transaction is that UBL which was earlier owned by UIC is now owned by Burren and it continues to hold 26.01% of the share capital in the target company. Since Burren indirectly acquired 26.01% equity share capital of the target company, it (Burren) nominated two directors on the board of directors of the target company in pursuance to the agreement. The appellant is also a limited company registered in England and it holds 8.5% shares in the target company. The dispute herein is between the appellant and Burren regarding 26.01% share capital of the target company held by UBL. The fight is between them to take over UBL with a view to control the target company.

2. The Securities and Exchange Board of India (Substantial Acquisition of Shares & Takeovers) Regulations, 1997 (hereinafter referred to as "the Regulations") have been framed by the Securities and Exchange Board of India (for short "the Board") in

exercise of its powers under section 30 of the Securities and Exchange Board of India Act, 1992 (for short "the Act"). Regulations 10 to 12 require that whenever any person acquires directly or indirectly 15% or more shares or voting rights in a company, he/it shall make a public announcement to acquire shares of the said company in accordance with the Regulations. Since Burren had taken over UBL, it indirectly acquired 26.01% shares in the target company and, therefore, in pursuance to the Regulations it made a public announcement on February 15, 2005 to acquire shares of the target company. The offer was to acquire 1,17,48,990 equity shares constituting 20% of the paid up equity share capital of the target company at a price of Rs. 92.41 per share. It was made clear in the public announcement that it was being made pursuant to and in compliance with the Regulations. Learned counsel for the parties informed us during the course of arguments that the public offer made by Burren had virtually failed because only 1800 shares were offered to it in response to the public announcement presumably because the share price of the target company had by then risen and was much higher than the offer price.

3. Soon after the public announcement, the appellant filed an application dated 6/4/2005 before the Board complaining that Burren and UBL were trying to seek legitimacy and legal sanction for a fraudulent acquisition of control of the target company which is a listed company and that the entire fraud was being put through the Regulations in derogation of the contractual rights of the appellant. The primary grievance made in the complaint was that the target company had entered into a shareholders agreement on 14/10/1998 to which UBL, the appellant through its predecessor and other financial institutions which were shareholders were a party and that the agreement contained a provision for preemption if any of the parties to the agreement desired to sell off their shares. The appellant complained that in pursuance to that agreement it had a right of preemption before Burren could acquire/purchase the shares of UBL. The appellant also complained that the public announcement suffered from inadequate disclosures and suppression of material particulars. The prayer made in the application was that the Board being the protector of the interests of investors and shareholders should not allow the open offer process to be initiated and that it should direct Burren to withdraw the public offer made on its behalf and on behalf of UBL. This complaint was followed by another complaint dated 21/7/2005 containing similar allegations. It is common case of the parties that disputes regarding the right claimed by the appellant are pending in a civil court at Vadodara in the State of Gujrat and that some arbitration proceedings are also pending before an Arbitrator in England with which we are not concerned.

4. In the meantime Burren submitted a draft letter of offer dated March 1, 2005 to the Board for its approval. While the letter of offer was being examined by the Board, it received the aforesaid complaints from the appellant and after examining the same Burren was informed by letter dated July 25, 2005 that it should ensure that all disputes pending between the parties in various fora should be disclosed in the letter of offer making it clear that the public offer was subject to the result of those proceedings. The Board further directed Burren to disclose in the letter of offer that the question whether appointment of directors on February 15, 2005 on the Board of Directors of the target company was in violation of the Regulations, was under consideration of the Board. Burren was also required to disclose the details regarding the incorporation of UBL in Mauritius. The draft letter of offer was approved by the Board subject to various riders including the aforesaid directions. It appears that the Board did not inform the appellant about the action taken on its complaints and, therefore, the appellant felt that the complaints were not being attended to. It approached the High Court of Bombay under Article 226 of the Constitution for a mandamus directing the Board to take action on the complaints filed by it. In response to the notice issued in the writ petition the Board informed the appellant and the court

(6)

that suitable directions had been issued to Burren to modify the draft letter of offer. A copy of the letter dated July 25, 2005 issued to the merchant banker of Burren was produced and handed over to the appellant in court. Since action had been taken on the complaints, the writ petition was dismissed on 11/08/2005 as withdrawn. Treating the letter dated July 25, 2005 as the order passed by the Board on the complaints filed by the appellant, the latter filed Appeal no. 115 of 2005 before this Tribunal with a grievance that the complaints made by it had not been properly considered by the Board. The appeal was disposed of with a direction to the Board to consider afresh the points raised by the appellant in its complaints and to convey its decision within a particular time frame. In pursuance to that direction the Board addressed a detailed communication dated August 29, 2005 to the appellant informing the latter that there was no merit in the complaints filed by it and that there was no need to carry out investigations under Regulation 38 of the Regulations. The Board further informed the appellant that the agreement between Burren and UIC for purchase of shares of UBL was an agreement between two foreign companies whereby shares of another foreign company were acquired outside India and, therefore, the validity of such an agreement could be challenged only according to the laws of domicile of those companies. Reference was made to the judgement of the Supreme Court in *Technip SA v. SMS Holding Pvt. Ltd.*, (2005) 5 SCC 465. The appellant was also informed that in the present case no provision of the Regulations had been violated. It is against this communication that the present appeal has been filed under Section 15-T of the Act.

5. We have heard the learned senior counsel for the parties.

6. It was strenuously urged on behalf of the appellant that the indirect acquisition of 26.01% shares of the target company by Burren on 14/02/2005 was in violation of the Regulations. Our attention was drawn to Regulations 10, 11, 12 and also to Regulation 22 to contend that the acquisition was illegal because Burren did not make the public announcement prior to acquiring the shares of UBL on 14/02/2005. The argument is that Regulation 10 prohibits the acquisition of shares (if they exceed the stipulated 15% or more) without the acquirer first making a public announcement to acquire the shares in accordance with the Regulations. Great stress was laid on the word unless used in this Regulation which, according to the learned senior counsel requires the acquirer to make the public announcement prior to the acquisition of shares. Reference was also made to the Explanation to Regulation 11 to contend that acquisition includes indirect acquisition of companies whether listed on unlisted, whether in India or abroad. Clause 16 of Regulation 22 was also pressed into service to support the plea that the agreement by which Burren indirectly acquired the shares of the target company was contrary to the Regulations. Learned senior counsel submitted that the shares of UBL had been acquired through an agreement which did not contain a clause "to the effect that in case of non compliance of any provisions of this regulation, the agreement for such sale shall not be acted upon by the seller or the acquirer....." and therefore, by virtue of Regulation 22(16) the agreement could not be acted upon. According to the learned senior counsel when an acquirer enters into an agreement to acquire 15% or more shares the agreement has to be conditional upon the acquirer to comply with the Regulations.

7. Having given our thoughtful consideration to the contentions raised on behalf of the appellant we have not been able to persuade ourselves to accept the same.

8. Before we deal with the contentions it is necessary to refer to the relevant provisions of the Regulations with which we are concerned and they read as under:

"Acquisition of fifteen per cent or more of the shares or voting rights of any company.

10. No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with

him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations:

Provided....."

"**Consolidation of holdings.**

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5 per cent of the voting rights, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

(2) .....

(2A) .....

(3) .....

Explanation.—For the purposes of regulation 10 and regulation 11, acquisition shall mean and include,—

(a) direct acquisition in a listed company to which the regulations apply;

(b) indirect acquisition by virtue of acquisition of companies, whether listed or unlisted, whether in India or abroad."

"**Timing of the public announcement of offer.**

14. (1) The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein:

(2) .....

(3) .....

(4) In case of indirect acquisition or change in control, a public announcement shall be made by the acquirer within three months of consummation of such acquisition or change in control or restructuring of the parent or the company holding shares of or control over the target company in India."

"**Offer price**

20. (1) The offer to acquire shares under regulation 10, 11 or 12 shall be made at a price not lower than the price determined as per sub-regulations (4) and (5).

(2) .....

(3) .....

(4) .....

(5) .....

(6) .....

(7) .....

(8) .....

(9) .....

(10) .....

(11) .....

(12) ....."

"**Minimum number of shares to be acquired.**

21. (1) The public offer made by the acquirer to the shareholders of the target company shall be for a minimum twenty per cent of the voting capital of the company:"

[6]

"**General obligations of the acquirer**

22. (1) The public announcement of an offer to acquire the shares of the target company shall be made only when the acquirer is able to implement the offer.

(2) .....

(3) The acquirer shall ensure that the letter of offer is sent to all the shareholders (including non-resident Indians) of the target company, whose names appear on the register of members of the company as on the specified date mentioned in the public announcement, so as to reach them within 45 days from the date of public announcement:

Provided that where the public announcement is made pursuant to an agreement to acquire shares or control over the target company, **the letter of offer shall be sent to shareholders other than the parties to the agreement.**

(4) .....

(5) .....

(6) .....

(7) During the offer period, the acquirer or persons acting in concert with him shall not be entitled to be appointed on the board of directors of the target company:

(8) .....

(9) .....

(10) .....

(11) .....

(12) .....

(13) .....

(14) .....

(15) .....

(16) If the acquirer, in pursuance of an agreement, acquires shares which along with his existing holding, if any, increases his shareholding beyond 15 per cent, then such agreement for sale of shares **shall contain a clause to the effect that in case of non-compliance of any provisions of this regulation, the agreement for such sale shall not be acted upon by the seller or the acquirer;**"

"**Competitive bid.**

25. (1) Any person, other than the acquirer who has made the first public announcement, who is desirous of making any offer, shall, within 21 days of the public announcement of the first offer, make a public announcement of his offer for acquisition of the shares of the same target company.

Explanation.—An offer made under sub-regulation (1) shall be deemed to be a competitive bid.

(2) No public announcement for an offer or competitive bid shall be made after 21 days from the date of public announcement of the first offer."

9. A reading of Regulation 10 makes it abundantly clear that no acquirer shall acquire 15% or more shares or voting rights in a company **unless** he makes a public announcement to acquire shares of such company in accordance with the Regulations. The word **unless** on which great stress was laid by the learned senior counsel for the appellant, in our opinion, only mandates that as and when the Regulations get triggered or become applicable, the acquirer has to make a public announcement to acquire shares of the target company in accordance with the Regulations. It does not mean that a public offer has to be made before the acquisition. The Regulations only impose an obligation on the acquirer to make a public announcement if he/it acquires the requisite percentage of shares. The word **unless** may have different connotations

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and in each case the context in which it is used will have to be looked into to find out the correct meaning. In some circumstances, the word **unless** may mean a condition precedent but it need not necessarily be so in every case. Having regard to the context in which it is used in Regulation 10, we are clearly of the view that it makes the acquisition conditional upon a public announcement being made and it does not mean that the public announcement has to be made before the acquisition. Such public announcement could be made before or after the acquisition. One of the meanings assigned to the word 'unless' in *Black's Law Dictionary* (6th edition) is "a conditional promise" meaning thereby that the condition has to be met irrespective of the time frame in which the promise is to be fulfilled. We are unable to accept the contention of the learned senior counsel for the appellant that the word **unless** denotes that public announcement has to be made prior to the acquisition of shares. If making of a public announcement was a condition precedent as contended on behalf of the appellant, then the Regulation would have read "unless such acquirer has made a public announcement" instead of "unless such acquirer makes a public announcement". Use of the word '**makes**' merely signifies the mandatory nature of the public announcement which could be made before or after the acquisition. Regulation 10 does not prescribe the time frame within which such an announcement is to be made. The time schedule for making such an announcement is prescribed by Regulation 14. Clause (1) of Regulation 14 provides that the public announcement referred to in Regulation 10 shall be made not later than 4 working days of entering into an agreement for acquisition of shares or voting rights. Regulation 14(1) does not refer to the date of acquisition. It only refers to the date of entering into the agreement for acquiring shares. Shares could be acquired within four days of entering into the agreement or thereafter and the period of four days for making the public announcement shall start running from the date of the agreement. It is possible that an agreement to acquire shares may be entered into today and the shares are acquired the following day. The acquirer would still have three more working days to make the public announcement because the period of four days is to start from the date of the agreement and not from the date of acquisition. It is, therefore, wrong to contend that the public announcement must always precede the acquisition of shares.

10. The explanation to Regulation 11 makes it clear that the acquisition referred to in Regulation 10 and 11 would include both direct and indirect acquisitions. If we read Regulation 14(1) in isolation it would cover both direct as well as indirect acquisition but when this clause is read along with clause (4) thereof it leaves no room for doubt that Regulation 14(1) deals only with direct acquisitions and Regulation 14(4) deals with all indirect acquisitions. The language of clause (4) of Regulation 14 is clear and it provides that in the case of indirect acquisition, a public announcement shall be made by the acquirer within 3 months of consummation of such acquisition. Shri Harish Salve, learned senior counsel appearing for the appellant referred to the report of a committee headed by Hon'ble Justice P.N. Bhagwati to contend that clause (4) of Regulation 14 applies only to such indirect acquisitions where more than one public announcements are to be made and that the said clause should be read in the context of clause (12) of Regulation 20. He laid emphasis on the word 'consummation' as used in Regulation 14(4) in support of his contention that clause (4) provides for making the public announcement in respect of a company which gets triggered by the acquisition of shares of the company which holds shares of the first company.

11. We do not think that it is necessary to refer to the Bhagwati Committee report for interpreting Regulation 14 because its language is more than clear. It is a well settled principle of interpretation that when the words of a statute are clear, plain or unambiguous and are susceptible to only one meaning the courts are bound to give effect to that meaning irrespective of the consequences. In *Kanaklal Sur* v. *Paramnidhi Sadhukhan*, AIR 1957 SC 907 Justice Gajendragadkar (as he then was) observed "if

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the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act." The word 'consummation' as used in clause (4) means completion. Completion of acquisition becomes important in the case of indirect acquisition. When a company gets acquired as a consequence of the takeover of another company, it is only upon the successful completion of the acquisition of the first company that the need to make public announcement of the second company would arise. It is in this context that Regulation 14(4) emphasises on the completion of the first acquisition. The language of this clause does not limit its applicability only to cases where there is a chain of acquisitions though it would apply to such cases as well. As already observed, when clauses (1) and (4) of Regulation 14 are read together, it becomes clear that all direct acquisitions are governed by clause (1) and indirect acquisitions are covered by clause (4). We are also unable to agree with the learned senior counsel for the appellant that Regulation 14(4) is to be read in the context of Regulation 20(12). This submission is also based on some recommendations made by the Bhagwati Committee report. May be the committee had made some recommendations but the authority framing the Regulations has used clear and unambiguous language and it is, therefore, not necessary to refer to the report of the committee and read clause (4) of Regulation 14 with Clause (12) of Regulation 20. Clause (12) of Regulation 20 only deals with the pricing of shares in the case of indirect acquisitions.

12. In this view of the matter, we have no hesitation to hold that the indirect acquisition of 26.01% shares of the target company by Burren which triggered the Regulations is governed by clause (4) of Regulation 14 and since Burren made the public announcement on 15/02/2005, the same is in accordance with the Regulations and that no fault could be found with the same.

13. The matter could be examined from another angle as well. The scheme of the Regulations is that as and when any person acquires shares in any company which may trigger the Regulations, then he/it is required to make a public announcement to acquire shares of such company in accordance with the Regulations. The acquisition may be direct or indirect. Regulation 14 then prescribes the time when the public announcement is to be made and the manner in which it is to be made is referred to in Regulation 15. What the public announcement should contain is referred to in Regulation 16. A draft letter of offer which is required to be made to the other existing shareholders of the company needs to be approved by the Board and after obtaining such approval an offer is to be made to the shareholders at an offer price which is determined in terms of Regulation 20. Regulation 21 requires that the acquirer must further acquire at least 20% of the voting capital of the target company and Regulation 22 provides that the acquirer shall ensure that the letter of offer is sent to all the shareholders of the target company whose names appear on the register of members of the company on the specified date. The proviso to Regulation 22(3) of the Regulations provides that the letter of offer shall be sent to the shareholders **other than the parties to the agreement.** The Regulations then refer to the obligations of the Board of Directors of the target company. Regulation 25 gives an option to any person other than the acquirer to make a public announcement of his offer within 21 days of the public announcement of the first offer for acquisition of the shares of the same target company. In other words when a public announcement is made, triggered by any acquisition, any person other than the acquirer has been given a right under the Regulations to make a competitive bid to acquire the same target company. This, in nutshell, is the scheme of the Regulations. It is clear from the scheme that the purpose of the Regulations is not to nullify the agreement proposing to acquire shares or any shares already acquired. The object is to compel the acquirer to make a public announcement of an offer to further acquire the shares of the target company at the

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offer price determined in accordance with the Regulations so that the existing shareholders of the target company other than the parties to the agreement, could have a right to exit by selling their shares to the acquirer at the offer price if they so like. The logic underlying the Regulations is that when a person acquires a big chunk of shares in the target company, the remaining shareholders other than those who have already sold their shares or have agreed to sell their shares to him, should have a right to decide for themselves whether they would like to continue in the company under the new management or not. The shares already acquired or agreed to be acquired are not and cannot be the subject matter of the public announcement. The public announcement will relate to further acquisition of shares of the garget company which will be a minimum of 20%. In this view of the matter the agreement dated 14/02/2005 by which Burren acquired the shares of UBL which triggered the Regulations, could not be challenged as being violative of the Regulations and if Burren had not made the public announcement or if the same had not been in accordance with the Regulations, it could be compelled to make one or issue a fresh one as the case may be. Since the object of the Regulations is not to nullify the acquisition or proposed acquisition which has triggered the public announcement, it is obvious that the appellant which is also a shareholder of the target company could not challenge under the Regulations the indirect acquisition of shares of the target company by Burren.

14. There is yet another reason why indirect acquisition of shares of the target company by Burren could not be challenged by the appellant. The agreement between Burren and UIC was entered into in England for the purchase of shares of UBL which is a Mauritius company which holds 26.01% shares in the target company. This was an agreement between two foreign companies whereby shares of another foreign company were acquired outside India and, therefore, validity of such an agreement could be challenged only according to the laws of domicile of those companies. In somewhat similar circumstances their Lordships of the Supreme Court in *Tecnimp's case* (supra) have observed that the law applicable in such cases would be the law of domicile of the companies and not the Indian law.

15. We may now deal with another objection raised by the appellant which was highlighted in its complaints made to the Board. The grievance of the appellant is that the share purchase agreement arrived at between Burren and UIC did not contain a clause to the effect that in case of non-compliance of any provisions of Regulation 22 the agreement would not be acted upon either by the seller or by the acquirer. The argument of the learned senior counsel for the appellant is that in terms of clause (16) of Regulation 22 the agreement ought to have contained such a clause and since it is not there the agreement itself was invalid. We cannot agree with this submission. Clause (16) of Regulation 22 in the very nature of things could apply only to the acquisition of shares of Indian companies and not when two foreign companies agree to acquire the shares of another foreign company outside India. The word 'company' has not been defined in the Regulations but they stipulate that all other expressions not defined would have the meaning assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956 or the Companies Act, 1956. It follows that the word 'company' wherever it appears in the Regulations would mean 'a company' registered under the Companies Act, 1956 in India. Since UBL whose shares were acquired by Burren from UIC is not an Indian company therefore the agreement would not be governed by clause (16) of Regulation 22. More over, the purpose of having such a clause in an agreement is to ensure that the Regulations are complied with and even if an agreement does not contain such a clause we do not think that the agreement itself would become invalid. In case such a clause is not found in an agreement pertaining to an Indian company the same will have to be read into it and we do not think that the agreement becomes invalid on that score.

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16. When we carefully examine the two complaints filed by the appellant before the Board it becomes clear that the primary grievance of the appellant was its alleged right of preemption under the share purchase agreement dated 14/10/1998 and it did not complain that the Regulations had been violated. It claims that on the basis of the agreement to which UBL and the appellant through its predecessor and other financial institutions were parties, it had inherited a right of preemption and that Burren could not have purchased the shares of UBL without first offering them to the appellant. Admittedly, disputes in this regard are pending in a civil court at Vadodara and some arbitration proceedings are also pending in England. The learned senior counsel appearing for the Board was right in contending that the Board has no concern with such disputes and that it could not intervene at any stage. He further submitted that on receipt of complaints from the appellant the same were thoroughly examined by the Board and when it received the draft of the public announcement it made Burren modify the same so as to disclose to the shareholders the disputes pending in different fora. Not only this, Board also made Burren issue a revised public announcement and the draft of the letter of offer was also modified accordingly. We are satisfied that the Board examined the complaints carefully and took whatever necessary action that was required.

17. Shri Harish Salve, learned senior counsel strenuously urged that Burren and the target company both acted illegally in appointing two nominees of Burren on the Board of Directors of the target company. He referred to the provisions of clause (7) of Regulation 22 to contend that during the offer period, Burren could not appoint its nominees on the board of directors of the target company and that the Regulations in this regard had been flagrantly violated. The learned senior counsel appearing for respondents nos. 2 and 3, however, controverted the submissions made on behalf of the appellant. Shri Rafique Dada, learned senior counsel appearing for the Board very fairly stated before us during the course of arguments that this complaint of the appellant was being investigated by the Board and in case any violation of the Regulations was found, appropriate action would be taken. Since the matter is being looked into by the Board we need not go into the merits of this contention at this stage. We, however, expect that the Board will examine this issue at the earliest and pass appropriate orders in accordance with law.

18. At this stage we may also take note of an objection raised on behalf of the respondents. It was contended that there is no order passed by the Board under the Regulations by which the appellant could feel aggrieved and therefore the appeal filed by it under Section 15-T of the Act is not maintainable. This objection of the respondents has now lost its force because of the subsequent events. When the Board did not communicate its decision on the complaints filed by the appellant, the later filed a writ petition in the High Court seeking a direction to the Board to decide those complaints. During the pendency of the proceedings before the High Court the Board produced a letter dated July 25, 2005 issued to the merchant banker of Burren indicating the action taken by it on those complaints and the writ petition was thereafter withdrawn. Treating this letter as an order of the Board disposing of its complaints, the appellant filed Appeal no. 115 of 2005 before this Tribunal which was disposed of with a direction to the Board to decide afresh all the points raised by the appellant in its complaints and convey the decision to it. It is common ground between the parties that in pursuance to that direction the Board communicated its decision as per letter dated August 29, 2005 which is now under challenge in this appeal. In this communication the Board had conveyed its reasons for not interfering in the matter. It cannot therefore be said that there was no order passed by the Board. There is thus no merit in the objection and the same stands overruled.

19. Before concluding, we may mention that the learned senior counsel for the parties had cited some case law including some judgements of the Supreme Court in

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support of their contentions. We have carefully gone through the judgements and do not think it necessary to deal with them separately as the law laid down therein is not in dispute. We have kept in view the law laid down in those judgements while dealing with the contentions of the parties.

20. For the reasons recorded above we find no merit in the appeal and the same stands dismissed leaving the parties to bear their own costs.

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sufficient remedies provided under the scheme and rights and liabilities can be determined like by the tribunals then there is no jurisdiction to Civil Court. Thus as per the principles laid down by the Apex Court also the suit is not tenable.

16. It appears that in the aforesaid suit, application is also filed for relief of temporary injunction to prevent the Corporation from taking possession. This application also shows that the plaintiff, present respondent wants to give go by to the procedure established by law. That cannot be allowed. It is clear that the Civil Court has committed error in making aforesaid order. Further the learned counsel for the petitioner drew attention of this Court to the provision of section 3 of the Maharashtra Rent Control Act, 1999 which has made clear that the Maharashtra Rent Control Act shall not apply to the property belonging to the local body. In view of this provision of law also the Civil Court cannot give the reliefs claimed in the suit and so the jurisdiction is barred.

17. In the result, the order made by the learned Civil Judge, Senior Division, Jalgaon is hereby set aside. The application filed by the Corporation under Order 7, Rule 11 of the Civil Procedure Code is allowed. The plaint stands rejected. Rule is made absolute in aforesaid terms.

Revision allowed.

DISQUALIFICATION FOR APPOINTMENT AS MANAGING DIRECTOR OF A COMPANY

(V. M. Kanade and Dr. Shalini Phansalkar-Joshi, JJ.)

SRIDHAR SUNDARARAJAN *Appellant.*

vs.

ULTRAMARINE AND PIGMENTS LTD., MUMBAI and another *Respondents.*

Companies Act (18 of 2013), S. 196(3)(a) — *Disqualification for appointment or continuation as Managing Director of Company — A person who is below age of 21 years or who has attained age of 70 years cannot be appointed or could not be continued as MD — Person who has been appointed as Managing Director before he was 70 years old is prohibited from continuing as Managing Director once he has attained the age of 70 years.*

By virtue of the Act of 2013, which came into force on 1-4-2014, one additional disqualification was added to the list of disqualifications which were in existence under the old Act under section 267. Since a new clause was added as further disqualification for appointment or continuation as Managing Director of the Company, it would operate not only at the stage of appointment but also would operate in the case of a person who has already been appointed and attained the age of 70 years and such a person, therefore, by virtue of disqualification, had no right to be continued as Managing Director, unless a special resolution was passed by the Company. There is no question therefore of the retrospective application of the provision. Since section 196(3)(a) would

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Appeal (L) No. 632 of 2015 in Notice of Motion No. 434 of 2015 in Suit (L) No. 146 of 2015 along with Notice of Motion (L) No. 2250 of 2015 decided on 8-2-2016. (O.O.C.J., Bombay)

apply prospectively, whoever attains the age of 70 after the Amendment Act came into force would cease to function as Managing Director by operation of statute. In other words, if appointment to the post of Managing Director is made after coming into force of the Amendment Act, 2013 on 1-4-2014, a person who is above the age of 70 years cannot be appointed on account of disqualification, subject to fulfilment of the proviso. On the other hand, if he was already appointed prior to 1-4-2014 when he was below the age of 70 years, on account of operation of statute, disqualification, whenever incurred after the Amendment Act, would operate automatically, subject to proviso i.e. special resolution being passed by the Company. It will not be possible to say that section 196(3)(a) would operate separately from other sections viz. Section 196(3)(b) to (d). Section 196(3)(a) to (d) mentions various disqualifications which prohibit appointment or continuation of Managing Director as a matter of public policy. (Paras 21, 24 and 25)

For appellant : *Aspi Chinoy, Senior Counsel with Shardul Singh, Viral Shukla* instructed by *Shukla and Associates*

For respondent No. 1 : *Prembhari Thakkar*

For respondent No. 2 : *Navroj Seervai, Senior Counsel along with Zurick Dastur, Ms. Sneha Sheth, Manasvi Nandu, Aashni Dalal* instructed by *J. Sagar Associates*

List of cases referred :

1.	*Rama Narang vs. Ramesh Narang and others, (1995) 2 SCC 513*	(Paras 15, 16)
2.	*P. Suseela and ors. vs. University Grants Commission and ors., 2015(3) SCALE 726*	(Paras 18, 19, 20, 22)
3.	*Trimbak Damodhar Rajpurkar vs. Assaram Hiraman Patil, 1962 NLJ (S.C.) 677 = 1962 Suppl 1 SCR 700*	(Para 18)
4.	*K. S. Paripoornan vs. State of Kerala and others,. (1994) 5 SCC 493*	(Para 21)
5.	*Commissioner of Income Tax, U.P. vs. M. S. Shah Sadiq and Sons, (1987) 3 SCC 516*	(Para 21)
6.	*J. S. Yadav vs. State of Uttar Pradesh and another, (2011) 6 SCC 570*	(Paras 21, 22)

ORDER

V. M. KANADE, J. :— Appellant is the original Plaintiff. He has challenged the order passed by the learned Single Judge dated 16th July, 2015. By the said order, the learned Single Judge dismissed the Notice of Motion taken out by the Plaintiff and refused to grant an order of injunction, restraining Respondent No. 2/Original Defendant No. 2 from functioning or continuing to exercise his powers as Chairman and Managing Director of the 1st Defendant-Company.

2. Brief facts which are relevant for the purpose of deciding this appeal are as under :—

3. For the purpose of convenience, parties shall be referred to as "Plaintiff" and "Defendant".

4. Appellant is the original Plaintiff. Respondent No. 1 is the original Defendant No. 1. Respondent No. 2 is the original Defendant No. 2 who was appointed as Chairman and Managing Director ("MD") of the 1st Defendant-Company. On 1st August, 2012 the 2nd Defendant was reappointed as Chairman and Managing Director of the 1st Defendant-Company for a period of further five years till 2017 and the Plaintiff was appointed as Joint Managing Director of the 1st Defendant-Company.

5. On 1st April, 2014, Companies Act was amended and by the Amendment Act of 2013, a new clause was introduced in section 196(3)(a). By virtue of the said amendment vide sub-clause (3)(a), additional disqualification was added to the disqualifications which already existed in the said provision namely a Managing Director could not be appointed or continued after he had attained the age of 70 years. The said amendment admittedly came into force on 1-4-2014. Defendant No. 2 was appointed for a period of five years as MD on 1-8-2012, prior to the amendment. The contention of the Plaintiff is that in view of the incorporation of the said clause in section 196(3)(a), Defendant No. 2 could not continue as MD and, therefore, he has sought an order of injunction, restraining him from functioning or continuing to exercise his powers as Chairman and MD of the 1st Defendant-Company.

6. On the other hand, it was contended by the learned Counsel appearing on behalf of Respondent No. 2/Original Defendant No. 2 that the said amendment could not operate retrospectively. The learned Single Judge accepted the contention of Defendant No. 2 and dismissed the Notice of Motion. Hence, the appeal.

7. We have heard both the learned Senior Counsel at length.

8. The short question which falls for consideration before this Court is : Whether, after the amendment of the Companies Act in 2013 which was brought into force with effect from 1-4-2014, any Managing Director who was appointed prior to the Amendment Act i.e. before 1-4-2014 would have a right to continue to act as Managing Director after his attaining the age of 70 years without special general resolution being passed by the Company in its general meeting?

9. Section 267 of the Companies Act, prior to amendment, reads as under:—

> "267. *Certain persons not to be appointed managing directors.*— No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its managing or whole-time director who —
>
> (a) is an undischarged insolvent, or has at any time been adjudged as an insolvent,
>
> (b) suspends, or has at any time suspended, payment to his creditors, or makes, or has at any time made, a composition with them; or
>
> (c) is, or has at any time been convicted by a Court of an offence involving moral turpitude."

10. Prior to the Amendment Act of 2013, section 267 provided that certain persons could not be appointed as Managing Directors and no Company shall

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continue the appointment or employment of any person as its Managing Director who is (a) an undischarged insolvent or has been adjudged as an insolvent, (b) suspends or has suspended payment to his creditors and (c) is convicted by a Court for an offence involving moral turpitude. The said section obviously provided for cessation or non-continuation of appointment of a person as Managing Director who has incurred these three disqualifications.

11. Secondly, prior to the amendment, the eligibility criteria for appointment as MD was provided in section 269(2). Section 269 (2) of the Companies Act reads as under:—

> "**269.** ***Appointment of managing or whole-time director or manager to require Government approval only in certain cases.***—
>
> (1) .....
>
> (2) On and from the commencement of the Companies (Amendment) Act, 1988, no appointment of a person as a managing or whole-time director or a manager in a public company or a private company which is a subsidiary of a public company shall be made except with the approval of the Central Government unless such appointment is made in accordance with the conditions specified in Parts I and II of Schedule XIII (the said Parts being subject to the provisions of Part III of that Schedule) and a return in the prescribed form is filed within ninety days from the date of such appointment."

12. Part-I of Schedule XIII of the Companies Act reads as under:—

> SCHEDULE XIII
>
> (See sections 198, 269, 310 and 311)
>
> CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT
>
> PART I
>
> APPOINTMENTS
>
> No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—
>
> (a).....
>
> (b).....
>
> (c) he has completed the age of 25 years and has not attained the age of 70 years :
>
> Provided that where —
>
> (i) he has not completed the age of 25 years, but has attained the age of majority;
>
> or
>
> (ii) he has attained the age of 70 years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment.
>
> (d) .....
>
> (e) ....."

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13. By virtue of section 269(2), therefore, a person who had completed the age of 21 years and has not attained the age of 70 years was eligible to be appointed, provided his appointment was approved by the special general resolution passed by the Company in its general meeting. Thus, by the amendment, the eligibility criteria was introduced as a disqualification.

14. This position changed after the amendment in 2013. Section 196(3) provided disqualification for appointment as well as for continuation of a person as Managing Director. The said section 196(3) not only incorporated three disqualifications which were mentioned in section 267 for a person to be appointed as MD viz. (a) a person who is an undischarged insolvent or has adjudged as an insolvent, (b) a person who suspends or has suspended payment to his creditors and (c) a person who is convicted by a Court for offence viz. moral turpitude but one more disqualification was added to section 196(3) by way of the said amendment and a person who was below the age of 21 years or who had attained the age of 70 years could not be appointed or could not be continued as MD if he had attained the age of 70 years. The said section 196(3) reads as under:—

> "196(3) ***No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who*** —
>
> (a) is below the age of twenty-one years or has attained the age of seventy years:
>
> Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;
>
> (b) is an undischarged insolvent or has at any time been adjudged as an insolvent;
>
> (c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
>
> (d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months."

15. The legislative intent in introducing section 196(3)(a) is quite clear. Obviously, the intention was to change the earlier position by providing that the person who has been appointed as Managing Director before he was 70 years old is prohibited from continuing as Managing Director once he has attained the age of 70.

The Apex Court in *Rama Narang vs. Ramesh Narang and others, (1995) 2 SCC 513* had an occasion to interpret section 267 of the Companies Act. The Apex Court in the said case was called upon to decide the question whether the Managing Director was liable to be removed upon his conviction and sentence by Additional Sessions Judge, Delhi notwithstanding the admission of the appeal by the Delhi High Court and notwithstanding the stay granted by the Delhi High Court to the order of conviction and sentence. The Apex Court in para 10 of the said judgment has examined the said question and has observed as under:—

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"10. The above resume would show that the principal question which falls for our determination is whether the appellant is liable to be visited with the consequence of section 267 of the Companies Act notwithstanding the interim order passed by the Delhi High Court while admitting the appellant's appeal against his conviction and sentence by the Additional Sessions Judge, Delhi. As we have said earlier the factum of his conviction and the imposition sentence is not in dispute. Section 267 of the Companies Act, to the extent it is relevant for our purposes, may be set out:—

"267. No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of any person as its managing or wholetime Director who--

(a) * * *

(b) * * *

(c) is, or has at any time been convicted by a court of an offence involving moral turpitude."

On a plain reading of this section it seems clear to us from the language in which the provision is couched that it is intended to be mandatory in character. The use of the word 'shall' brings out its imperative character. The language is plain, simple and unambiguous and does not admit of more than one meaning, namely, that after the commencement of the Companies Act, no person who has suffered a conviction by a court of an offence involving moral turpitude shall be appointed or employed or continued in appointment or employment by any company as its managing or whole-time Director in 1990 after his conviction on 22-12-1986. On the plain language of section 267 of the Companies Act, the Company had, in making the appointments, committed an infraction of the mandatory prohibition contained in the said provision. The section not only prohibits appointment or employment after conviction but also exercises discontinuance of appointment or employment made prior to his conviction. This in our view is plainly the mandate of section 267. As rightly pointed out by the Division Bench of the High Court, section 274 of the Companies Act provides that a disqualification which a Director incurs on conviction for an offence involving moral turpitude in respect of which imprisonment of not less than six months is imposed, the Central Government may, by notification, remove the disqualification incurred by any person either generally or in relation to any company or companies specified in the notification to be published in the Official Gazette. Such a power is, however, not available in the case of a Managing Director. Secondly, section 283 of the Companies Act provides that the office of a Director shall become vacant if convicted and sentenced as stated hereinabove but sub-section (2) thereof, inter alia, provides that the disqualification shall not take effect for thirty days from the date of sentence and if an appeal is preferred during the pendency of appeal till seven days after the disposal of the appeal. This

> benefit is not extended in the case of a Managing Director. The Companies Act has, therefore, drawn a distinction between a Director and a Managing Director; the provisions in the case of the latter are more stringent as compared to that of the former. And so it should be because it is the Managing Director who is personally responsible for the business of the Company. The law considers it unwise to appoint or continue the appointment of a person guilty of an offence involving moral turpitude to be entrusted or continued to be entrusted with the affairs of any company as that would not be in the interests of the shareholders or for that matter even in public interest. As a matter of public policy the law bars the entry of such a person as Managing Director of a company and insists that if he is already in position he should forthwith be removed from that position. The purpose of section 267 is to protect the interest of the shareholders and to ensure that the management of the affairs of the company and its control is not in the hands of a person who has been found by a competent court to be guilty of an offence involving moral turpitude and has been sentenced to suffer imprisonment for the said crime. In the case of a Director, who is generally not in-charge of the day-to-day management of the company affairs, the law is not as strict as in the case of a Managing Director who runs the affairs of the company and remains in overall charge of the business carried on by the company. Such a person must be above board and beyond suspicion." (Emphasis supplied)

In our view, ratio of the said judgment would squarely apply to the facts of the present case. The Apex Court has therefore held that the language in which the provision is couched is plain, simple and unambiguous and does not admit of more than one meaning viz. that after the commencement of the Amendment Act, no person who has suffered disqualification can be appointed or continue in appointment as Managing Director of the Company. Respondent No. 2, in this case, was appointed as Chairman and Managing Director of Respondent No. 1 – Company on 13-8-1990. The amendment came into force on 1-4-2014. He completed the age of 70 years on 11-11-2014 and therefore, from that date, he was disqualified from continuing as Managing Director, unless he fulfilled the requirements of the proviso viz. that the Company has to continue his appointment by a special resolution and, secondly, that the resolution must state the reason why the continuation is necessary. The said disqualifications which are mentioned in clauses (a) to (d) cannot be fractured or split or dissected to mean that disqualifications (b) to (d) would operate instantly but clause (a) viz. appointment or continuation of Managing Director beyond the age of 70 years would operate in a different manner than the remaining clauses (b) to (d). The learned Single Judge, therefore, in our view, has clearly erred in dissecting the said section in two parts and by holding that clause (a) would operate differently than clauses (b) to (d). The said observation is contrary to the ratio laid down by the Apex Court in *Rama Narang* (supra).

16. We do not agree with the submission of Mr. Seervai, the learned Senior Counsel appearing on behalf of Respondent No. 2 that ratio of the judgment in

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Rama Narang (supra) would not apply to the present case. We also do not find force in the submission of Mr. Seervai, the learned Senior Counsel for Respondent No. 2 that section 196(3)(a) would not apply to the Managing Directors who had been appointed before 1-4-2014 (which is the date on which the the amended section 196(3)(a) was brought into force) as it would otherwise retrospectively affect the vested right of such Managing Directors and, secondly, that there is presumption against legislation operating retrospectively.

17. In our view, Mr. Aspi Chinoy, the learned Senior Counsel appearing on behalf of the Appellant has correctly submitted that the amended section as a matter of public policy contains mandatory prohibition/bar against any Company from continuing the Managing Director in employment once he has attained the age of 70 years. The language of section 196(3)(a) is plain, simple and unambiguous and it applies to all the Managing Directors who have attained the age of 70 years and the section does not make any distinction between the Managing Directors who have been appointed before 1-4-2014 and those after 1-4-2014. The moment therefore Managing Director attains the age of 70 years, disqualification mentioned in section 196(3) (a) would operate immediately. In our view, it is not open now to alter its clear terms by a process of interpretation for excluding the Managing Directors appointed prior to 1-4-2014 from the purview of prohibition contained in section 196(3). The disqualifications which have been mentioned in section 196(3) are introduced as a matter of public policy and they contain mandatory prohibition/bar for continuing the Managing Director in employment, once he has attained the age of 70 years. It is well settled position in law that while interpreting any provision it is not open for the Court to add to or delete words from the provision or change the plain statutory language of the provision.

18. Mr. Seervai, the learned Senior Counsel appearing on behalf of Respondent No. 2, in support of his submission, had relied on the judgment in *P. Suseela and ors. vs. University Grants Commission and ors., 2015(3) SCALE 726*. His submission was that section 196(3)(a) would not operate to affect the vested right of Managing Director before 1-4-2014. In the said case, facts were as under:—

In the said case, constitutional validity of the University Grants Commission Regulations, 2009 under which NET/SLET was to be the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/ Institutions, was under challenge. Delhi High Court vide judgment dated 6-12-2010 dismissed the Petition and held that the Regulations did not violate Article 14 and were, in fact, prospective. Same view was taken by the Madras and Rajasthan High Court. Initially, the Allahabad High Court vide judgment dated 6-4-2012 observed that Regulations were issued outside the powers conferred by the UGC Act and therefore held that the eligibility conditions laid down would not apply to M.Phil and Ph.D. degrees awarded prior to 31-12-2009. However, by subsequent judgment dated 6-1-2014, the said Regulations were upheld by the Allahabad High Court. In the Apex Court, a submission was made that the said Regulations should not be given retrospective effect so as not to prejudicially

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affect the interest of any person to whom such Regulations may be made applicable. The Apex Court then observed that it was necessary to make distinction between the existing right and vested right. It relied on the earlier judgment of the Apex Court in *Trimbak Damodhar Rajpurkar vs. Assanam Hiraman Patil, 1962 NLJ (S.C.) 677 = 1962 Suppl 1 SCR 700*. In the said case, the Apex Court was called upon to consider the question as to whether the amendment made to section 5 of the Bombay Tenancy and Agricultural Lands Amendment Act could be said to be retrospective because its operation took within its sweep existing rights. In the said case five judges Bench of the Apex Court held that section 5 had no retrospective operation. The Apex Court, in the said case of *P. Suseela* (supra), relied upon the observations made by the Apex Court in *Trimbak Damodhar Rajpurkar* (supra), which read as under:—

> "In this connection it is relevant to distinguish between an existing right and a vested right. Where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included. As observed by Buckley L.J. in *West vs. Gwynne [(1911) 2 Ch 1* at pp 11, 12] retrospective operation is one matter and interference with existing rights is another. "If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act I understand to be retrospective. That is not this case. The question here is whether a certain provision as to the contents of leases is addressed to the case of all leases or only of some, namely, leases executed after the passing of the Act. The question is as to the ambit and scope of the Act, and not as to the date as from which the new law, as enacted by the Act, is to be taken to have been the law.". These observations were made in dealing with the question as to the retrospective construction of section 3 of the Conveyancing and Law of Property Act, 1892 (55 & 56 Vict. c. 13). In substance Section 3 provided that in all leases containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent. It was held that the provisions of the said section applied to all leases whether executed before or after the commencement of the Act; and, according to Buckley, L.J., this construction did not make the Act retrospective in operation; it merely affected in future existing rights under all leases whether executed before or after the date of the Act. The position in regard to the operation of section 5(1) of the amending Act with which we are concerned appears to us to be substantially similar.
>
> A similar question had been raised for the decision of this Court in *Jivabhai Purshottam vs. Chhagan Karson* [Civil Appeal No. 153 of 1958 decided on 27-3-1961] in regard to the retrospective operation of section

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34(2)(a) of the said amending Act 33 of 1952 and this Court has approved of the decision of the Full Bench of the Bombay High Court on that point in *Durlabbha Fakirbhai vs. Jhaverbhai Bhikabhai [(1956) 58 BLR 85]*. It was held in *Durlabbhai* case *[(1956) 58 BLR 85]* that the relevant provision of the amending Act would apply to all proceedings where the period of notice had expired after the amending Act had come into force and that the effect of the amending Act was no more than this that it imposed a new and additional limitation on the right of the landlord to obtain possession from his tenant. It was observed in that judgment that "a notice under section 34(1) is merely a declaration to the tenant of the intention of the landlord to terminate the tenancy; but it is always open to the landlord not to carry out his intention. Therefore, for the application of the restriction under sub-section 2(a) on the right of the landlord to terminate the tenancy, the crucial date is not the date of notice but the date on which the right to terminate matures; that is the date on which the tenancy stands terminated". (Emphasis supplied)

The Apex Court then observed in para 15 of its judgment in *P. Suseela* (supra) as under:—

"15. Similar is the case on facts here. A vested right would arise only if any of the appellants before us had actually been appointed to the post of Lecturer/Assistant Professors. Till that date, there is no vested right in any of the appellants. At the highest, the appellants could only contend that they have a right to be considered for the post of Lecturer/Assistant Professor. This right is always subject to minimum eligibility conditions, and till such time as the appellants are appointed, different conditions may be laid down at different times. Merely because an additional eligibility condition in the form of NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regulation laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail."

The Apex Court therefore held in the facts of *P. Suseela* that a new eligibility condition would only be prospective and it would apply only at the stage of appointment.

19. The learned Single Judge relied on the judgment of the Apex Court in *P. Suseela* (supra) and in para 9 observed that the observations of the Apex Court in para 15 of the said judgment would be applicable to the facts of the present case. The learned Single Judge observed that since the second Defendant was already a Chairman and Managing Director of the 1st Defendant when he turned 70, the 2013 Act could not operate as an immediate termination of his appointment, as that would give a retrospective application to the 2013 Act.

20. In our view, the learned Single Judge has clearly erred in applying the ratio of the judgment in *P. Suseela* (supra) to the facts of this case. In *P. Suseela*,

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by virtue of the power vested under the Act, Regulations were framed and an additional minimum eligibility criteria was introduced, apart from existing criteria for the appointment of Lecturers. The Apex Court in para 15 has observed that till the Appellants were actually appointed to the post of Lecturer/Assistant Professor, no vested right was created in any of the Appellants. It held that, at the most, the Appellants could contend that they have a right to be considered for the post of Lecturer/Assistant Professor and, secondly, it held that this would not mean that Regulations laying down such minimum eligibility criteria would be retrospective in operation.

21. In our view, the learned Single Judge has erred in holding that ratio of the said judgment is applicable to the facts of the present case. It has to be borne in mind that by virtue of the Amendment Act of 2013, which came into force on 1-4-2014, one additional disqualification was added to the list of disqualifications which were in existence under the old Act under section 267. Since a new clause was added as further disqualification for appointment or continuation as Managing Director of the Company, it would operate not only at the stage of appointment but also would operate in the case of a person who has already been appointed and attained the age of 70 years and such a person, therefore, by virtue of disqualification, had no right to be continued as Managing Director, unless a special resolution was passed by the Company. There is no question therefore of the retrospective application of the provision. Since section 196(3)(a) would apply prospectively, whoever attains the age of 70 after the Amendment Act came into force would cease to function as Managing Director by operation of statute. Ratio of the said judgments therefore on the retrospective application, which have been relied upon by the learned Senior Counsel appearing on behalf of Respondent No. 2 viz. in *K. S. Paripoornan vs. State of Kerala and others., (1994) 5 SCC 493* (paras 64-68), *Commissioner of Income Tax, U.P. vs. M. S. Shah Sadiq and Sons. (1987) 3 SCC 516* (Para 15), *J. S. Yadav vs. State of Uttar Pradesh and another. (2011) 6 SCC 570* (paras 20-24 and 28-29) and other judgments relating to retrospective application of the statute will not apply to the facts of the present case.

In *J. S. Yadav* (supra), facts were that the appellant was a member of the State Human Rights Commission. The provision requiring seven years' experience as a District Judge was brought into force after his appointment. The Apex Court held that he had vested right to complete his tenure. In our view, ratio of the said judgment would not apply to the facts of the present case. A distinction will have to be made between addition of eligibility criteria to the existing provision and addition of disqualification to continue in that post after the initial appointment.

22. In the present case, prior to 2013 Amendment Act, appointment after the age of 70 years was not permissible subject to proviso but after the Amendment Act came into force, this was added as disqualification for further continuation of a person after he attained the age of 70 years. In a case therefore where the appointment is already made and thereafter eligibility criteria is changed then, in that event, it could be said that the vested right is created in a

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person who is already appointed prior to the amendment and additional eligibility criteria could not be applied retrospectively. However, in a case where additional disqualification is added to the section then in such a case, after disqualification is incurred after his initial appointment, he would cease to continue as Managing Director since the disqualification would operate as cessation or discontinuation to work as Managing Director. In our view, the learned Single Judge has failed to note this distinction between the disqualification which is added after the appointment and the eligibility criteria which is added after his appointment. In the former case, disqualification would operate even after the appointment but in the latter case, it would operate prospectively. The judgments in *P. Suseela* (supra) and *J. S. Yadav* (supra) therefore would not apply to the facts of the present case. For the same reasons, section 6(c) of the General Clauses Act, 1897 will not be applicable in the present case.

23. The last submission made by Mr. Seervai, the learned Senior Counsel for Respondent No. 2 was that executive interpretation of the said section supported the interpretation placed by the Respondent No. 2 on section 196(3)(a). Reliance was placed on a Circular issued by Government of India, Ministry of Industry (Department of Company Affairs), in the context of the Companies (Amendment) Act, 1988 clarifying that the conditions specified in Schedule XIII Part-I of the 1956 Act were required to be satisfied only at the time of appointment. It further observed that if the appointee, after appointment, did not satisfy any of the said conditions, it would not debar the person concerned from continuing in office for the full tenure of his appointment. Secondly, reliance was also placed on Schedule-V of 2013 Act which is also in *pari materia* with Schedule XIII of 1956 Act which speaks about the conditions to be fulfilled for the appointment of managing or full time Director or Manager without the approval of the Central Government. It was submitted that Clause (c) of Schedule-V of 2013 Act is exactly the same as section 196(3)(a) and therefore it was submitted that section 196(3)(a) would apply only in cases of appointment.

24. In our view, again, the said submission is without any substance. As mentioned hereinabove, prior to the amendment, section 196(3)(a) was a part of section 269 which mentioned the eligibility criteria for appointment of Managing Director and, in that context, the Circular dated 13-4-1989 was issued. After the amendment, however, since the said clause has been incorporated in the list of disqualifications, the meaning which was given earlier i.e. prior to the amendment to Schedule XIII of 1956 Act, cannot be given now to disqualification which is added in section 196(3)(a). It will not be possible therefore to say that section 196(3)(a) would operate separately from other sections viz. section 196(3)(b) to (d). Section 196(3)(a) to (d) mentions various disqualifications which prohibit appointment or continuation of Managing Director as a matter of public policy.

25. In other words, if appointment to the post of Managing Director is made after coming into force of the Amendment Act, 2013 on 1-4-2014, a person who is above the age of 70 years cannot be appointed on account of disqualification, subject to fulfilment of the proviso. On the other hand, if he was already appointed prior to 1-4-2014 when he was below the age of 70 years, on

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account of operation of statute, disqualification, whenever incurred after the Amendment Act, would operate automatically, subject to proviso i.e. special resolution being passed by the Company.

26. Appeal is therefore allowed. The impugned order passed by the learned Single Judge is set aside. Notice of Motion (L) No. 434 of 2015 taken out by the Appellant in Suit (L) No. 146 of 2015 is allowed in terms of prayer clause (a).

27. Appeal is accordingly disposed of. Since appeal itself is disposed of, Notice of Motion (L) No. 2250 of 2015 taken out by the Appellant does not survive and it is accordingly disposed of.

Order accordingly.

GRANT OF COMPENSATION TO DEPENDANTS : REQUIREMENT

(A. S. Chandurkar, J.)

FARZANA d/o ABBAS BHAI and another *Appellants.*

vs.

MAHARASHTRA STATE ROAD TRANSPORT CORPORATION *Respondent.*

(a) Motor Vehicles Act (59 of 1988), S. 166 — *Locus to maintain an application for compensation under section 166 and grant of compensation based on dependency of claimants are two distinct aspects — Aspect of dependency has to be pleaded and proved by claimants before any compensation is granted to them.*

The locus to maintain an application for compensation under section 166 of the said Act and grant of compensation based on dependency of the claimants are two distinct aspects. While it would be open for a legal representative to maintain proceedings for grant of compensation, the entitlement to the same would depend on the material placed on record with regard to dependency of the claimants vis-à-vis the deceased. The right to seek compensation cannot straight way lead to the conclusion that such claimant was dependent on the deceased. It would be a matter of evidence to be led in the proceedings while determining the amount of compensation. The aspect of dependency has to be pleaded and proved by the claimants before any compensation is granted to them. 2013 ALL SCR (O.C.C.) 351, Rel. (Paras 10, 13 and 14)

(b) Motor Vehicles Act (59 of 1988), S. 166 — *Compensation — Entitlement of claimant to claim compensation — Evidence and proof regarding dependency of claimant on deceased — No evidence produced to show dependency on deceased — In absence of evidence, compensation cannot be awarded to claimant.* (Para 13)

For appellants : *Asghar Hussain*

For respondent : *S. R. Charpe*

List of cases referred :

1. *Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and anr.*
   1987 Mh.L.J. (S.C.) 838 = (1987) 3 SCC 234 (Paras 2, 11, 13)

F. A. No. 199 of 2007 decided on 29-4-2016. (Nagpur)

ITEM NO.36 COURT NO.2 SECTION X^VII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 4794/2023

NATIONAL STOCK EXCHANGE OF INDIA LIMITED Appellant(s)

VERSUS

NECTAR LIFE SCIENCES LTD & ANR. Respondent(s)

(IA No. 172849/2023 - STAY APPLICATION)

Date : 18-09-2023 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Appellant(s) Mr. Sidhartha Dave, Sr. Adv.
Ms. Sonali Jaitley Bakhshi, Adv.
Mr. Jaiyesh Bakhshi, Adv.
Mr. Ravi Tyagi, Adv.
Mr. Gaurav Mishra, Adv.
Mr. Danan Popli, Adv.
Ms. Ria Chandra, Adv.
Ms. Neetu Devrani, Adv.
Mr. Anubhav Yadav, Adv.
Mr. Prastut Dalvi, Adv.
Mr. P. V. Yogeswaran, AOR

For Respondent(s) Mr. Bharat Bhushan, AOR
Ms. Rupali Yadav, Adv.

Mr. Pratap Venugopal, Adv.
Ms. Amrita Singh, AOR
Ms. Soupayan Sinha Roy, Adv.

UPON hearing the counsel the Court made the following
O R D E R

IA No. 172849/2023

Issue notice.

Learned counsel for the parties accept notice.

On hearing learned counsel for the parties, we are of the view that interest of justice would be sub-served by observing that the impugned judgment is not to be treated as a precedent in the meantime till we consider the matter on merits.

Application stands disposed of.

[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS

[POONAM VAID]
COURT MASTER (NSH)

TRUE COPY

I.A NO. 23491 / 2024

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2024

(Under Section 22F of the Securities Contracts (Regulation) Act, 1956)

(Arising out of the Order dated 28 November 2023 passed by the Ld. Securities Appellate Tribunal, Mumbai in Appeal No. 846 of 2023)

IN THE MATTER OF:

NATIONAL STOCK EXCHANGE OF INDIA LIMITED

...APPELLANT

VERSUS

20 MICRONS LTD. & ANR

...RESPONDENTS

APPLICATION FOR STAY

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF
THE APPELLANT ABOVENAMED

MOST RESPECTFULLY SHOWETH: -

1. The present Civil Appeal is being preferred under Section 22F of the Securities Contracts (Regulation) Act, 1956 ("SCRA")

challenging the Order dated 28 November 2023 ("**Impugned Order**") passed by the Ld. Securities Appellate Tribunal, Mumbai ("**Ld. Tribunal**") in Appeal No. 846 of 2023

2. By way of the present Application, the Applicant/ Appellant seeks an *ex-parte ad-interim* stay on the Impugned Order and the operation and effect thereof, as if it is not stayed, it would set a wrong precedent and have far reaching repercussions, thereby deteriorating the standards of corporate governance of listed companies in India. The Appellant craves leave of this Hon'ble Court to refer and rely upon the contents of the Civil Appeal as part and parcel of this Application as the same are not being repeated for the sake of brevity.

3. As has already been stated in the Appeal, the Impugned Order is bad in law, erroneous, misdirected, and perverse as it has acted in utter disregard of the statutory provisions and has overlooked the operative part of the relevant provisions of the law and is consequently setting a wrong precedent and therefore cannot be sustained and is liable to be set aside.

4. It is submitted that the Impugned Order is baseless in its very origin as the order is being passed by placing reliance on

Regulation 17(1C) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**") which itself is not applicable in the facts of the present case. The Ld. Tribunal overlooked the fact that the purpose and intention of bringing Regulation 17(1C) of the LODR Regulations was entirely different and is not applicable to dispute in hand.

5. While passing the Impugned Order, the Ld. Tribunal overlooked the fact that the Regulation 17(1C) of the LODR Regulations does not even apply to the facts of the present case. The Ld. Tribunal has wrongly invoked the Regulation 17(1C) of the LODR Regulations and while invoking the wrong provision held that no penalty could have been imposed for violation of Regulation 17(1A) of the LODR Regulations, and quashed the order of the Appellant imposing penalty on Respondent No. 1 for violation of Regulation 17(1A) of the LODR Regulations.

6. It is submitted that the Ld. Tribunal overlooked the fact that Regulation 17(1A) of the LODR Regulations is the only provision which specifically covers the situation where appointment of Non-executive Director over the age of 75

years is involved, whereas Regulation 17(1C) of LODR Regulations covers an entirely different issue which is alien to the present matter at hand. The Regulation 17(1C) of LODR Regulations is a general regulation, for all classes of directors, could not have been interpreted and applied in cases including the present case which are squarely covered under Regulation 17 (1A) of LODR Regulations. That the observation of the Ld. Tribunal in the Impugned Order, that Regulation 17 (1A) and (1C) of LODR Regulations are to be read conjointly, is grossly misplaced as, such a reading would render the sole existence and objective of Regulation 17 (1A) of LODR Regulations otiose and redundant.

7. While passing the Impugned Order, the decision of the Committee of the Appellant ought to have been upheld by the Ld. Tribunal since Respondent No. 1 failed to comply with the mandatory and qualifying requirement of passing a special resolution and failing to do so will lead to the non-compliance of Regulation 17 (1A) of LODR Regulations. It is submitted that from a bare perusal of Regulation 17 (1A) of LODR Regulations it clear that no person who is more than the age of 75 years shall be appointed as Non-Executive Director unless there is a special resolution to that effect. It is also submitted

that the requirement of prior approval for appointment of Non-Executive Director flows from the amendments made in the LODR Regulations subsequent to the recommendations of the Kotak Committee on Corporate Governance. The Kotak Committee was constituted by Respondent No. 2 for improving the standards of corporate governance of listed companies in India and the several recommendations of the said committee were duly accepted by Respondent No. 2, one of the key recommendations being that though the Companies Act, 2013 provides a particular age of 70 years, beyond which the appointment of a Managing Director, Whole Time Director or Manager can only be done by passing a special resolution, no such provision for exists in the case of Non-Executive Director in the Companies Act, 2013 and therefore, the Committee recommended that the LODR Regulations should be amended to incorporate the provision requiring the age of 75 years for Non-Executive Director stating that the appointment of Non-Executive Director has to be approved by a Special resolution if the age of the said Director is more than the age of 75 years at the time of appointment.

8. It is submitted that the provision of Regulation 17(1A) of LODR Regulations are mandatory in nature and provides a pre-

requisite condition that is required to be fulfilled before appointing any person who is more than the age of 75 years as Non-Executive Director. The Ld. Tribunal while passing the Impugned Order has failed to consider that in terms of Regulation 17 (1A) of LODR Regulations, passing of a special resolution before appointing a Non-Executive Director is a qualifying condition that has to be fulfilled and the non-compliance of the same shall lead to non-compliance of the said provision. It is submitted that the legislature while incorporating the phrase *"unless a special resolution is passed to that effect"* has made it categorically clear that the appointment must be preceded by a special resolution. The use of word *unless* makes it clear that no appointment can be done without prior approval from the shareholders.

9. It is imperative to mention here that the Ld. Tribunal has erred in law by failing to apply the "Rule of plain meaning" and "Rule of literal interpretation" while interpreting the provisions of Regulation 17(1A) of LODR Regulations. It is submitted that according to these Rules, the words of a statute must be given their ordinary meaning unless doing so would lead to an absurd result. However, if the words of a statute are unclear or ambiguous, other aids to interpretation may be used to

determine the meaning of the statute. One such aid to interpretation is the Principle of Harmonious Construction, which states that two provisions of the same statute should be interpreted in a way that gives effect to both provisions as per the intention of the legislature.

10. The Ld. Tribunal while passing the Impugned Order, has, by allowing the appeal of Respondent No. 1 herein, in a way rewritten and nullified the effect of the Bye-Laws, Rules and Regulations of NSE and Respondent No. 2, i.e., SEBI.

11. The Appellant submits that if an *ex-parte ad-interim* stay as prayed for is not granted by this Hon'ble Court, the Impugned Order would set a wrong precedent and have far reaching consequences amongst the corporate governance standards of listed entities in India.

12. It is humbly submitted that no prejudice, injury or loss would be caused to Respondent No. 1 if the operation of the Impugned Order dated 28 November 2023 is stayed during the pendency of the Civil Appeal.

13. The Appellant, thus, has a strong *prima facie* case on merits in its favour and it shall be in the interest of justice if the present Application for stay of the Impugned Order is allowed.

14. Therefore, it is most respectfully submitted that pending the hearing and final disposal of the Civil Appeal, the effect and operation of the Impugned Order dated 28 November 2023 be stayed by way of an *ex-parte ad-interim* order in favour of the Appellant.

15. That the present Application is made *bona fide* and in the interest of justice, and this Hon'ble Court may be pleased to allow the same as prayed.

PRAYER

In the facts and circumstances of the case and in the interest of justice, it is most respectfully prayed that pending the disposal of the Civil Appeal, this Hon'ble Court may graciously be pleased to pass appropriate orders/ directions to:

a) to pass an *ex-parte ad-interim* order staying the effect and operation of the Impugned Order dated 28 November 2023 passed by Securities Appellate Tribunal, Mumbai in Appeal No. 846 of 2023; and

b) pass such further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPELLANT AS IN DUTY BOUND SHALL FOREVER PRAY.

FILED BY:

(RAVI TYAGI)
ADVOCATE-ON-RECORD
FOR THE APPELLANT

Filed on: 25 January 2024
Place: New Delhi

I.A NO. 23494 / 2024

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2024

(Under Section 22F of the Securities Contracts (Regulation) Act, 1956)

(Arising out of the Order dated 28 November 2023 passed by the Ld. Securities Appellate Tribunal, Mumbai in Appeal No. 846 of 2023)

IN THE MATTER OF:

NATIONAL STOCK EXCHANGE OF INDIA LIMITED

...APPELLANT

VERSUS

20 MICRONS LTD. & ANR

...RESPONDENTS

APPLICATION SEEKING EXEMPTION FROM FILING THE CERTIFIED COPY OF THE IMPUGNED ORDER DATED 28 NOVEMBER 2023

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF
THE APPELLANT ABOVENAMED

1. The Appellant has preferred the present Civil Appeal impugning the Order dated 28 November 2023 passed by the Securities Appellate Tribunal, Mumbai in Appeal No. 846 of 2023. The contents of the accompanying

Appeal be read as part and parcel of the present Application and has not been repeated herein for the sake of brevity.

2. That the Appellant is presently not in possession of the certified copy of the Impugned Order against which the present Civil Appeal is being preferred as the same was passed on 28 November 2023. However, due to urgency in filing of the present Civil Appeal, the Appellant prays for leave of this Hon'ble Court to file the present Civil Appeal annexing herewith a true copy of the impugned order.

3. That the Appellant undertakes to file the certified copy of the impugned order as and when so directed by this Hon'ble Court.

4. That Appellant shall suffer grave irreparable injury in case the present application is not allowed.

PRAYER

In view of the submissions made above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a) Grant exemption to the Appellant from filing the certified true copy of impugned Order dated 28 November 2023 passed by the Ld. Securities Appellate Tribunal, Mumbai in Appeal No. 846 of 2023;

b) Pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPELLANT AS IN DUTY BOUND SHALL FOREVER PRAY.

FILED BY:

DRAFTED ON: 24.01.2024

FILED ON: 25.01.2024

(RAVI TYAGI)
ADVOCATE-ON-RECORD
FOR THE APPELLANT

I.A NO. 23498 / 2024

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2024

(Under Section 22F of the Securities Contracts (Regulation) Act, 1956)

(Arising out of the Order dated 28 November 2023 passed by the Ld. Securities Appellate Tribunal, Mumbai in Appeal No. 846 of 2023)

IN THE MATTER OF:

NATIONAL STOCK EXCHANGE OF INDIA LIMITED

...APPELLANT

VERSUS

20 MICRONS LTD. & ANR

...RESPONDENTS

APPLICATION SEEKING PERMISSION TO FILE ADDITIONAL DOCUMENTS ON RECORD

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF
THE APPELLANT ABOVENAMED

MOST RESPECTFULLY SHOWETH: -

1. The present Civil Appeal is being preferred under Section 22F of the Securities Contracts (Regulation) Act, 1956 ("**SCRA**") challenging the Order

dated 28 November 2023 ("**Impugned Order**") passed by the Ld. Securities Appellate Tribunal, Mumbai ("**Ld. Tribunal**") in Appeal No. 846 of 2023.

2. The Appellant craves leave of this Hon'ble Court to refer and rely upon the contents of the accompanying Civil Appeal as part and parcel of this Application as the same are not being repeated for the sake of brevity.

3. By way of the present Application, the Applicant/ Appellant seeks permission to file on record the Kotak Committee Report which is the basis for Regulation 17 (1A) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**"). On the basis of the Kotak Committee Report, Regulation 17 (1A) of LODR Regulations was introduced and put into effect as there were no regulations for the appointment of an independent director who has attained the age of 75 years. By way of adducing the Kotak Committee Report, the Appellant herein intends to showcase the legislative intent behind Regulation 17 (1A). An official copy of the Kotak Committee Report (Report of the Committee on Corporate Governance) of SEBI dated 05 October 2017 is annexed herewith and marked as **ANNEXURE A-11**. (143 – 318)

4. The Appellant humbly submits that the Ld. Tribunal while passing the Impugned Order has failed to consider the findings given by the Kotak Committee which led to the amendment in LODR Regulations by way of

which Regulation 17 (1A) was introduced. The Kotak Committee was constituted by Respondent No. 2 for improving the standards of corporate governance of listed companies in India and the several recommendations of the said committee were duly accepted by Respondent No. 2.

5. Also, by way of the present Application, the Appellant seeks permission to file on record the consultation paper bearing the agenda and the decision of the Securities and Exchange Board of India, i.e., Respondent No. 2, wherein the Meeting of the Board of Respondent No. 2 took place to bring about amendment in the LODR Regulations relating to appointment or re-appointment of persons who fail to get elected as directors, including as Whole-time directors or Managing Directors or Managers, at the general meeting of a listed entity.

6. It is submitted that the aforementioned amendment was introduced as Regulation 17 (1C) of the LODR Regulations and the legislative intent behind the same is clearly stated in the consultation paper of Respondent No. 2.

7. The aforementioned consultation paper and agenda for amendment in the LODR Regulations can be accessed on the website of Respondent No. 2, under the *year 2021>>Tuesday, 28th December>>Sr. No. 3>>Subject - Introduction of provisions relating to appointment or re-appointment of*

persons who fail to get elected as directors, including as Whole-time directors or Managing Directors or Managers, at the general meeting of a listed entity.

The URL of the same is as follows: -

https://www.sebi.gov.in/sebiweb/about/AboutAction.do?doBoardMeeting=yes&year=2021#

An official copy of the consultation paper of Respondent No. 2 as available on the official website mentioned above is annexed herewith and marked as **ANNEXURE A-12**. (319-326) An official copy of the decision of Respondent No. 2 as on the official website of Respondent No. 2 mentioned above is annexed herewith and marked as **ANNEXURE A-13**. (327) A print out of the webpage wherein the consultation paper and the decision of Respondent No. 2 can be found is annexed herewith and marked as **ANNEXURE A-14**. (328)

8. The Appellant herein has placed reliance on the consultation paper and the decision of Respondent No. 2, to demonstrate the legislative intent behind the introduction of Regulation 17 (1C) of LODR Regulations and humbly submits that the Ld. Tribunal has gravely erred by not looking into the intent of Regulation 17 (1C) of LODR Regulations and has virtually nullified and made redundant the existence of Regulation 17 (1A) of LODR Regulations, by misinterpreting Regulation 17 (1C) of LODR Regulations and reading the

same in a combined manner along with Regulation 17 (1A) of LODR Regulations.

9. Further, the Appellant seeks to place on record the several waiver letters received by the Appellant of listed companies that are in non-compliance of Regulation 17 (1A) LODR Regulations and are coming forward and seeking waiver of fine(s) imposed on them for non-compliance of Regulation 17 (1A) of LODR Regulations by placing reliance on the Impugned Order dated 28 November 2023, as well as the Order dated 27 April 2023 of the Ld. Tribunal which has been categorically put under embargo vide order dated 18 September 2023 of this Hon'ble Court. More likely than not, many more such instances are likely to occur wherein listed entities will place reliance on the Impugned Order of the Ld. Tribunal, wherein the Ld. Tribunal has adopted an interpretation of the Companies Act and the relevant SEBI Regulations to conclude that a prior approval through a special resolution is not necessary for appointing a non-executive director who has crossed the age of 75 years. This interpretation is now allowing contraventions to take place and leisurely ratifying of the same through special resolutions of the general bodies of companies much after the event. A true copy of the waiver letter dated 23 August 2023 of a listed entity, i.e., Adani Enterprises Limited, is annexed herewith and marked as **ANNEXURE A-15** (Pg 331-332). A true copy of the waiver letter dated 01 December 2023 of a listed entity, i.e., Eros International Media

Limited, is annexed herewith and marked as **ANNEXURE A-16**. (333-335) A true copy of the waiver letter dated 02 December 2023 of a listed entity, i.e., Shah Alloys Limited, is annexed herewith and marked as **ANNEXURE A-17**. (336-337) A true copy of the waiver letter dated 07 December 2023 of a listed entity, i.e., Kakatiya Cement Sugar & Industries Limited, is annexed herewith and marked as **ANNEXURE A-18**. (338-342) A true copy of the waiver letter dated 11 December 2023 of a listed entity, i.e., DP Wires Limited, is annexed herewith and marked as **ANNEXURE A-19**. (343-344) A true copy of the waiver letter dated 13 December 2023 of a listed entity, i.e., Nagreeka Exports Limited, is annexed herewith and marked as **ANNEXURE A-20**. (345-346) A true copy of the waiver letter dated 18 December 2023 of a listed entity, i.e., Pavna Industries Limited, is annexed herewith and marked as **ANNEXURE A-21**. (347-348)

10. The present Application is being filed by the Appellant to place on record before this Hon'ble Court the above stated documents. It is respectfully submitted that the above stated documents are relevant for effective adjudication of the present Civil Appeal.

11. The Appellant has a strong *prima facie* case on merits in its favour and the balance of convenience also lies in favour of the Appellant. That an irreparable loss shall be caused to the Appellant in case the present Application is not allowed.

12. That the present Application is made *bona fide* and in the interest of justice, and this Hon'ble Court may be pleased to allow the same as prayed.

PRAYER

In the facts and circumstances of the case and in the interest of justice, it is most respectfully prayed that pending the disposal of the Civil Appeal, this Hon'ble Court may graciously be pleased to:

a) allow the instant application seeking permission to place additional documents on record; and

b) pass such further order/orders as may be deemed fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPELLANT AS IN DUTY BOUND SHALL FOREVER PRAY.

FILED BY:

(RAVI TYAGI)
ADVOCATE-ON-RECORD
FOR THE APPELLANT

Filed on: 25 January 2024
Place: New Delhi

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ANNEXURE A11

REPORT OF THE
COMMITTEE ON CORPORATE GOVERNANCE

OCTOBER 5, 2017

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

PREFACE

The completion of this Committee's report in a short span of four months has been possible because of the active participation and wholehearted support of all members of the Committee. I take the opportunity to thank my fellow Committee members for their valuable time and contributions as well as for the free and frank discussions over the past few months. I am also grateful to the SEBI Chairman, Mr. Ajay Tyagi for entrusting the Committee with this responsibility.

I would also like to thank the colleagues and families of every Committee member for extending their support without which this Committee would not have been able to complete the arduous task in such a short period.

India is a strong emerging force on the global map. Its growth is enabled by progress and development across sectors by public and private enterprises, and is built on the foundation laid down by the government and regulators that encourages transparency in business dealings, accountability and good governance.

As India aspires to its rightful position as a global leader, the focus will be on Corporate India and on Indian markets. Corporate India has a key role in nation building and corporate governance is an integral part of the broader governance of the country.

Today, leading corporates in India, who are often seen as role models by budding entrepreneurs, emerging SMEs and the broader community at large, are also looked up to for their corporate governance practices. However, if one investigates further, weaknesses become visible. This is where the contention between letter and spirit comes to light. By and large most leading corporates in India follow rules and regulations, and if their governance practices are put to test, they will likely stand scrutiny of the law. However, if one delves deeper, one could find that while the letter of the law may have been complied with, the spirit of regulations has not necessarily been embraced wholeheartedly.

In India, there are broadly two styles of running a company – the "Raja" (Monarch) model and the "Custodian" (Trusteeship) model: In the "Raja" model, promoter interest i.e. self-interest precedes interests of "Proja" i.e. other stakeholders. Given the sizeable number of promoter-led companies that are present in the Indian market, the challenges India Inc. faces are inherently unique. There are instances of promoters carrying out actions that are favourable to them but detrimental to the interests of minority shareholders. This has affected confidence in India Inc.

The "Custodian" model works on "Gandhian Principles", and is relevant for both promoter-managed as well as professionally managed entities. Under this model, promoters, boards and management wear the hat of "trustees" and act in the interest of all stakeholders – shareholders, investors, employees, customers et al, keeping stakeholder interests before self-interest. Corporate India needs to move in this direction.

This report is a sincere attempt to support and enable sustainable growth of enterprise, while safeguarding interests of various stakeholders. It is an endeavor to facilitate the true spirit of governance. Under the leadership of a vigilant market regulator - SEBI, and with the persistent efforts of key stakeholders, corporate governance standards in India will continue to improve. A stronger corporate governance code will enhance the overall confidence in Indian markets and in India.

Uday Kotak
Chairman, Committee on Corporate Governance

Mumbai, October 5, 2017

ACKNOWLEDGEMENTS

The Committee expresses its gratitude to Mr. S Raman, Mr. G. Mahalingam, Ms. Madhabi Puri Buch, Mr. P K Nagpal, Mr. Ananta Barua, Mr. Jayanta Jash, Mr. Pradeep Ramakrishnan, Ms. Nila Khanolkar and Mr. Rohan Vijay, from SEBI.

Special thanks are due to the members of the drafting group: SEBI team comprising of Mr. Pradeep Ramakrishnan and Ms. Nila Khanolkar; Cyril Amarchand Mangaldas team comprising of Ms. Amita Katragadda, Ms. Anchal Dhir, Ms. Anshu Choudhary and Ms. Saloni Shroff; AZB & Partners team comprising of Ms. Nitanjana Singh and Mr. Prerak Ved; and Kotak Mahindra team comprising of Mr. Jaimin Bhatt, Mr. S. Ramesh and Mr. Nimesh Kampani.

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THE COMMITTEE, TERMS OF REFERENCE AND APPROACH

The SEBI Committee on corporate governance was formed on June 2, 2017 under the Chairmanship of Mr. Uday Kotak with the aim of improving standards of corporate governance of listed companies in India. The Committee was requested to submit its report to SEBI within four months.

Composition of the Committee

S.No.	Member Details	Organisation and designation	Capacity
1	Mr. Uday Kotak	Executive Vice Chairman and Managing Director, Kotak Mahindra Bank Limited	Chairman
2	Mr. Madhukar Gupta	Additional Secretary, Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises	Member
3	Mr. Praveen Garg	Joint Secretary (Financial Markets), Department of Economic Affairs, Ministry of Finance	Member
4	Mr. Amardeep Singh Bhatia	Joint Secretary, Ministry of Corporate Affairs	Member
5	Mr. Keki Mistry	Vice Chairman & Chief Executive Officer, Housing Development Finance Corporation Limited	Member
6	Mr. Rishad Premji	Chief Strategic Officer and Member of the Board, Wipro Limited	Member
7	Mr. R Shankar Raman	Whole Time Director and CFO, Larsen & Toubro Limited	Member
8	Mr. Nilesh Shivji Vikamsey	President, The Institute of Chartered Accountants of India (ICAI)	Member
9	Mr. Mahavir Lunawat	Chairman, Financial Services Committee and council member, The Institute of Company Secretaries of India (ICSI)	Member
10	Mr. Ashish Kumar Chauhan	MD & CEO, Bombay Stock Exchange (BSE)	Member
11	Mr. J Ravichandran	Group President, National Stock Exchange of India Ltd (NSE)	Member
12	Ms. Zia Mody	Managing Partner, AZB & Partners	Member
13	Mr. Cyril Shroff	Managing Partner, Cyril Amarchand Mangaldas	Member
14	Mr. Joydeep Sengupta	Senior Partner and Leader of Asia Pacific Banking Practice, McKinsey & Company	Member
15	Ms. Shobhana Kamineni[1]	President, Confederation of Indian Industry (CII)	Member
16	Mr. Pankaj R Patel[2]	President, Federation of Indian Chambers of Commerce & Industry (FICCI)	Member
17	Mr. J N Gupta	Managing Director, Stakeholders Empowerment Services (SES)	Member
18	Mr. Amit Tandon	Managing Director, Institutional Investor Advisory Services (IiAS)	Member
19	Mr. N Venkatram	Managing Partner & CEO, Deloitte India	Member
20	Mr. Arun M Kumar	Chairman & CEO, KPMG India	Member
21	Prof. Vasanth/ Srinivasan	Professor, IIM Bangalore	Member
22	Mr. Krishnamurthy Subramanian	Associate Professor of Finance, Indian School of Business	Member
23	Dr. U D Choubey	Director General, Standing Conference Of Public Enterprises (SCOPE)	Member

[1] Ms. Shobana Kamineni was represented by Ms. Zia Mody/ Mr. Keki Mistry in the meetings

[2] Mr. Pankaj R Patel was represented by Mr. Ashok Gupta, Co-Chair, Corporate Laws Committee, FICCI and Group General Counsel, Aditya Birla Group, in the meetings

S.No	Member Details	Organisation and designation	Capacity
24	Mr. S. Ravindran	Executive Director, SEBI	Member
25	Mr. S Raman	Former Whole Time Member, SEBI	Special Invitee

Terms of the reference of the Committee

With the aim of improving standards of Corporate Governance of listed companies in India, the Committee was requested to make recommendations to SEBI on the following issues:

1. Ensuring independence in spirit of Independent Directors and their active participation in functioning of the company;
2. Improving safeguards and disclosures pertaining to Related Party Transactions;
3. Issues in accounting and auditing practices by listed companies;
4. Improving effectiveness of Board Evaluation practices;
5. Addressing issues faced by investors on voting and participation in general meetings;
6. Disclosure and transparency related issues, if any;
7. Any other matter, as the Committee deems fit pertaining to corporate governance in India.

The Committee was requested to provide its recommendations in the context of equity listed companies.

Approach

The Committee had twelve meetings over a period of four months with the first meeting held on June 14, 2017 and the last on September 29, 2017. The Committee deliberated each of the terms of reference in detail. The Committee, wherever required, formed sub-groups for analysis of specific issues.

This Report sets out the recommendations of the Committee along with the rationale and the expected timeline for implementation of such recommendations.

The Committee's approach to the recommendations has been driven by the primary objective of enhancing corporate governance for listed entities. In this regard, the Committee believes that there are certain recommendations which may require implementation by authorities/ regulators in addition to SEBI. Therefore, the Committee has suggested that SEBI take up such recommendations with the relevant authorities/ regulators.

The Committee has received a letter from the Ministry of Corporate Affairs ("MCA") dated October 3, 2017 with comments on the recommendations. The same is enclosed in Annexure 1. The Committee has also received a letter from the Ministry of Finance ("MoF") dated October 3, 2017 with certain observations/comments on the recommendations. The same is enclosed in Annexure 2. These letters have been shared with SEBI and the Committee recommends that SEBI consult with

the MCA and the MoF, as relevant, in the context of implementing the recommendations in this Report.

The Report suggests certain amendments to the existing provisions (*which are reflected in red and underline/strikethrough*) and certain new provisions (*which are reflected in red*) that may be required to implement the recommendations. For the ease of reference of the reader, the Report also summarises the current regulatory framework along with detailed provisions included in Annexure 3.

INTRODUCTION

India accounts for nearly 3 per cent of world GDP and 2.5 percent of global stock market capitalization. With over 5,000 listed companies and more than 50 companies in the global Fortune 2000, India represents a vibrant mix of small and large companies that access capital from domestic and international investors to fund their growth. Many of these companies are amongst the largest employers. Moreover, a large number of small investors in India rely on corporate India's good performance so that the returns they obtain on their investments can ensure their financial security. Beyond doubt, corporate India represents a key engine that powers nation building; and nation building requires sound principles of governance, whether it is a country or a company. As corporate India's health is critical for India's future, sound corporate governance needs to be the key enabler to manifest this reality.

Corporate governance deals with the ways in which suppliers of capital to corporations, especially faceless, powerless small investors, can assure themselves of getting fair treatment as stakeholders. A promoter, or a professional manager, raises funds from equity investors either to put them to productive use or to cash out his/her holdings in the firm. The investors need the manager's/ promoter's specialized human capital to generate returns on their funds. But how can small suppliers of capital ensure that, once they invest their funds, owners and/or professional managers will invest their money responsibly and return some of the profits generated from such investments? Corporate governance deals with the mechanisms to address this key question.

Does Corporate Governance Really Matter?

Research provides robust evidence that companies that exhibit sound corporate governance generate significantly greater returns when compared to companies that exhibit poor corporate governance.[3] In fact, well governed companies across the world command a premium of anywhere between 10 to 40 percent more than their not so well governed counterparts. Research focusing on the governance mechanisms that ensure such value creation highlights the role of: (i) composition of boards, especially their independence in law and in spirit from the company's management; (ii) expertise of the directors on the boards; (iii) the composition and independence of key board committees such as the audit committee and the nomination and remuneration committee; (iv) independence of the companies' auditors and the quality of audit of its financial statements; (v) the quality of disclosures by the company; and (vi) careful balancing of the interests of controlling shareholders vis-à-vis minority shareholders. Numerous studies indicate that the payoff from good corporate governance manifests both in the operating results of publicly listed companies, as well as the market capitalization of such companies. In fact, good firm-level governance often makes up for weaknesses in a country's corporate laws or the enforcement of such laws.

[3] For evidence in the Indian context, see Sarkar, Sarkar and Sen (2012), *"A Corporate Governance Index for Large Listed Companies in India,"* Working Paper, IGIDR. For similar evidence across the world, see Agrawal, A., & Knoeber, C. R. (2012), *"Corporate governance and firm performance,"* Oxford Handbook in Managerial Economics, Oxford University Press.

Why Review Corporate Governance Now? The Case for Change

Over the past decade, policymakers in India have been acutely conscious of the importance of corporate governance – several committees, including those under the chairmanship of Mr. Kumar Mangalam Birla, Mr. Narayana Murthy and Mr. Naresh Chandra, have made valuable recommendations which have been largely adopted. Yet, governance practices even in some of the most reputed publicly listed Indian companies have come under question on a number of dimensions. These include evaluation of company boards, board diversity, reliability of disclosures (especially those relating to financial statements), role of independent directors, protection of minority shareholder interests, managerial compensation and related party transactions.

Some global trends, also evident in India, drive the demand for a higher quality of corporate governance, for instance:

a) Increasing pace of change in market conditions, viz. demographic, technological and market change, which require companies and their boards to be agile and quickly adapt to the changing business environment.

b) Obsessive focus on short-term performance often at the cost of long-term performance: Rather than pursuing long-term strategies, many public companies and boards dedicate significant resources to meeting quarterly earnings guidance and communicating their performance relative to this guidance. In a survey conducted by McKinsey and CPPIB in 2014, nearly half of the C-suite respondents stated that the reason for their organizations' overemphasis on short-term financial results and under emphasis on long-term value creation was the company's board.

c) Several corporate governance failures across the world and an increasingly complex regulatory environment have sharpened the focus on good governance.

d) An increasing number of passive institutional owners with small positions in a wide range of companies – raising the expectations towards, and opportunities for, *larger shareholders to be active* and involved as owners to ensure and support the value creation in their individual portfolio companies. What has led to this sharp rise in activism? According to Stephen Murray, president and CEO of CCMP Capital Advisors, a major private-equity firm, *"The whole activist industry exists because public boards are often seen as inadequately equipped to meet shareholder interests."*

e) "Increasing evidence that private equity ("PE") owned companies outperform publicly listed ones. Directors who have served on the boards of both public and private companies add that the behavior of the board is a key element driving superior operational performance. Compared to their public-owned company counterparts, directors in PE-owned companies are believed to spend far more time on strategy and risk management, have deeper functional and industry expertise and engage more actively in talent management. Clearly, public boards cannot (and should not) seek to replicate all elements of the PE model. Nevertheless, can public boards be structured so that their members can put more time into managing strategy, risk, talent and performance?

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[*] Source: Acharya, Kehoe, Reyner, McKinsey on Finance (December 2008), *"The voice of experience: Public versus private equity"*

f) Significant market discount being placed on Public Sector Enterprises (PSEs): Given their multiple objectives, we continue to witness significant value erosion in several PSEs. Most public sector banks, for example, trade at a significant discount to book value, and at a considerable discount to their counterparts in the private sector.

Given these trends, not surprisingly, there's been a renewed focus on improved corporate governance: better structures, more rigorous checks and balances, and greater independence of all key gate-keepers including boards and auditors. Arguably, governance suffers most when boards spend too much time looking in the rearview mirror and not enough scanning the road ahead. Directors have difficulty in prioritizing their time between quarterly reports, audit reviews, budgets and compliance on the one hand and matters crucial to the future prosperity and direction of the business on the other.

This has to change.

Principles of the Change Agenda

The Committee's approach has been to focus on addressing immediate challenges and gaps in governance while at the same time, anchoring its discussions firmly in the long term. The Committee believes that such a focus on the long term is necessary to enable our companies shape a strong and resilient governance apparatus for the foreseeable future. Irrespective of the timeframe, at its core, the Committee believes that well-governed companies need to fulfil two major roles: the first to focus on long-term value creation and the second to protect shareholders interests by applying proper care, skills and diligence to business decisions.

In relation to the governance processes that would help achieve these outcomes, the Committee was guided by the following conceptual underpinnings:

First, high-quality information represents the basic input for governance because it reduces the twin problems of reliability and asymmetric information, which refer to the fact that professional managers, board members and auditors possess significantly greater information than the average investor in these companies. These may get exacerbated by the possibility that good news may be revealed aggressively while bad news may be allowed to percolate slowly or remain undisclosed. Therefore, high-quality information is the primary ingredient for enabling shareholders to exercise their voting rights in general meetings of the company and express their views on such key corporate decisions. Even directors and auditors have to rely on high-quality information about the operations of the company to duly discharge their fiduciary duties. Thus high-quality information is the key pillar of corporate governance.

Second, good corporate governance primarily helps overcome potential agency problems which can occur if managers who are agents of all shareholders (particularly the faceless, powerless ones) pursue their personal interests to the possible detriment of investors' interests.

Last, but not the least, regulatory monitoring and optimal use of the proverbial carrot and stick represents a key element of corporate governance.

With these guiding principles, the Committee deliberated on the following:

A. Shaping governance for long-term value creation: Given long-term trends, it is clear that the board of the future will need to operate with an owner's mindset and guard its authority and independence zealously. Operating with an "owner's" mindset would imply:

i) Optimizing the composition of the board to ensure that it has the right mix of domain, functional and 'future ready' expertise, e.g., digital/analytics in addition to appropriate ethos, given the strategic context of the company. High demographic diversity among board members has a positive effect on financial performance and the quality of strategic decision-making.

ii) Ensuring adequate time is spent by individual board members with clear guidelines. Periodicity of meetings will also have to increase.

iii) Cultivating the spirit of independence on the board and ensuring its unfettered practice through truly independent high quality non-executive directors, a chairman independent of the CEO, regular challenges and discussions with management and through key committees. Truly independent boards are vital to effective governance. As former UK Financial Reporting Council Chairman, Sir Christopher Hogg has noted, *"Good boards are pretty uncomfortable places and that's where they should be."*

iv) Enabling the boards to independently develop and discuss strategic perspectives on the company. Ensuring that substantial time is spent on strategy, performance, talent, risk management, succession planning and social responsibility.

v) Constructively engaging and communicating with long-term institutional shareholders and engaging with them on matters of strategic importance including long-term value creation.

vi) Ensuring consistent and sufficiently frequent evaluation of the board's and the individual board member's performance.

vii) Reviewing board member compensation to enhance commitment and obtain the right talent.

B. Shaping governance to protect shareholder interests: Securing the interests of all shareholders is a fiduciary duty of the board. Today in India, there are a number of ways in which shareholder interests get compromised. Safeguarding shareholder interest would imply:

i) Strengthening the core safeguarding committees of the board, audit, risk and technology (including cyber security) – enhancing their scope and periodicity.

ii) Enhancing monitoring of group entities and subsidiaries to ensure shareholders get a holistic and transparent view of performance.

iii) A majority of Indian listed entities continue to be promoter–driven entities with significant shareholding being held by the promoter/promoter group. Therefore, protection of the interests of minority shareholders, especially those of the retail shareholders assumes even more importance. In this context, clarifying conditions for sharing of information and creating checks and balances on related party transactions are crucial for good governance. It is also important to ensure that

compensation practices, especially with respect to promoter-directors, do not exacerbate potential agency problems.

iv) Enhancing disclosure norms significantly in order to provide greater transparency to investors and thereby reduce possible asymmetric information, including in areas such as credit rating, securities holdings, and performance. Financial and performance disclosures alone tend to yield little insight into the company's value drivers or future potential. These disclosures rarely connect recent performance to long-term strategy and progress on value creation. Companies that articulate a long-term strategy effectively tend to attract investors who are more willing to look beyond short-term under-performance.

v) Recognizing that stakeholders rely significantly on auditors, strengthening the audit function will provide them greater comfort.

vi) Evaluating structural solutions for PSEs.

vii) Strengthening the enforcement mechanism by leveraging data, technology and creating greater enforcement capacity within SEBI. This has the potential to have a multiplier effect on governance of listed entities.

C. Building regulatory capacity for enhancing governance of listed entities: Corporate governance deals not only with the *de jure* but also the *de facto* aspects of the law. In this context, SEBI's role as a regulator of capital markets assumes particular importance given that it requires diligent detection, monitoring and enforcement of punitive action. The efficacy of the Committee recommendations, therefore, depend critically upon SEBI's detection and enforcement capabilities. By drawing on the experiences of regulators in other countries, this Committee recommends specific steps to build capacity at SEBI.

These principles provided the Committee a framework to engage in a more extensive debate around the relative importance of each of the principles and its applicability to the various issues. They also acted as a guardrail to ensure we were leaving no significant issues uncovered in our quest for preparing our boards for the future. All subsequent detailed chapters in the report are consistent with these principles.

Approach to Implementation: Evolution not Revolution

The Committee was faced with a number of choices while defining timelines for implementation of its recommendations. It was tempting to seek an accelerated implementation of all recommendations – however, the Committee picked a balanced and measured approach as it felt that preparedness is important and change must be smooth. Otherwise, there was the risk of poor execution with damaging second order consequences. As such, we have arrived at a phased timetable for most initiatives to be executed between 2018 and 2020. It was agreed that a phased transition could allow companies time to adjust to new governance demands. For example, on disclosure of long-term strategy, the Committee has provided guidance, as opposed to mandating a timeframe.

There are also a few implementation challenges; for one, the availability of qualified independent directors. While we have tried to address some of the obvious deterrents, like compensation, much

needs to be done to enhance the supply of this scarce pool. Similarly, some of these recommendations will not only involve multiple stakeholders but also get into uncharted territories; perhaps even be contentious.

Hence, our approach is evolutionary. We propose that these be implemented in a sequenced but disciplined way over the next three years.

The Committee comprises of persons from diverse backgrounds including representatives from the corporate sector, the government, industry bodies, professional bodies, lawyers, academicians, consulting and accounting firms, stock exchanges and proxy advisors. We have had extensive discussions and our recommendations have been carefully finalized keeping in mind the objective of enhancing corporate governance while facilitating ease of doing business.

We believe that we have a unique opportunity to create a world class corporate governance environment in India that will enable India to fulfil its destiny.

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RECOMMENDATIONS

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CHAPTER I: COMPOSITION AND ROLE OF THE BOARD OF DIRECTORS

The basic principle underlying the governance of a corporate entity is that the superintendence, control and direction of its business and affairs lie with its board of directors, with the executive management being delegated powers for smooth and efficient operational functioning. Accordingly, the board of directors as a whole is responsible to all stakeholders for meeting the requisite standards of corporate governance. The responsibilities of the board of directors are accentuated in a listed entity given the wider ambit of stakeholder interests.

The Committee observed that while aspects relating to the composition and role of the board of directors of listed entities have been subjected to gradual reform, a holistic re-assessment is required to further strengthen the same.

Accordingly, this review by the Committee and the attendant recommendations seek to address aspects relating *inter-alia* to the size of the board and its diversity, separation of the roles of chairperson and executive management, attendance of directors at board meetings, ongoing updation of knowledge of directors and disclosure of their skills/expertise.

1. Minimum Number of Directors on a Board

Current regulatory provisions:

At present, the Companies Act, 2013 read with rules issued thereunder *(hereinafter referred to as the "Companies Act")* requires a minimum of three directors on the board of a public limited company. There is no similar requirement in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 *(hereinafter referred to as the "SEBI LODR Regulations")*. [Check for *Detailed Provisions*]

Recommendation and rationale:

The board of directors plays an important role in a company's governance and performance. It is therefore essential that a company has a sufficient number of directors on its board to ensure that it is able to carry out its functions effectively. In view of the additional functions and obligations of the board of a listed entity, relative to unlisted entities, it is crucial that a sufficient number of directors with diverse backgrounds and skill sets are available on the boards of listed entities to fulfill these functions and obligations.

Therefore, the Committee recommends that for any listed entity, a minimum of six directors should be required on the board of directors.

Proposed amendments to SEBI LODR Regulations (w.e.f. October 1, 2018):

Current provision in SEBI LODR Regulations	Proposed / amended provision in SEBI LODR Regulations
No specific provision.	**Reg 17. Board of Directors.** (1) The composition of board of directors of the listed entity shall be as follows: ... Insertion of a new clause (c): (c): board of directors shall comprise of not less than six directors.

2. Gender Diversity on the Board

Current regulatory provisions:

The Companies Act and the rules prescribed thereunder require at least one woman director on the board of directors of every listed entity. The SEBI LODR Regulations also currently require at least one woman director on the board of a listed entity. (Click for *Detailed Provisions*)

Recommendation and rationale:

Diversity, including gender diversity, is often seen to have a positive impact on the decision making processes of corporate boards. The Companies Act and SEBI LODR Regulations took a progressive step in requiring at least one woman director to be on the board of directors of listed entities. This was done as under-representation of women on boards was a significant concern in India. Although India lags behind global markets in women participation on corporate boards, the broad reaction of corporate India on having to include at least one woman on every board has been largely positive. Women representation on the boards of NIFTY 500 companies, which was at 5% as on March 31, 2012, increased to 13% as on March 31, 2017.

To further improve gender diversity on corporate boards, the Committee recommends that every listed entity have at least one independent woman director on its board of directors.

Proposed amendments to SEBI LODR Regulations (w.e.f. October 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 17. Board of Directors **(1)** The composition of board of directors of the listed entity shall be as follows: **(a)** board of directors shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty percent of the board of directors shall comprise of non-executive directors;	**Reg 17. Board of Directors** **(1)** The composition of board of directors of the listed entity shall be as follows: **(a)** board of directors shall have an optimum combination of executive and non-executive directors with at least one woman as an independent director and not less than fifty percent of the board of directors shall comprise of non-executive directors;

3. Attendance of Directors

Current regulatory provisions:

Currently, the Companies Act provides for the automatic vacation of the office of director if a director is absent from all meetings of the board of directors held during a 12-month period. There is no requirement for minimum attendance of directors in meetings of the board of directors under the SEBI LODR Regulations. (Click for *Detailed Provisions*)

Recommendation and rationale:

Board members have the responsibility to protect the interests of various stakeholders. Hence, it is desirable that directors attend all scheduled meetings to carry out their fiduciary duties appropriately. However, it is understandable that sometimes, they may not be able to do attend due to certain exigencies.

The Committee is of the view that it is important for all directors to attend a minimum number of meetings in order to enhance their contribution of skill, time and value towards serving the long-term interests of all stakeholders. It is therefore recommended that if a director does not attend at

least half of the total number of board meetings over two financial years on a rolling basis, his/her continuance on the board should be ratified by the shareholders at the next annual general meeting.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Reg 17. Board of Directors** **Insertion of a new sub-Regulation (2A):** 2A. With effect from April 1, 2018, if a director does not attend at least half of the total number of board meetings held over the Relevant Period, his/her continuance on the board shall be subject to ratification by the shareholders at the next annual general meeting (notwithstanding the nature of directorship). Explanation: For the purposes of this provision, the term "Relevant Period" shall mean a period of two consecutive financial years on a rolling basis, commencing from the financial year immediately succeeding the date of appointment. For existing directors, the "Relevant Period" shall commence from April 1, 2018.

4. Disclosure of Expertise/Skills of Directors

Current regulatory provisions:

The Companies Act and SEBI LODR Regulations require the disclosure of a brief profile of a director on his/her appointment, including expertise in specific functional areas. However, there is no specific requirement under the Companies Act or SEBI LODR Regulations for listed entities to disclose the required and available expertise of the board on a regular basis. (Click for *Detailed Provisions*)

Recommendation and rationale:

In today's dynamic and complex world, diverse skill-sets of the board of directors have become a necessity. The importance of diversity on a board cannot be overstated. A group of individuals with varied skill-sets and experience is critical for providing comprehensive guidance and direction to a company.

The Committee acknowledged that while a board of directors may seek external expert advice on various matters, given the collective responsibility and the need for the board to make informed business judgement, a balanced wholesome board with complementary skill-sets amongst the directors is imperative. Typically, these skill-sets would comprise technical/academic skills, general management, global business, technology, manufacturing/operations, risk management, etc. Recognizing this, board members should collectively have a wide set of skill-sets appropriate for the relevant business.

Currently, there is no requirement for the disclosure of the expertise matrix of the board on a regular basis and therefore shareholders are unable to adequately analyze whether a board has a sufficient mix of diverse expertise/skill-sets.

It is therefore recommended that the board of directors of every listed entity should be required to list the competencies/expertise that it believes its directors should possess. It should also be

required to disclose the list of competencies/expertise that its board members actually possess. Some illustrative parameters that may be considered in this context are listed in Annexure 4.

Further, it is recommended that initially, a listed entity should be required to disclose competencies of its board members against every identified competency/expertise without disclosing names in the annual report for financial year ending March 31, 2019. However, detailed disclosures of competencies of every board member, along with their names, should be required w.e.f. March 31, 2020 (i.e. for annual report for the financial year ending March 31, 2020).

Proposed amendments to SEBI LODR Regulations (w.e.f. FY ending March 31, 2019/March 31, 2020 as applicable):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Schedule V: Annual Report** (C) Corporate Governance Report: The following disclosures shall be made in the section on the corporate governance of the annual report. (2) Board of Directors: .... Insertion of a new sub-clause (h): (h) A chart or a matrix setting out the skills/expertise/competence of the board of directors specifying the following: (i) List of core skills/expertise/competencies identified by the board of directors as required in the context of its business(es) and sector(s) for it to function effectively and those actually available with the board; and (ii) Names of directors who have such skills/expertise/competence, with effect from financial year ended March 31, 2020.

5. Approval for Non-executive Directors on Attaining a Certain Age

Current regulatory provisions:

The Companies Act provides that a person may be appointed/continue as Managing Director *(hereinafter referred to as "MD")*, whole-time director or manager on attaining the age of 70 years by passing a special resolution. However, no such provision exists for non-executive directors. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee recognizes that while age itself may not be a determinant of efficiency or capability of a person or the basis for disqualification of a director, a higher level of shareholder endorsement may be required for directors to continue in their position beyond a certain age. The Committee further noted that non-executive roles on a board also require significant commitment of time. In this regard, the Committee is of the view that checks and balances should be considered in connection with the age of Non-executive Directors *(hereinafter referred to as "NEDs")* similar to the provisions of the Companies Act for executive directors.

Therefore, the Committee recommends that a provision requiring a special resolution on a similar basis should be inserted for listed entities for the appointment/continuation of NEDs on attaining the age of 75 years for the relevant term. All shareholders should be permitted to vote on such a resolution.

Proposed amendments to SEBI LODR Regulations (w.e.f. October 1, 2019):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Reg 17. Board of Directors.** Insertion of a new sub-Regulation (1A): (1A) No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

6. Minimum Number of Board Meetings

Current regulatory provisions:

Currently, both the Companies Act and the SEBI LODR Regulations require at least four meetings of the board every year with a maximum gap of one hundred and twenty days between any two meetings. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee believes that the four meetings of the board tend to focus primarily on financial results and other matters relating to regular compliance. Hence, boards may be required to meet more frequently to focus on other critical aspects of a listed entity such as its management and corporate governance. Accordingly, it is recommended that the minimum number of meetings of board of directors be increased to five every year.

Additionally, the Committee is of the view that aspects like strategy, succession planning, budgets, risk management, ESG (environment, sustainability and governance) and board evaluation are critical to the medium-term and long-term future of a listed entity – and in order to ensure that there is adequate attention paid thereto, the Committee recommends that, at least once a year, the above-referred aspects should be specifically discussed by the board.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 17. Board of Directors. (2) The board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.	**Reg 17. Board of Directors** (2) The board of directors shall meet at least four five times a year, with a maximum time gap of one hundred and twenty days between any two meetings and at least once a year, the board shall specifically discuss strategy, budgets, board evaluation, risk management, ESG (environment, sustainability and governance) and succession planning.

7. Updation of Knowledge of the Board Members

Current regulatory provisions:

Currently, the Companies Act contains general provisions pertaining to the induction of independant directors. SEBI LODR Regulations require familiarization of the independant directors relating to certain specified matters and that the board of directors periodically reviews compliance reports pertaining to all laws applicable to the listed entity as well as steps taken to rectify instances of non-compliances. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee is cognizant of the ever-evolving and changing regulatory environment. The Committee also acknowledges that ignorance of the law is no excuse, and that the board's supervisory role holds it ultimately accountable for unlawful actions of the company. Accordingly, in order for the directors to exercise their judgement and discharge their duties with sufficient knowledge, the directors need to be kept abreast of changes in laws, regulations, relevant judicial or regulatory orders, and compliance requirements.

Therefore, in order to fill this information gap, it is recommended that at least once every year, the board of directors should be updated on regulatory and compliance changes.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Reg 17. Board of Directors** Insertion of a new sub-Regulation (3A) (3A) The listed entity shall, at least once every year, undertake a formal updation programme for the board of directors on changes in applicable laws, regulations and compliance requirements.

8. NED Engagement with the Management

Current regulatory provisions:

Currently, the Companies Act and SEBI LODR Regulations do not have any provisions requiring mandatory engagement of the NEDs with the management.

Recommendation and rationale:

The Committee believes that interaction between the NEDs and the management is critical for a better understanding by NEDs of the company's business and of the managerial capacity and capability of the company.

Therefore, it is recommended that at least once every year, an interaction should be required between the NEDs and senior management.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Reg 17. Board of Directors** Insertion of a new sub-Regulation (3A) (3A) The listed entity shall, at least once every year,

	undertake a formal interaction between the non-executive directors and the senior management.

9. Quorum for Board Meetings

Current regulatory provisions:

Currently, the Companies Act requires a quorum of one-third of the total strength of the board of directors or two directors, whichever is higher, for every board meeting. SEBI LODR Regulations do not prescribe any quorum for meetings of board of directors. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee is of the opinion that in view of the increased obligations of the boards of listed entities, a higher quorum may be required vis-à-vis other companies. The Committee also believes that in the interest of all stakeholders, especially minority shareholders, the presence of at least one independent director is required for every board meeting.

Therefore, it is recommended that the quorum for every board meeting of the listed entity should be a minimum of three directors or one-third of the total strength of the board of directors, whichever is higher, including at least one independent director.

Proposed amendments to SEBI LODR Regulations (October 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Reg 17. Board of Directors** **Insertion of a new sub-Regulation (2A):** **(2A) The quorum for every meeting of the board of directors of the listed entity shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director and subject to the requirements of the Companies Act, 2013, the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum.**

10. Separation of the Roles of Non-executive Chairperson and Managing Director/CEO

Current regulatory provisions:

Currently, the Companies Act states that an individual shall not be appointed/reappointed as the chairperson of a company as well as its MD/CEO at the same time unless the articles of such company provide otherwise or the company does not undertake multiple businesses. SEBI LODR Regulations do not mandate a separation of the posts of chairperson and chief executive officer of the listed entity but state that it is a discretionary requirement for a listed entity. (Click for *Detailed Provisions*)

Recommendation and rationale:

Corporate democracy is built into the interconnected arrangement amongst the board, the shareholders and the management, where the board supervises the management and reports to the

shareholders. The issue of whether to separate the roles of the chairperson and the CEO/MD, while not a recent phenomenon, is a growing concern in corporate governance worldwide.

The separation of powers of the chairperson (i.e. the leader of the board) and CEO/MD (i.e. the leader of the management) is seen to provide a better and more balanced governance structure by enabling better and more effective supervision of the management, by virtue of:

a) providing a structural advantage for the board to act independently;

b) reducing excessive concentration of authority in a single individual;

c) clarifying the respective roles of the chairperson and the CEO/MD;

d) ensuring that board tasks are not neglected by a combined chairperson-CEO/MD due to lack of time;

e) increasing the possibility that the chairperson and CEO/MD posts will be assumed by individuals possessing the skills and experience appropriate for those positions;

f) creating a board environment that is more egalitarian and conducive to debate.

Several corporate governance codes for best practices recommend this, a few jurisdictions require it, and many companies are actively debating whether to undertake it. The Committee noted that in some jurisdictions, such as the U.K. and Australia, this debate has tilted in favour of separating the two posts. In other countries, such as France and the U.S., the issue continues to be vigorously debated. Countries with a two-tier board structure, such as Germany and the Netherlands, separate the top board and top management roles.

In this regard, the Committee also noted the rationale of the United Kingdom's Cadbury Committee in the Report of the Committee on the Financial Aspects of Corporate Governance (1992) that *"given the importance and the particular nature of the chairman's role, it should in principle be separate from that of the chief executive. If the two roles are combined in one person, it represents a considerable concentration of power"*.

After deliberation, the Committee believes that the time is right in India to introduce a separation of the roles of the Chairperson and the CEO/MD for listed entities. The Committee observed that such separation, at least at the stage of introduction of the construct, may be more relevant where public shareholders constitute a large portion of the shareholding of a company. In this regard, the Committee considered various thresholds and concluded at least 40% of public shareholding would be an appropriate threshold. Further, in view of the fact that this would require a significant transition from the existing requirements, the Committee believes that listed entities should be given sufficient time to undertake such a transition.

Therefore, it is recommended that:

- Listed entities with more than 40% public shareholding should separate the roles of Chairperson and MD/CEO with effect from April 1, 2020.
- After 2020, SEBI may examine extending the requirement to all listed entities with effect from April 1, 2022.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2020/April 1, 2022, as applicable):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Schedule II: Corporate Governance: Part E: Discretionary Requirements D. Separate posts of chairperson and chief executive	Schedule II: Corporate Governance: Part E: Discretionary Requirements ~~D. Separate posts of chairperson and chief executive~~

officer The listed entity may appoint separate persons to the post of chairperson and managing director or chief executive officer.	officer ~~The listed entity may appoint separate persons to the post of chairperson and managing director or chief executive officer.~~ 17. Board of Directors Insertion of a new sub-Regulation (1A): (1A) With effect from April 1, 2020, all listed entities which have public shareholding of forty percent or more at the beginning of a financial year shall ensure that the Chairperson of the board of such listed entity shall be a non executive director, on and from that financial year; Provided that once a listed entity is subject to the above provision, any subsequent reduction in public shareholding below forty percent will not make the provision inapplicable. After 2020, if deemed fit by SEBI, the aforesaid sub-Regulation (1A) may be modified as under: (1A) With effect from April 1, 2022, the Chairperson of the board of each of the listed entities shall be a non executive director.

11. Matrix Reporting Structure

Current regulatory provisions:

The Companies Act states that the board of directors of a company shall be entitled to exercise all such powers, and to undertake all such activities as the company is authorised to exercise and undertake. Additionally, the board of directors of a company as a whole is responsible for all decision-making in relation to the company, with the ability to delegate certain powers to committees/individuals, and is required to provide a detailed report (popularly referred to as the Director's Report) that sets forth details in relation to the company's business, financial performance and certain other aspects. The SEBI LODR Regulations also set forth detailed responsibilities for the board of directors of a listed entity. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee acknowledges that many companies (including global conglomerates) follow matrix reporting structures to meet their internal functional reporting requirements, whereby reporting happens along functional lines to relevant heads who operate at a group level (including in other jurisdictions). Given that the Companies Act and the SEBI LODR Regulations require the board of directors of a listed entity to exercise authority and assume responsibility for the overall business and affairs of that entity, the Committee believes that informal matrix reporting structures may dilute the powers and the role of the board of a listed entity.

Accordingly, the Committee recommends that a confirmation be provided by the board of a listed entity as a part of the corporate governance report that it has been responsible for the business and overall affairs of the listed entity in the relevant financial year and that the reporting structures of the listed entity, formal and informal, are consistent with the above.

Proposed amendments to SEBI LODR Regulations (w.e.f. FY ending March 31, 2019):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Schedule V: Annual Report** **C. Corporate Governance Report** Insertion of a new clause (1A): **(1A)** A confirmation that the board of directors has been responsible for the business and overall affairs of the listed entity in the relevant financial year and that the reporting structures of the listed entity, formal and informal, are consistent with the above.

12. Maximum Number of Directorships

Current regulatory provisions:

Currently, the Companies Act provides that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten. SEBI LODR Regulations state that a person shall not serve as an independent director in more than seven listed entities and if the director is a whole time director in one listed entity, then he/she can't serve as an independent director in more than three listed entities. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee believes that multiple directorships beyond a reasonable limit may lead to a director not being able to allocate sufficient time to a particular company, thus hindering their ability to play an effective role. In light of the increasing responsibilities of corporate boards and thereby increased requirement of time from directors, the Committee recommends that the maximum number of directorships in listed entities should be reduced to seven (irrespective of whether the person is appointed as an independent director or not). However, in the interest of providing adequate transition time, the Committee recommends that the maximum number of listed entity directorships held by a person be brought down to eight by April 1, 2019 and to seven by April 1, 2020.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2019/April 1, 2020 as applicable):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg. 25. Obligation with respect to independent directors. **(1) A person shall not serve as an independent director in more than seven listed entities; Provided that any person who is serving as a whole time director in any listed entity shall serve as an independent director in not more than three listed entities**	Insertion of a new regulation (17A): Maximum number of directorships 17A. No person shall hold office as a director, including any alternate directorship, in more than eight listed entities at the same time (of which independent directorships shall not exceed seven), with effect from April 1, 2019 and not more than seven listed entities with effect from April 1, 2020: Provided that any person who is serving as a whole time director/managing director in any listed entity shall serve as an independent director in not more than three listed entities.

	~~Reg. 25 - Obligation with respect to independent directors.~~ ~~(1) A person shall not serve as an independent director in more than seven listed entities;~~ ~~Provided that any person who is serving as a whole time director in any listed entity shall serve as an independent director in not more than three listed entities~~

13. Disclosures on Board Evaluation

Current regulatory provisions:

The Companies Act and SEBI LODR Regulations contain broad provisions on board evaluation i.e. evaluation of the performance of: (i) the board as a whole, (ii) individual directors (including independent directors and Chairperson) and (iii) various committees of the board. The provisions also specify responsibilities of various persons/committees for the conduct of such evaluation and the disclosure requirements that are a part of the listed entity's corporate governance obligations. A guidance note on board evaluation has also been issued by SEBI vide circular dated January 5, 2017. [Click for *Detailed Provisions*]

Recommendation and rationale:

The Committee is of the view that the concept of board evaluation is at a nascent stage in India and prescribing detailed requirements in this area may not be desirable at this stage. The Committee also takes note of the Guidance Note dated January 5, 2017 issued by SEBI on board evaluation and is of the opinion that the Note is comprehensive and covers all major aspects of board evaluation.

However, based on the study of a few actual board evaluation disclosures made by global companies, the Committee recommends that in order to strengthen disclosures on board evaluation, a guidance should be issued specifying, in particular, the following disclosures to be made as a part of the disclosures on board evaluation:

a) Observations of board evaluation carried out for the year

b) Previous year's observations and actions taken

c) Proposed actions based on current year observations

In due course, depending on the experience, SEBI could consider making them mandatory, if it so deems fit.

Proposed amendments to SEBI LODR Regulations:

Since the aforesaid recommendations are in the nature of guidance, no specific amendments may be required to the SEBI LODR Regulations. However, a guidance note in the nature of a circular should be issued by SEBI, in this regard stating as under:

"All listed entities may consider the following as a part of their disclosures on board evaluation:

a) Observations of board evaluation carried out for the year
b) Previous year's observations and actions taken
c) Proposed actions based on current year observations."

CHAPTER II: THE INSTITUTION OF INDEPENDENT DIRECTORS

The institution of Independent Directors (*hereinafter referred to as 'IDs'*) forms the backbone of the corporate governance framework worldwide and in India. IDs are expected to bring objectivity into the functioning of the board and improve its effectiveness. IDs are required to safeguard the interests of all stakeholders, particularly minority shareholders, balance the conflicting interest of the stakeholders and bring an objective view to the evaluation of the performance of the board and management.

Given the importance of this role, the institution of independent directors must be continually supported and strengthened. In this regard, the Committee believes that there needs to be greater focus in areas of eligibility, monitoring, awareness of role and functions, domain knowledge, provision of resources to play an effective role, adequacy of compensation vis-à-vis their responsibilities, addressing the fear of disproportionate liability, etc. An attempt has been made in this report to provide recommendations in this regard.

1. Minimum Number of Independent Directors

Current regulatory provisions:

At present, the Companies Act requires every listed company to have at least one-third of total number of directors as IDs. SEBI LODR Regulations impose stricter obligations that require at least half of the total directors of the board of a listed entity to be IDs if the Chairperson is executive/related to the promoter, and in other cases, at least one-third IDs. (Click for *Detailed Provisions*)

Recommendation and rationale:

With the institution of the ID being the backbone of the governance of a company, it is imperative that there are sufficient IDs on a board to ensure safeguarding of interest of all stakeholders, especially minority shareholders. To improve governance, it is recommended that every listed entity, irrespective of whether the Chairperson is executive or non-executive, may be required to have at least half its total number of directors as IDs. However, given that this may require significant changes to the composition of the boards, the Committee felt that appropriate transition time should be provided for effecting such change. In this regard, the Committee recommends that this be applicable to top 500 listed companies by market capitalization by April 1, 2019 and to the rest of listed companies by April 1, 2020.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2019/April 1, 2020, as applicable):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 17. Board of Directors. **(1) The composition of board of directors of the listed entity shall be as follows:** **(b) Where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:**	**Reg 17. Board of Directors.** **(1) The composition of board of directors of the listed entity shall be as follows:** ~~**(b) Where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:**~~

Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors. Explanation.-For the purpose of this clause, the expression "related to any promoter" shall have the following meaning: (i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it; (ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.	~~Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.~~ ~~Explanation.-For the purpose of this clause, the expression "related to any promoter" shall have the following meaning: (i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it; (ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.~~ (b) At least half of the board of directors shall comprise of independent directors (i) with effect from April 1, 2019, for the top 500 listed entities, determined on the basis of market capitalization, as at the end of the immediately preceding financial year; and (ii) with effect from April 1, 2020, for all listed entities.

2. Eligibility Criteria for Independent Directors

Current regulatory provisions:

Section 149(6) of the Companies Act and Regulation 16(1)(b) of the SEBI LODR Regulations set out certain objective criteria for determination of independence of a director. Under Section 149(7) of the Companies Act, every ID is required to provide a declaration that he/ she meets the legal criteria of independence, at the first meeting of the relevant board in which he or she participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director.

Further, at the time of appointment of an ID, the board needs to certify that in the opinion of the board, the ID proposed to be appointed fulfils the conditions specified in the Companies Act and the rules made thereunder and that the proposed director is independent of the management. (Click for *Detailed Provisions*)

Recommendation and Rationale:

Given the critical role of IDs within a good governance framework, and one of the most important elements being "independence", the Committee felt that the evaluation of "independence" of an ID should entail both objective and subjective assessments and such assessments should be both continuing and genuine.

In this regard, the Committee noted that there were some instances of persons who are relatives of promoters being appointed as IDs. It was therefore concluded that the net of exclusions be appropriately expanded to avoid the appointment of family associates as independent directors. The Committee also studied different options on measuring or ensuring the "spirit of independence" that underlies the institution of IDs. Given the nebulous nature of the determination of "independence", it was felt that a self-assessment of "independence" be required of every ID, the veracity of which would need to be confirmed by the board.

Another trend that was brought to the attention of the Committee and found to be undesirable from a good governance standpoint, is "board interlocks" which may run a structural vulnerability of *quid-pro-quo*.

In this context, the Committee recommends the revision of eligibility criteria for a director to be an "independent director" to also include the following:

(i) Specifically exclude persons who constitute the 'promoter group' of a listed entity;

(ii) Requirement of an undertaking from the ID that such a director is not aware of any circumstance or situation, which exists or may be reasonably anticipated, that could impair or impact his/her ability to discharge his/her duties with objective independent judgements and without any external influence.

(iii) The board of the listed entity taking on record the above undertaking after due assessment of the veracity of such undertaking.

(iv) Exclude "board inter-locks" arising due to common non-independent directors on boards of listed entities (i.e. a non-independent director of a company on the board of which any non-independent director of the listed entity is an independent director, cannot be an independent director on the board of the listed entity). For instance, if Mr. A is an executive director on Co. A (being a listed entity) and is also an independent director on Co. B, then no non-independent director of Co. B can be an independent director on the board of Co. A.

Further, the Committee observed that there needs to be continuous assessment of the independence criteria. Regulatory requirements for testing the independence of directors are currently based on factual information or checklists. However, true independence is a function of behavior, and an objectiveness being brought to board deliberations and overall decision making. Some markets follow a practice of the board certifying to the independence of its directors: the Committee believes this practice must be brought to India as well. It is therefore recommended that the board of directors as a part of the board evaluation process may be required to certify every year that each of its IDs fulfils the conditions specified in the SEBI LODR Regulations and is independent of the management.

Proposed amendments of SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provisions in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Regulation 16: Definitions (1) (b) "independent director" means a non-executive director, other than a nominee director of the listed entity: (i) who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience; (ii) who is or was not a promoter of the listed entity or its holding, subsidiary or associate company; ...	**Regulation 16: Definitions** (1) (b) "independent director" means a non-executive director, other than a nominee director of the listed entity: (i) who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience; (ii) who is or was not a promoter of the listed entity or its holding, subsidiary or associate company or member of the promoter group of the listed entity; .... (viii) who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director

Reg 17. Board of Directors **(10) The performance evaluation of independent directors shall be done by the entire board of directors:** **Provided that in the above evaluation the directors who are subject to evaluation shall not participate**	**Reg 17. Board of Directors** **(10) The performance evaluation of independent directors shall be done by the entire board of directors which shall include:** **(a) performance of the directors; and** **(b) fulfilment of the independence criteria as specified in these regulations and their independence from the management:** **Provided that in the above evaluation the directors who are subject to evaluation shall not participate.**
No specific provision	**Schedule V: Annual Report** **Part C: Corporate Governance Report** **Insertion of a new sub-clause 2(h) as follows:** (h) confirmation that in the opinion of the board the independent directors fulfil the conditions specified in these regulations and are independent of the management.
No specific provision.	**Reg 25. Obligations with respect to independent directors.** **Insertion of new sub-regulations (8) and (9):** (8) Every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in clause (b) of sub-regulation (1) of regulation 16 and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could impair or impact his ability to discharge his duties with objective independent judgements and without any external influence. (9) The board of directors of the listed entity shall take on record the declaration and confirmation provided by the independent director under sub-regulation (8) after undertaking due assessment of the veracity of the same.

3. Minimum Compensation to Independent Directors

Current regulatory provisions:

While the Companies Act prescribes a ceiling on the compensation that can be paid to directors, there is no requirement for minimum compensation to be paid, except that the sitting fee paid to IDs cannot be lower than that of other directors. SEBI LODR Regulations also do not prescribe any minimum compensation to be paid to IDs. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee acknowledges that good governance is the cornerstone of value creation and sustainable growth of listed entities, and that independent directors have a pivotal role to play in such good governance. The Committee believes that, (a) a risk-reward balance in the compensation payable to IDs, would make it attractive for competent people to accept appointment as IDs, and that (b) the compensation paid should be commensurate to the value that the IDs deliver.

Therefore, in order to attract competent IDs on the boards of the listed entities, it is recommended that a listed entity may be required to pay certain minimum compensation to IDs as under:

1. The minimum total remuneration for an ID per year shall be Rs. 5 lakhs for top 500 companies by market capitalisation (subject to approvals as required under Companies Act). In case of inadequacy of profits, the minimum requirement of Rs. 5 lakhs shall not apply.
2. The minimum sitting fees to be paid to IDs for every board meeting shall be:
   a. Rs. 50,000 for top 100 companies by market capitalisation;
   b. Rs. 25,000 for next 400 companies by market capitalisation.
3. The minimum sitting fees to be paid to IDs for every audit committee meeting shall be:
   a. Rs. 40,000 for top 100 companies by market capitalisation;
   b. Rs. 20,000 for next 400 companies by market capitalisation.
4. The minimum sitting fees to be paid to IDs for every other board committee meeting *(only for those committees which are mandatory under SEBI LODR Regulations)* shall be:
   a. Rs. 20,000 for top 100 companies by market capitalisation;
   b. Rs. 10,000 for next 400 companies by market capitalisation.

While the Committee acknowledges the importance of all board committees, it is felt that the workload and obligations on the Audit Committee are significantly higher and therefore merit higher sitting fees.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No provision on minimum compensation.	Reg 17. Board of Directors Insertion of a new sub-clause (e) under sub-Regulation (6): (6) (e) The top 500 listed entities by market capitalisation shall pay compensation to each independent director as under: (i) Minimum total remuneration in aggregate of rupees five lakhs per annum, whether through sitting fees or profit linked commissions subject to receipt of approvals, if any, as may be necessary under Companies Act, 2013. Provided that, this provision will not apply

	in case of inadequacy of profits in accordance with Section 197 of Companies Act, 2013. (ii) Minimum sitting fees for every board meeting of rupees 50,000 for top 100 entities by market capitalisation and rupees 25,000 for next 400 entities by market capitalisation. (iii) Minimum sitting fees for each audit committee meeting of rupees 40,000 for top 100 entities by market capitalisation and rupees 20,000 for next 400 entities by market capitalisation. (iv) Minimum sitting fees for each board committee meeting (other than audit committee) of rupees 20,000 for top 100 entities by market capitalisation and rupees 10,000 for next 400 entities by market capitalisation for all such committees mandatory to be formed under these regulations. Explanation: Market capitalisation for the purpose of this clause shall be calculated as on March 31 of the preceding financial year.

4. Disclosures on Resignation of Independent Directors

Current regulatory provisions:

The Companies Act provides that a director who resigns before the expiry of his term shall give detailed reasons to the registrar of companies. There is no specific provision on this aspect in SEBI LODR Regulations. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Companies Act already provides for the disclosure of detailed reasons to the registrar of companies in case of resignation of a director prior to the expiry of his/her term. However, this disclosure can be made anytime within 30 days of the resignation and therefore is not current. There is no corresponding provision in the SEBI LODR Regulations which requires (immediate) disclosure to the stock exchanges in case of resignation of a director.

The Committee noted that IDs are in a unique position, not being a part of the executive management but having overall insight into the functioning of the listed entity – and that their resignation (prior to expiry of their term) may be occasioned by reasons that need wider disclosure (including material negative developments or governance concerns). Also, as the resignation of IDs can be construed as a worrisome sign for external stakeholders, in order to provide greater clarity and reassurance to the stakeholder community, it is considered a good practice for companies to provide full disclosure on the reasons for an ID's resignation. In this context, the Committee also encourages directors to be forthright in providing reasons for their resignation: resigning directors

must consider this to be the last act of discharging their fiduciary responsibility towards the company's stakeholders.

The Committee recommends that listed entities should be required to disclose detailed reasons for resignation of IDs (as provided by such IDs) along with the notification of their resignation to the stock exchanges, as well as subsequently as part of the corporate governance report. As part of such disclosure, the listed entity should include a confirmation as received from the director that there are no other material reasons other than those set out therein. The Committee believes this will enhance transparency and strengthen the institution of IDs.

Proposed amendments to SEBI LODR Regulations and proposed modifications to SEBI circular (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Schedule V: Annual report** **(C) Corporate Governance Report: The following disclosures shall be made in the section on the corporate governance of the annual report.** .... **(2) Board of Directors:** .... **Insertion of a new sub-clause (h):** (h): Detailed reasons for resignation of independent directors who resigns before the expiry of his tenure: Provided that the director shall be required to confirm that there are no other material reasons other than those provided, the disclosure of which shall also be made by the listed entity.
Proposed modifications to SEBI circular: Clause 7 of Annexure I of SEBI circular No. CIR/CFD/CMD/4/2015 dated Sep 9, 2015 may be amended as under: 7.1A. Detailed reasons for the resignation of independent directors as given by the said director; Provided that the director shall be required to confirm that there are no other material reasons other than those provided, the disclosure of which shall also be made by the listed entity.	

5. Directors and Officers Insurance for Independent Directors

Current regulatory provisions:

The Companies Act provides that the letter of appointment of IDs shall specify the provision for Directors and Officers (D&O) insurance, if any. However, it is not mandatory under the Companies Act for a company to undertake such D&O insurance. SEBI LODR Regulations have no specific provision on the matter. (Click for *Detailed Provisions*)

Recommendation and rationale:

IDs have significant responsibilities and liabilities in their capacity as board members and even more so in their capacity as an IDs. It is often observed that such liabilities act as a deterrent for several good quality IDs from joining corporate boards.

It is therefore recommended that it may initially be mandatory for Top 500 companies by market capitalization to undertake D&O insurance for its IDs, with effect from October 1, 2018, which may

be subsequently extended to all listed entities. However, it may be left to the board of directors of the listed entity to determine the quantum and type of risks covered under such insurance.

Proposed amendments to SEBI LODR Regulations [w.e.f. October 1, 2018]:

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Reg 25. Obligations with respect to independent directors.** **Insertion of a new sub-Regulation (8):** (8) The top 500 listed entities by market capitalization, calculated as on March 31 of the preceding financial year, shall undertake Directors and Officers Insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors with effect from October 1, 2018 **Based on future impact assessment as deemed fit by SEBI, the aforesaid sub-Regulation (8) may be modified as under:** (8) All listed entities shall undertake Directors and Officers Insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors.

6. Induction and Training of Independent Directors

Current regulatory provisions:

The Companies Act provides general clauses pertaining to training, induction, etc. of directors. SEBI LODR Regulations require familiarization of the IDs relating to certain specified matters. However, specific provisions on induction training and periodicity of continuous updation are lacking. (Click for *Detailed Provisions*)

Recommendation and rationale:

The IDs will, in most cases, bring a diverse set of skills and experiences to the board deliberations – some of these may not be strictly associated with the company's main operation / business or product. To ensure that these skills can be harnessed in the context of the company's business, it is important to ensure that these IDs understand the company's operations in reasonable granularity. While accepting that IDs will not, and need not, know the business as well as executive directors, the Committee recommends the following:

- A formal induction should be mandatory for every new ID appointed to the board; and
- Formal training, whether external/internal, especially with respect to governance aspects, should be required for every ID once every five years, the onus of which shall be on the director.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Extant provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 25. Obligations with respect to independent directors. **(7) The listed entity shall familiarise the independent directors through various programmes about the listed entity, including the following:** **(a) nature of the industry in which the listed entity operates;** **(b) business model of the listed entity;** **(c) roles, rights, responsibilities of independent directors; and** **(d) any other relevant information.**	**Reg 25. Obligations with respect to independent directors.** **(7) The listed entity shall undertake a formal induction process to familiarise the independent directors through various programmes about the listed entity, including the following:** **(a) nature of the industry in which the listed entity operates;** **(b) business model of the listed entity;** **(c) roles, rights, responsibilities of independent directors;** **(d) organization structure and operations; and** **(e) any other relevant information.** **Insertion of new sub-Regulation (7A)** **(7A) Each independent director shall ensure that he/she undergoes formal training once every five years on their roles and responsibilities with particular emphasis on governance aspects, and shall certify compliance with the same to the listed entities every year.** **Provided that all independent directors currently on boards of listed entities shall ensure compliance with this provision within a period of two years from the date of its notification.**

7. Alternate Directors for Independent Directors

Current regulatory provisions:

The Companies Act permits alternate directors for all directors including IDs *(for a director during his absence for a period of not less than three months from India)*. It also states that no person shall be appointed as an alternate director for an ID unless he is qualified to be appointed as an ID under the provisions of this Act. There is no specific provision pertaining to alternate directors in SEBI LODR Regulations. (Click for *Detailed Provisions*)

Recommendation and rationale:

IDs are elected to the board for their skills, experience, acumen, network and objectivity. These qualities are unique to the relevant appointee and are not replaceable with an alternate. Additionally, the concept of alternate directors itself (i.e. a director being appointed in case of absence of the appointee director for a particular duration from a particular place) was probably more relevant when the physical presence of directors was required to constitute attendance at board meetings – currently, the Companies Act recognizes the right of directors to attend board meetings via video conference and other audio visual means (which enables directors to attend meetings from any location). For the above reasons, the Committee is of the view that the appointment of an alternate director for IDs should not be permitted.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Reg 25. Obligations with respect to independent directors.** **Insertion of a new sub-Regulation (1A)** **(1A) No person shall be appointed as an alternate director for an independent director of a listed entity with effect from April 1, 2018.**

8. Lead Independent Director in Companies with Non-independent Chairperson

Current regulatory provisions:

Currently, there is no requirement of a Lead ID in Companies Act/SEBI LODR Regulations.

Recommendation and rationale:

The Committee acknowledges that while IDs have equal fiduciary responsibility as other directors on the board, their role is more defined and distinct and needs better coordination amongst the IDs to improve effectiveness. In this, it was felt that the appointment of a Lead ID may facilitate better engagement of, and by, the IDs. Globally, there are several countries which adopt the concept of lead IDs in their jurisdictions. The Lead ID is expected to assist in coordinating the activities and decisions of the other non-executive and/or independent directors to chair the meetings of the IDs.

The position of Lead ID becomes especially crucial where the chairperson is non-independent.

The Committee recommends the following:

1. All listed entities where the Chairperson is not independent to designate an ID as the Lead ID;
2. The Lead ID should be a member of NRC;
3. The Lead ID shall:
   a) lead exclusive meetings of the IDs and provide feedback to the Chairperson/board of directors after such meetings;
   b) Serve as liaison between the chairperson of the board and the IDs;
   c) Preside over meetings of the board at which the chairperson or vice-chairperson is not present, including executive sessions of the IDs;
   d) Have the authority to call meetings of the IDs; and
   e) If requested by significant shareholders, ensure that he/she is available for consultation and direct communication.

Proposed amendments to SEBI LODR Regulations (w.e.f. October 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Reg 25: Obligations with respect to independent directors.** **Insertion of a new sub-Regulation (2A):** **(2A)** All listed entities which have a non-independent chairperson shall designate an independent director as the lead independent director who, apart from being a member of the nomination and remuneration committee, shall fulfil the following role: a) leading exclusive meetings of the independent directors and providing feedback to the chairperson/board of directors after such meetings; b) serving as a liaison between the chairperson of the board and independent directors; c) presiding over meetings of the board at which the chairperson and vice-chairperson, if any, is not present, including executive sessions of the independent directors; d) having the authority to call meetings of independent directors; e) if requested by significant shareholders, ensuring that he is available for consultation and direct communication.

9. Exclusive Meeting of Independent Directors

Current regulatory provisions:

The Companies Act and the SEBI LODR Regulations require at least one meeting of the IDs in a year without the presence of other directors. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee observed that given the inherent information asymmetry between IDs and executive/promoter directors, exclusive meetings of IDs encourage free flowing discussions and facilitate higher preparedness for effective participation of the IDs. Further, such meetings assume greater importance in view of the proposed introduction of the concept of Lead ID. Therefore, the Committee recommends that such meetings may be held more than once at the discretion of the IDs.

Proposed amendments to SEBI LODR Regulations:

No amendments are required to SEBI LODR Regulations.

10. Casual Vacancy of Office of Independent Director

Current regulatory provisions:

Currently, the Companies Act states that if the office of any director appointed by the company in a general meeting is vacated before his term of office expires in the normal course, the resulting

casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled for the residual term by the board of directors at a meeting of the board.

SEBI LODR Regulations provide for filling the vacancy of IDs only in case of resignation and removal and provides that in case of such resignation/removal, such vacancy shall be filled but not later than the immediate next meeting of the board of directors or three months from the date of such vacancy, whichever is later. (Click for *Detailed Provisions*)

Recommendation and rationale:

IDs represent the interests of all stakeholders, especially minority shareholders. At the first instance, the IDs are appointed by the shareholders. In the same spirit, the Committee recommends that any appointment to fill a casual vacancy of office of any ID should also be approved by the shareholders at the next general meeting.

Proposed amendments to SEBI LODR Regulations (w.e.f April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 25. Obligations with respect to independent directors. **(6)** An independent director who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by listed entity at the earliest but not later than the immediate next meeting of the board of directors or three months from the date of such vacancy, whichever is later: **Provided that** where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director shall not apply.	**Reg 25. Obligations with respect to independent directors.** **(6)** Any casual vacancy arising in the office of an independent director ~~who resigns or is removed from the board of directors of the listed entity~~ shall be replaced filled by a new independent director by listed entity at the earliest but not later than the immediate next meeting of the board of directors or three months from the date of such vacancy, whichever is later: **Provided that** where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director shall not apply. Insertion of a new sub-Regulation (6A): (6A) Any appointment to fill a casual vacancy i.e. the office of independent director shall be subject to approval by the shareholders at the next general meeting, and such director shall cease to hold office: a) if not so approved at the said meeting; b) on the last date on which the meeting ought to have been held; whichever is earlier.

CHAPTER III: BOARD COMMITTEES

Given the broad range of responsibilities of the board, the constitution of committees enables effective governance through small-group discussions, focus and diligence on various aspects. The key is to ensure an appropriate balance between the role delegated to a board committee while maintaining the overall supervisory role of the Board, with key matters requiring prior recommendation of the relevant committee and final approval of the Board. The law already provides for several mandatory board committees with distinct roles and responsibilities, including the audit committee, stakeholder relationship committee, nomination and remuneration committee, corporate social responsibility committee, and for some companies, even a risk management committee.

The Committee recognizes that the effective functioning of board committees is crucial for the Board to successfully discharge its duties. Therefore, the Committee's recommendations address fundamentals like balanced representation in board committees, mandating more focused discussion by setting a minimum number of meetings and a quorum for each such committee. Further, keeping in mind the changing operating environment, and expanding scope of roles and responsibilities of the Board, the Committee also recommends an increase in the number and nature of board committees.

1. Minimum Number of Committee Meetings

Current regulatory provisions:

Currently, SEBI LODR Regulations require at least four meetings of the Audit Committee every year. The SEBI LODR Regulations does not require a minimum number of meetings for other committees. (Click for *Detailed Provisions*)

Recommendation and rationale:

The four Audit Committee meetings in the year are generally tied in with the quarterly financial results where most of the discussions revolve around financial and other regulatory & compliance matters.

Therefore, to allow audit committees the time and opportunity to address matters beyond the quarterly reporting, it is recommended that the minimum number of Audit Committee meetings be increased to five every year. This is also consistent with the recommendation to increase the number of board meetings from four to five.

In addition, the Committee recommends all other mandatory board committees necessarily meet at least once in a year.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 18. Audit Committee (2) The listed entity shall conduct the meetings of the audit committee in the following manner: (a) The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.	**Reg 18. Audit Committee** (2) The listed entity shall conduct the meetings of the audit committee in the following manner: (a) The audit committee shall meet at least four-five times in a year and not more than one hundred and twenty days shall elapse between two meetings.

No specific provision	**Reg. 19 Nomination and remuneration committee** Insertion of a new sub- regulation 3A: (3A) The nomination and remuneration committee shall meet at least once in a year.
No specific provision	**Reg. 20 Stakeholders Relationship Committee** Insertion of a new sub-regulation 3A: (3A) The stakeholders relationship committee shall meet at least once in a year.
No specific provision	**Reg. 21 Risk Management Committee** Insertion of a new sub-regulation 3A: (3A) The risk management committee shall meet at least once in a year.

2. Role of Audit Committee

Current regulatory provisions:

The Companies Act and the SEBI LODR Regulations provide the specific role and terms of reference of the audit committee. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee is of the opinion that the audit committee should also review the utilization of funds of the listed entity infused into unlisted subsidiaries including foreign subsidiaries. In order to ensure such an obligation is not onerous on the audit committee, the Committee recommends that the audit committee should be required to scrutinize the end utilization of funds where the total amount of loans/advances/investment from the holding company to the subsidiary exceeds Rs. 100 crore or 10% of the asset size of the subsidiary, whichever is lower.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Schedule II** **Part C: Role of the Audit Committee and Review of Information by Audit Committee** A. The role of audit committee shall include the following: Insertion of a new sub- clause (21): (21) reviewing the utilization of loans and/ or advances from/investment by the holding company in the subsidiary exceeding rupees 100 crore or 10% of the asset size of the subsidiary, whichever is lower.

3. Composition of Nomination and Remuneration Committee

Current regulatory provisions:

Under the Companies Act, the Audit Committee and the Nomination and Remuneration Committee (*hereinafter referred to as "NRC"*) are required to have at least half of their members as IDs. On the other hand, under SEBI LODR Regulations, while the Audit Committee is required to have 2/3rd of its members as IDs, the NRC is required to have only half of its members as IDs. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee is of the view that the role and importance of NRC is increasing by the day and ensuring independence of the NRC is becoming crucial for effective governance of the entity. Therefore, the Committee recommends that the requirement of having at least two thirds of its members as IDs may be required for NRC as well, in line with the requirement for the audit committee.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2019):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 19. Nomination and remuneration committee. **(1)** The board of directors shall constitute the nomination and remuneration committee as follows: **(c)** at least fifty percent of the directors shall be independent directors.	**Reg 19. Nomination and remuneration committee.** **(1)** The board of directors shall constitute the nomination and remuneration committee as follows: **(c)** at least ~~fifty percent of the directors~~ two-thirds of the members of the committee shall be independent directors.

4. Role of Nomination and Remuneration Committee

Current regulatory provisions:

The Companies Act and SEBI LODR Regulations provide for detailed provisions on roles and functions of the Nomination and Remuneration Committee (NRC). (Click for *Detailed Provisions*)

Recommendation and rationale:

Currently, SEBI LODR Regulations state that the role of the NRC includes identifying persons who may be appointed in senior management in accordance with the criteria laid down, and recommending to the board of directors their appointment and removal.

It is recommended that a clarification be provided that persons in senior management should include all members of management one level below the chief executive officer/managing director/whole time director/manager (including CEO/manager, in case CEO/manager is not part of the board) and shall specifically include the company secretary and the chief financial officer.

Further, it was noted by the Committee that in the absence of specific provisions in SEBI LODR Regulations, compensation paid to certain KMPs were not being recommended by NRC in some companies. Therefore, it was decided that it may be clearly specified in SEBI LODR Regulations that all payments made to senior management, in whatever form, shall be recommended by the NRC to the board of the listed entity. The Committee recommends that this process be followed for any

payments to be made to the senior management, irrespective of existing contracts, unless the same has been approved earlier through this process.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 16(1)(d) "senior management" shall mean officers/personnel of the listed entity who are members of its core management team excluding board of directors and normally this shall comprise all members of management one level below the executive directors, including all functional heads. **Schedule II:** Corporate Governance Part D (A): ROLE OF NOMINATION AND REMUNERATION COMMITTEE : Role of committee shall, inter-alia, include the following: ...	**Reg 16(1)(d)** "senior management" shall mean officers/personnel of the listed entity who are members of its core management team excluding board of directors and normally this shall comprise all members of management one level below the chief executive officer/managing director/whole time director/manager (including chief executive officer/manager, in case chief executive officer /manager not part of the board) and shall specifically include company secretary and chief financial officer; Provided that administrative staff shall not be included. **Schedule II:** Corporate Governance Part D (A): ROLE OF NOMINATION AND REMUNERATION COMMITTEE : Role of committee shall, inter-alia, include the following: **Insertion of a new sub-Regulations (6):** (6) recommend to the board all remuneration, in whatever form, payable to senior management;

5. Composition and Role of Stakeholders Relationship Committee

Current regulatory provisions:

The Companies Act and SEBI LODR Regulations provide for detailed provisions on composition and role of the Stakeholders Relationship Committee (*hereinafter referred to as "SRC"*) and specify that the role of the SRC shall be *inter alia* to consider and resolve the grievances of the security holders of a listed entity including complaints related to the transfer of shares, non-receipt of annual report and non-receipt of declared dividends. (Click for *Detailed Provisions*)

Recommendation and rationale:

The rapidly growing influence of activists in global capital markets is fundamentally transforming how public-company boards interact with investors. This transformation extends to the role of the board in investor relations, cognizance of the importance of outside voices, and more transparent relationships between directors and company managers. Today, as a direct consequence of shareholder activism, boards and executives frequently review lists of the largest shareholders in order of percentage of holdings. They then decide on a consultation strategy. Mary Jo White, the ex-chair of the US Securities and Exchange Commission, has even publicly stated that shareholder relations are now a board duty: *"The board of directors is—or ought to be—a central player in shareholder engagement."*

Larry Fink, CEO of BlackRock wrote an April 2015 letter to all S&P 500 CEOs, urging them to have *"consistent and sustained engagement"* with their shareholders. And the Vanguard Group has encouraged boards of its investee companies to promote communication with shareholders through a *"shareholder liaison committee"* or other structures.

Recent events in India have brought into sharp focus the role of active investors and major security holders not just in questioning the quality of governance of boards, but also demanding greater and continual engagement in the areas of strategy and significant decisions made by companies.

While the SRC exists in India, currently, the Companies Act and SEBI LODR Regulations specify that the role of the SRC shall be to consider and resolve the grievances of the security holders of a listed entity, including complaints related to transfer of shares, non-receipt of annual report and non-receipt of declared dividends. The Committee is of the view that the role of the SRC is limited and recommends a significant increase in its scope and responsibilities to include actively engaging and communicating with the major shareholders of the company/Group it represents, including obtaining proactive input on strategy.

In arriving at its conclusions, the Committee considered several factors, including that most directors assume that dealing with investors is the role of management and revamping the composition of the existing SRC to add strategic and investor skills. In its deliberations, the Committee felt that these challenges could be mitigated through a purposeful reshaping of the SRC by inducting new skills, (including adding an ID).

In addition to the existing role of resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report and non-receipt of declared dividends, it is recommended that the role of the SRC be widened to include the following:

(1) Resolving security holder grievances relating to issue of new/duplicate certificates, general meetings etc.

(2) Proactively communicating and engaging with security holders including with the institutional shareholders at least once a year along with members of the Committee/Board/KMPs, as may be required and identifying actionable points for implementation.

(3) Reviewing measures taken for effective exercise of voting rights by shareholders.

(4) Reviewing adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.

(5) Reviewing various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the security shareholders of the company.

Further, the Committee recommends that there be at least three directors as members of the SRC, with at least one being an ID. Further, the Committee recommends that the Chairperson of the SRC be present in the annual general meeting to answer queries of the security holders.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 20. Stakeholders Relationship Committee. (1) The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal	**Reg 20. Stakeholders Relationship Committee.** (1) The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the ~~mechanism of redressal of grievances as also various~~

of grievances of shareholders, debenture holders and other security holders. (2) The chairperson of this committee shall be a non-executive director. (3) The board of directors shall decide other members of this committee. (4) The role of the Stakeholders Relationship Committee shall be as specified as in Part D of the Schedule II. **Schedule II: Corporate Governance** Part D (B): Stakeholders Relationship Committee The Committee shall consider and resolve the grievances of the security holders of the listed entity including complaints related to transfer of shares, non-receipt of annual report and non-receipt of declared dividends.	aspects of interest of shareholders, debenture holders and other security holders. (2) The chairperson of this committee shall be a non-executive director. Insertion of a new sub-Regulation (2A) and substitution of sub-Regulation 3: (2A) At least three directors, with at least one being an independent director, shall be members of the Committee. ~~(3) The board of directors shall decide other members of this committee.~~ (3) The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meeting to answer queries of the security holders. (4) The role of the Stakeholders Relationship Committee shall be as specified as in Part D of the Schedule II. **Schedule II: Corporate Governance** Part D: ROLE OF COMMITTEES (OTHER THAN AUDIT COMMITTEE) (B): Stakeholders Relationship Committee Insertion of a detailed role: The role of committee shall, inter-alia, include the following: (1) Resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report, non-receipt of declared dividends, issue of new/duplicate certificates, general meetings etc. (2) Proactively communicate and engage with stockholders including engaging with the institutional shareholders at least once a year along with members of the Committee/Board/KMPs, as may be required and identifying actionable points for implementation. (3) Review of measures taken for effective exercise of voting rights by shareholders. (4) Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent. (5) Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company.

6. Quorum for Committee Meetings

Current regulatory provisions:

Currently, there is no quorum requirement for meetings of the committees of the board in the Companies Act. SEBI LODR Regulations specifies quorum requirement for meetings of the Audit committee but not for other committees. (Click for *Detailed Provisions*)

Recommendation and rationale:

IDs bring an unbiased perspective to the proceedings of committee/board meetings, which improves the quality of governance and decision making. In order to protect the interest of all stakeholders, especially minority shareholders, it is recommended that for meetings of each such committee of the board, the composition of which statutorily requires at least one ID, the presence of at least one ID may be made mandatory for attaining quorum for such meetings *(apart from the audit committee where the quorum requirement remains unchanged)*.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision	**Reg 19. Nomination and remuneration committee.** **Insertion of a new sub-Regulation (2A)** **(2A) The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, with at least one independent director.** **Reg 20. Stakeholders Relationship Committee.** **Insertion of a new sub-Regulation (3A)** **(3A) The quorum for a meeting of the Stakeholders Relationship Committee shall be either two members or one third of the members of the committee, whichever is greater, with at least one independent director.**

7. Applicability and Role of Risk Management Committee

Current regulatory provisions:

Currently, SEBI LODR Regulations require the constitution of a risk management committee by the top 100 listed entities. There is no specific provision in the Companies Act on this aspect. The role of the risk management committee is not specified in the SEBI LODR Regulations. (Click for *Detailed Provisions*)

Recommendation and rationale:

Given the dynamic business environment, an active risk management committee is imperative for identification, mitigation and resolution of risks. These risks that are being managed operationally on a daily basis call for a more formal structure, especially for the next set of high-growth companies. Hence, it is recommended to extend the requirement of a Risk Management Committee to the top 500 listed entities by market capitalization as against current applicability to top 100 listed entities. In addition, the Committee recommends that, in view of the increasing relevance of cyber security and related risks, the role of risk management committee specifically cover this aspect.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Regulation 21: Risk Management Committee. **(4) The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.** **(5) The provisions of this regulation shall be applicable to top 100 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.**	**Regulation 21: Risk Management Committee.** **(4) The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit. Such function shall specifically cover cyber security.** **(5) The provisions of this regulation shall be applicable to top ~~100~~ 500 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.**

8. Membership and Chairpersonship Limit

Current regulatory provisions:

Currently, in determining the maximum number of committees of which a director can be a member/Chairperson, SEBI LODR Regulations considers only the Audit Committee and Stakeholders Relationship Committee. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee recognizes the important role that is being played and would continue to be played by the NRC, which is integral to the entity's governance processes. Therefore, in addition to recommending a higher number of IDs as part of constitution of the NRC (as recommended above), it is also recommended that in determining the maximum number of committees of which a director can be a member/Chairperson, NRC should also be included and thereby treated at par with the Audit Committee and Stakeholders Relationship Committee.

Proposed amendments to SEBI LODR Regulations w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Regulation 26. (1) A director shall not be a member in more than ten committees or act as chairperson of more than five committees across all listed entities in which he is a director which shall be determined as follows: **(b) for the purpose of determination of limit, chairpersonship and membership of the audit committee and the Stakeholders' Relationship Committee alone shall be considered.**	**Regulation 26. (1) A director shall not be a member in more than ten committees or act as chairperson of more than five committees across all listed entities in which he is a director which shall be determined as follows:** **(b) for the purpose of determination of limit, chairpersonship and membership of the audit committee, Nomination and Remuneration Committee and the Stakeholders' Relationship Committee alone shall be considered.**

9. Information Technology Committee

Current regulatory provisions:

There are no specific provisions in the Companies Act and SEBI LODR Regulations on constitution of an information technology committee.

Recommendation and rationale:

The Committee is of the view that listed entities may constitute an information technology committee which, in addition to the risk management committee, will focus on digital and other technological aspects.

Proposed amendments to SEBI LODR Regulations:

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No provision.	**Schedule II Corporate Governance** **Part E: Discretionary Requirements** **Insertion of a new sub-clause (F):** **F. Information technology committee** The listed entity may constitute an information technology committee which will focus on digital and technological aspects.

CHAPTER IV: ENHANCED MONITORING OF GROUP ENTITIES

As companies grow in scale and operations go global, businesses become more complex. Business and structural compulsions (both legal and financial) often necessitate the creation of holding and operating entities. The Committee notes that several listed entities in India operate through a network of entities – where some companies have over 200 subsidiaries, step-down subsidiaries, associates, and joint ventures. While investors hold direct equity only in the listed holding company, they have valued the entire business structure at the time of investment. Therefore, it is important for boards to ensure that good governance trickles down to the entire structure. Accordingly, to provide for better transparency on the governance levels of downstream investee entities of the listed entity and to improve the monitoring of the listed entity at a consolidated level, the following recommendations have been made by the Committee.

1. Obligation on the Board of the Listed Entity with Respect to Subsidiaries

Current regulatory provisions:

The Companies Act does not provide for the board of the listed entity to oversee the affairs of its subsidiaries. SEBI LODR Regulations, however, impose specific obligations on the board of the listed entity with respect to its subsidiaries such as: at least one ID must be a director in unlisted material Indian subsidiaries; audit committee to review financial statements of unlisted subsidiaries; minutes of the board of directors of an unlisted subsidiary to be placed before a meeting of the board of directors of the listed entity; etc. SEBI LODR Regulations also provide the threshold for determining "material subsidiary" as a subsidiary whose income or networth exceeds 20% of the consolidated income or networth of the listed entity. (Click for *Detailed Provisions*)

Recommendation and rationale:

Many Indian companies operate through global and Indian subsidiaries in view of business needs. These subsidiaries are an integral/material part of the listed entity. In many instances, the global subsidiaries are as large as the Indian listed entity. Hence, these global subsidiaries should be at par with Indian subsidiaries in the context of governance. The Committee also observed that an appropriate level of review and oversight is required of the board of the listed entity over its unlisted subsidiaries for protection of interests of public shareholders.

Further, the Committee noted from the presentation made by ICSI that based on an analysis of the top 100 listed companies at BSE, under the existing threshold for determining "material subsidiaries", less than 3% of the total subsidiaries get classified as such. Therefore, the threshold may be modified to 10% to enhance monitoring and hence governance of material subsidiaries.

In the interest of better monitoring at a consolidated level, the following is recommended:

- Currently, SEBI LODR Regulations require that at least one ID on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, incorporated in India. The same may be extended to unlisted foreign material subsidiaries as well.
- Currently, LODR Regulations state that the management of the unlisted subsidiary be required periodically to bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary. However, under the explanation for the term "significant transaction or arrangement", the term "unlisted material subsidiary" has been used. The Committee is of the opinion that significant

transactions which could be higher than the prescribed limits of even those companies which are not material subsidiaries should come under the purview of the board of the listed entity. Therefore, it was recommended that the word "material" shall be dropped from the explanation to Regulation 24(4) of SEBI LODR Regulations.

- The definition of the term "material subsidiary" should be revised to mean a subsidiary whose income or net worth exceeds 10% (from the current 20%) of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year, other than for requirement of appointment of independent directors on the boards of material subsidiaries (where the threshold of 20% continues).

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulation	Proposed amended provision in SEBI LODR Regulations
Reg 16. Definitions **(1)(c) "material subsidiary" shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.** **Reg 24. Corporate governance requirements with respect to subsidiary of listed entity.** **(1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, incorporated in India.** **(4) The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.** **Explanation.-For the purpose of this regulation, the term "significant transaction or arrangement" shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted material subsidiary for the immediately preceding accounting year.**	**Reg 16. Definitions** **(1)(c) "material subsidiary" shall mean a subsidiary, whose income or net worth exceeds twenty ten percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.** **Reg 24. Corporate governance requirements with respect to subsidiary of listed entity.** **(1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not.** **Explanation- For the purposes of this provision, notwithstanding anything to the contrary contained in regulation 16, the term "material subsidiary" shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.** **(4) The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.** **Explanation.-For the purpose of this regulation, the term "significant transaction or arrangement" shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted material subsidiary for the immediately preceding accounting year.**

2. Group Governance Unit/Committee and Policy

Current regulatory provisions:

There are currently no provisions under the Companies Act or SEBI LODR Regulations with respect to group governance unit/governance committee or a group governance policy.

Recommendation and rationale:

In order to improve monitoring of group entities, it is recommended that where a listed entity has a large number of unlisted subsidiaries:

1) The listed entity may monitor their governance through a dedicated group governance unit or Governance Committee comprising the members of the board of the listed entity.
2) A strong and effective group governance policy may be established by the entity.
3) However, the decision of setting up of such a unit/committee and having such a group governance policy may be left to the board of the listed entity.

Accordingly, it is recommended that guidance to this effect may be provided by SEBI.

Proposed amendments to SEBI LODR Regulations:

No amendments may be required to SEBI LODR Regulations.

However, guidance may be issued by SEBI stating the following where a listed entity has multiple unlisted subsidiaries:

- The entity may monitor their governance through a dedicated group governance unit or Governance Committee comprising the members of its board of directors.
- A strong and effective group governance policy may be established by the entity.
- The decision of setting up of such a unit/committee or having such a policy shall lie with the board of directors of the listed entity.

3. Secretarial Audit

Current regulatory provisions:

Currently, the Companies Act requires a secretarial audit for listed companies and unlisted companies above a certain threshold. However, there is no specific provision for secretarial audit under SEBI LODR Regulations. (Click for *Detailed Provisions)*

Recommendation and rationale:

Secretarial functions are critical to efficient board functioning. Therefore, it is recommended that:

- Secretarial audit may be made compulsory for all listed entities under the SEBI LODR Regulations in line with the provisions of Companies Act.
- Secretarial audit may also be extended to all material unlisted Indian subsidiaries. This is in line with the theme of strengthening group oversight and improving compliance at a group level.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed / amended provision in SEBI LODR Regulations
No specific provision.	Insertion of a new Regulation 24A 24A. Secretarial Audit Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.

CHAPTER V: PROMOTERS/CONTROLLING SHAREHOLDERS AND RELATED PARTY TRANSACTIONS

A majority of Indian listed entities continue to be promoter driven, with significant shareholding held by promoter/promoter group. Therefore, protection of the interests of minority shareholders, especially those of retail shareholders assumes even greater importance. In this context, checks and balances on interactions and relationships between listed entities and the promoters/significant shareholders is crucial for good governance.

The Committee therefore deliberated at length on aspects such as information rights of promoters, significant non-promoter shareholders, approval of related party transactions and arrived at the following recommendations:

1. Sharing of Information with Controlling Promoters/Shareholders with Nominee Directors

Current regulatory provisions:

The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "SEBI PIT Regulations") provide that any communication or procurement of unpublished price sensitive information (hereinafter referred to as "UPSI") is prohibited except in furtherance of legitimate purpose, performance of duties or discharge of legal obligations. The SEBI LODR Regulations provide for equitable treatment of all shareholders. Under the SEBI PIT Regulations and the SEBI LODR Regulations, there is no specific provision enabling information sharing by the listed entity with specific shareholders. *(Click for Detailed Provisions)*

Recommendation and Rationale:

Equal access to information and information symmetry is the cornerstone of efficient functioning of any securities market. This, in fact, is the genesis and foundation of the market conduct laws in India and specifically the laws curbing communication of UPSI and insider trading. The law does, however, facilitate asymmetric access to UPSI for legitimate purposes, performance of duties and discharge of legal obligations. These are subjective standards requiring event-based determination.

The Committee members recognize that the business reality in India is that a majority of the listed Indian entities are controlled by a single promoter (or a set of persons acting in concert) where the lines of control, influence and information flow do not necessarily follow the formal and distinct corporate structure. This is true for Indian groups as well as MNCs. Information flow occurs through informal channels, matrix structures and through nominees. Generally, these may be for genuine business reasons, such as strategic transactions, including acquisitions, mergers, divestments, financing, etc., which often require the support of the promoter to be successful. The significance of the role played by promoters is recognized in the legal construct as well, where extant regulations impose greater responsibility on promoters as compared to other shareholders in relation to certain strategic matters such as funding. Further, in addition to promoters, there are shareholders with such strategic or financial association with the company (such as private equity investors) that they are considered significant by the company and consequently, allowed to exercise their representation and information rights through nominee directors on the board of such company.

While it is recognized that the status of a promoter is akin to a perpetual insider requiring access to information on a regular basis and the role of the nominee director is to protect the interests of the nominating shareholder (subject to the former's fiduciary duty), the information flow to such

promoters and significant shareholders occurs in the "shadows" in the absence of a green channel legitimizing such information flow. Given the absence of a formal green channel on information access and an explicit framework recognizing a legitimate right to information of promoters and significant shareholders, all communication of UPSI to promoters and significant shareholders (including those for legitimate purposes and on a need-to-know basis) are open to regulatory scrutiny on a *post facto* basis.

Therefore, the Committee members felt that the ground realities are at substantial variance from the legal framework and this regulatory white space has so far possibly been filled in by virtue of legal interpretation (of terms such as "legitimate purpose", "need to know", etc.), market practice and pragmatism. Whilst derivative economic interest may suffice for some entities to constitute legitimate purpose, other companies may need clarity on each issue. This entails event-based determination based on subjective standards which not only leads to ambiguous legal interpretations of "legitimate purpose" but also brings uncertainty in the business environment and adversely impacts the ease of doing business. This has also led to creation of a grey zone which is examined only when something goes wrong.

After due consideration and detailed deliberation, the Committee members proposed that the regulatory framework should be amended to provide an enabling transparent framework regulating the information rights of certain promoters (including promoters of the promoter) and significant shareholders to reduce subjectivity and provide clarity for ease of business, along with appropriate and adequate checks and balances to prevent any abuse and unlawful exchange of UPSI i.e. to ensure information moves from one known safe container to another. The Committee recommends that this framework be optional at this stage. In addition, this framework will not impact the applicability of the SEBI PIT Regulations other than as specified.

Detailed recommendations of the Committee in relation to amendments to the current regulations are set out below.

Proposed Amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current Provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	Insertion of a new Chapter IV-A: **CHAPTER IV-A** **INFORMATION RIGHTS OF CERTAIN PROMOTERS AND SIGNIFICANT SHAREHOLDERS** **Definitions** 48A. For the purposes of this chapter, unless the context otherwise requires- (a) "agreement" means an agreement titled Access to Information Agreement entered into between the listed entity and the counterparty; (b) "control" shall have the same meaning as assigned to it under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; (c) "counterparty" means any person who (i) qualifies as promoter of the listed entity and holds, by itself or together with the members of the promoter group, shareholding of more than 25% in the listed entity;

(ii) is in direct or indirect control of the person specified in sub-clause (i); or
(iii) has nominated a director on the board of directors of the listed entity.

(d) "Designated Person" shall have the same meaning as assigned to it under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015;

(e) "unpublished price sensitive information" shall have the same meaning as assigned to it under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

Information rights under the agreement

48B. (1) A listed entity may enter into the agreement in relation to providing access to material information (including unpublished price sensitive information) to the counterparty as per the provisions of this chapter.

(2) Under the agreement, the persons mentioned in sub-clauses (i) and (ii) of clause (c) of sub-regulation (1) of regulation 48A shall be provided access to any material information subject to the terms of the agreement, and the persons mentioned in sub-clause (iii) of clause (c) of sub-regulation (1) of regulation 48A shall be provided only such material information as is shared with the nominee director in the normal course by virtue of his directorship in the listed entity.

Terms of the agreement

48C. (1) The agreement shall include provisions adopting the principles set out below, without diluting them in any manner:

(a) Counterparty's duty to maintain strict confidentiality of all material information.

(b) Each party to the agreement to put in place appropriate safeguards in respect of procedures for communication and procurement of material information pursuant to the agreement, including categorization of any individual representative of the counterparty who is a recipient of unpublished price sensitive information as a 'Designated Person' under the code of conduct formulated in accordance with sub-regulations (1) and (2) of regulation 9 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, where necessary.

(c) The counterparty may be categorized as a 'Designated Person' by the listed entity under the code of conduct formulated in accordance with sub-regulations (1) and (2) of regulation 9 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, at the time of entering into or at any time during the subsistence of the agreement pursuant to an assessment by the board of directors of the listed entity, in consultation with the compliance officer, on the basis of the extent of information access provided or proposed to be provided to the counterparty.

(d) The listed entity to have no responsibility for the accuracy and veracity of the material information shared pursuant to the agreement.

(e) The counterparty may onward communicate the information received pursuant to the agreement only in compliance with the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

(f) The counterparty to provide the following undertaking/acknowledgement to the listed

entity:

(i) the counterparty shall comply with and use the information received pursuant to the agreement in accordance with, the securities laws; and

(ii) the access to information provided pursuant to the agreement does not undermine the independence and autonomy of the board of directors of the listed entity in any manner.

(g) The listed entity to have the right to withhold communication/access to material information in case the board of directors of the listed entity determines that:

(i) providing access to the material information to the counterparty is not in the interests of the listed entity, or

(ii) there is a conflict of interest in the listed entity sharing the material information with the counterparty, or

(iii) there has been a breach of the agreement by the counterparty and the same has been established by the board of directors of the listed entity or its committee pursuant to an investigation.

(h) Term and termination of the agreement shall be as follows:

(i) The term of the agreement shall not be less than one year at a time.

(ii) In case the counterparty ceases to be eligible in the same category (i.e. one of the three categories as specified in clause (c) of sub-regulation (1) of regulation 4BA) to which the counterparty belonged at the time of entering into the agreement, there will be an automatic termination of the agreement.

(iii) The counterparty shall have the right to unilaterally terminate the agreement, provided that the obligations in respect of material information communicated or procured under the agreement shall survive such termination.

(iv) The listed entity shall have the right to unilaterally terminate the agreement with the consent of majority of directors of the listed entity representing three-fourths in number, provided that the counterparty or a nominee of the counterparty on the board of directors of the listed entity shall abstain from such voting.

(2) In case of the termination of the agreement (other than expiry of the term of the agreement in its normal course), the parties may enter into another agreement only after a 6 month cooling off period from the date of termination. For avoidance of doubt, any renewal of the agreement in the normal course will not require any cooling off period.

(3) Once a counterparty is categorized as a "Designated Person", such counterparty may be permitted to be removed from being a "Designated Person" as per clause (c) of sub-regulation (1) of regulation 4BC during the subsistence of the agreement pursuant to a good faith assessment undertaken by the board of directors of the listed entity in consultation with the compliance officer. In the absence of such an assessment, the said counterparty shall continue to be a Designated Person.

(4) A listed entity that enters into the agreement shall disclose the following information or events under regulation 30.
(a) Fact of entering into the agreement;

	(b) the names of the counterparty to such agreement; (c) termination of the agreement. (5) A listed entity may enter into the agreement after amending its articles of association to include an enabling provision authorizing the listed entity to enter into such agreements in accordance with this chapter.
	Schedule III Part A A: Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30): Insertion of a new clause (16) 16. The fact of entering into or termination of the agreement under regulation 46B along with the name of the counterparty.

Proposed Amendments to SEBI PIT Regulations:

Current Provision in SEBI PIT Regulations	Proposed amended provision in SEBI PIT Regulations
Regulation 3. Communication or procurement of unpublished price sensitive information. **(1)** No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purpose, performance of duties or discharge of legal obligations. **(2)** No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.	**Regulation 3. Communication or procurement of unpublished price sensitive information.** **(1)** No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purpose, performance of duties or discharge of legal obligations. **(2)** No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. Insertion of a new sub-Regulation (2A) (2A) Notwithstanding anything contained in this regulation, any unpublished price sensitive information may be communicated, provided, access is allowed to or procured, as part of and in accordance with Chapter IV-A of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, and the same shall be considered as communication or procurement of unpublished price sensitive information in furtherance of legitimate purposes

2. Re-classification of Promoters/Classification of Entities as Professionally Managed

Current regulatory provisions:

Presently, the Companies Act is silent on reclassification of promoters, while the SEBI LODR Regulations permit reclassification of promoters in limited circumstances.

SEBI LODR Regulations cover mainly four aspects on the subject: (i) requirement of approval of stock exchanges, (ii) reclassification when a promoter is replaced by a new promoter, (iii) reclassification where a company ceases to have any promoters (i.e. becomes professionally managed) and (iv) general conditions. The specific categories of reclassification as specified in points (ii) and (iii) require the approval of shareholders. In addition, in cases where the entity becomes professionally managed, the aggregate shareholding of a person or group along with persons acting in concert (hereinafter referred to as "PACs") should not exceed 1%. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee is of the opinion that where there is no identifiable promoter/promoter group, the 1% threshold to be able to classify the entity as professionally managed is too low and merits an increase to 10% for the following reasons:

- from the listed entity's perspective, if a promoter *(being sole promoter)* along with its promoter group/PAC in aggregate holds less than 10%, it is unlikely to be able to exercise *de-facto* control; and
- from the promoter's perspective, even after ceasing to be in control, a 'promoter' may want to continue as a financial investor with a shareholding of more than 1%, and in such cases, should not be required to reduce his/her shareholding to 1% or lower.

In addition, the SEBI LODR Regulations also do not deal with a situation where there are multiple and distinct parties classified as promoters, and one of them wishes to be reclassified. The Committee is of the opinion that there ought to be a mechanism to enable such reclassification, to ensure that persons who may have been promoters but are no longer in day-to-day control and management and have a low shareholding, should have an "opt-out" from being classified as "promoters". The Committee is also of the view that any reclassification would have to be done in a fair and transparent manner, keeping in mind the interests of public shareholders.

The Committee accordingly recommends the following:

- ***Where there are multiple promoters/promoter groups and a specific promoter/promoter group wishes to undergo re-classification***

  In case the following conditions are met:

  (i) promoters, promoter group and PACs cumulatively hold 10% or more of the aggregate shareholding and voting rights in a listed entity;

  (ii) a specific person/entity therein (classified as a "specific promoter"), its promoter group and PACs cumulatively hold less than 5% of the aggregate shareholding and voting rights; and

  (iii) the specific promoter or its promoter group or PAC are neither on the board of directors of the listed entity ("Listed Entity Board") (including not having a nominee director) nor in the management of the listed entity and are not acting in concert with other persons forming part of the promoter and promoter group.

then, on request for reclassification being received from the specific promoter, the Listed Entity Board shall consider the same.

Post the Listed Entity Board's consent, reclassification would require shareholder approval based on the Listed Entity Board's (positive) recommendation. The specific promoter, its promoter group and PAC shall abstain from voting on such a resolution placed before the shareholders for approval.

- ***Where there is only one specific promoter/ promoter group who/ which wishes to be re-classified and the entity wishes to be classified as professionally managed***

In the case of a promoter, where:

(i) such promoter or its promoter group or PAC for that promoter is/are neither on the Listed Entity Board nor in management of the company nor has a nominee director;

(ii) cumulative shareholding and voting rights of such promoter and its promoter group and PACs goes below 10%; and

(iii) there are no other persons qualifying as promoters of the company,

then, on request for reclassification being received from the promoter, the Listed Entity Board shall consider the same.

Post the Listed Entity Board's consent, reclassification would require shareholder approval based on the Listed Entity Board's (positive) recommendation. All members of promoter, promoter group and PAC shall abstain from voting on such a resolution placed before the shareholders for approval.

Proposed amendments to SEBI LODR Regulations (with immediate effect):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 31A. Disclosure of Class of shareholders and Conditions for Reclassification. **(6) Where an entity becomes professionally managed and does not have any identifiable promoter the existing promoters may be re-classified as public shareholders subject to approval of the shareholders in a general meeting.** Explanation.- For the purposes of this sub-regulation an entity may be considered as professionally managed, if- (i) No person or group along with persons acting in concert taken together shall hold more than one per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/ Depository Receipts: **Provided that any mutual fund, bank, insurance company, financial institution, foreign portfolio investor may individually hold up to ten per cent paid-up equity capital of the entity including any holding of convertibles/outstanding**	**Reg 31A. Disclosure of Class of shareholders and Conditions for Reclassification.** **(6) Where an entity becomes professionally managed and does not have any identifiable promoter then existing promoter(s) may be re-classified as public shareholders, on receipt of request in this regard from the promoter(s), subject to approval of the board of directors and the shareholders in a general meeting in which the promoter, promoter group and persons acting in concert shall not vote.** Explanation.- For the purposes of this sub-regulation, an entity may be considered as professionally managed, if- (i) No ~~person~~ promoter or promoter group along with persons acting in concert taken together shall hold more than ~~one~~ ten per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/Depository Receipts. ~~Provided that any mutual fund, bank, insurance~~

warrants/Depository Receipts. (ii) The promoters seeking reclassification and their relatives may act as key managerial personnel in the entity only subject to shareholders' approval and for a period not exceeding three years from the date of shareholders' approval. (iii) The promoter seeking reclassification along with his promoter group entities and the persons acting in concert shall not have any special right through formal or informal arrangements. All shareholding agreements granting special rights to such outgoing entities shall be terminated.	~~company, financial institution, foreign portfolio investor may individually hold up to ten per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/Depository Receipts.~~ (ii) The promoter(s) ~~seeking reclassification~~ and their relatives ~~may act as key managerial personnel in the entity only subject to shareholders' approval and for a period not exceeding three years from the date of shareholders' approval.~~ shall not be on the board of directors of the listed entity or in management of the listed entity or have a nominee director on the board of the listed entity. (iii) The promoter(s) ~~seeking reclassification~~ along with his promoter group entities and the persons acting in concert shall not have any special right through formal or informal arrangements. All shareholding agreements granting special rights to such outgoing entities shall have been be terminated. Insertion of a new sub-Regulation (6A): (6A) Any person/entity ("Specific Promoter") which is a part of promoters, promoter group or persons acting in concert with them may be re-classified as public shareholders, on receipt of request in this regard from the Specific Promoter, subject to the approval of the board of directors and approval of the shareholders in a general meeting, wherein the Specific Promoter(s), along with its promoter group and persons acting in concert shall abstain from voting on such resolution placed before the shareholders for approval, and provided the following conditions are met: (i) promoters, promoter group and persons acting in concert of the listed entity cumulatively hold 10% or more of the paid-up equity capital of the entity; and (ii) the Specific Promoter, its promoter group and persons acting in concert cumulatively hold less than 5% of the paid-up equity capital of the entity; (iii) Specific Promoter or its promoter group or persons acting in concert (a) is not on the board of directors of the listed entity or in management of the listed entity or have a nominee director on the board of the listed entity, and (b) is not acting in concert with other persons forming part of the promoter and promoter group; and

	(iv) The Specific Promoter(s) seeking reclassification along with his promoter group entities and the persons acting in concert shall not have any special right through formal or informal arrangements and all shareholding agreements granting special rights to such outgoing entities shall have been terminated. (7) Without prejudice to sub-regulations (5), and (6) and (6A), re-classification of promoter as public shareholders shall be subject to the following conditions:

3. Disclosure of Related Party Transactions

Current regulatory provisions:

Currently, the Companies Act contains provisions on disclosure of related party transactions *(hereinafter referred to as "RPTs")* in the board's report, approval of the shareholders in certain cases, etc. Similar approval and disclosure requirements are also required in SEBI LODR Regulations. (Click for *Detailed Provisions*)

Recommendation and rationale:

In order to strengthen transparency on related party transactions, the following is recommended:

(a) Half yearly disclosure of RPTs on a consolidated basis, in the disclosure format required for RPT in the annual accounts as per the accounting standards, on the website of the listed entity within 30 days of publication of the half yearly financial results. Copy of the same to also be submitted to the stock exchanges.

(b) Strict penalties may be imposed by SEBI for failing to make requisite disclosures of RPTs.

In addition, the Committee observed that that certain promoters/promoter group entities were not getting categorised as related parties under SEBI LODR Regulations on account of not strictly falling under the definition of "related parties" under the relevant accounting standards and thereby transactions with such persons were not getting categorised as RPTs under the SEBI LODR Regulations. The Committee recommends that all promoters/promoter group entities that hold 20% or above in a listed company to be considered "related parties" for the purposes of the SEBI LODR Regulations. In addition, the Committee recommends that disclosures of transactions with promoters/promoter group entities holding 10% or more shareholding be made annually and on a half yearly basis (even if not classified as related parties).

The Committee noted that penalties included in SEBI Circular No. CIR/CFD/CMD/12/2015 dated November 30, 2015 for breach of Regulation 33, will be applicable to the recommended amendments.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision on half yearly disclosure of RPTs	**Reg 33. Financial results.** **(3) The listed entity shall submit the financial results in the following manner:** **Insertion of a new clause (g):** **(g) The listed entity shall submit within 30 days of publication of its standalone and consolidated financial results for the half year, disclosures of related party transactions on a consolidated basis, in the format prescribed in the relevant accounting standards for annual results, to the stock exchanges and publish the same on its website.**
Reg. 34. Annual Report **(3) The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations**	**Reg. 34. Annual Report** **(3) The annual report shall include following:** **(a) disclosures of transactions of the listed entity with any person or entity belonging to the promoter/promoter group which hold(s) 10% or more shareholding in the listed entity, in the format prescribed in the relevant accounting standards for annual results;** **(b) contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations**
Reg. 2(1) Definitions **(zb)"related party" means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards:** **Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);**	**Reg. 2(1) Definitions** **(zb)"related party" means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards:** **Insertion of a new proviso:** **Provided that any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall also be a related party:** **Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);**

4. Approval of Related Party Transactions

Current regulatory provisions:

The Companies Act provides that a shareholder cannot vote to approve a contract or transaction which may be entered into by a company if such a shareholder is a related party to that transaction. However, SEBI LODR Regulations have a blanket restriction on related parties voting on any resolution pertaining to a material related party transaction. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee deliberated upon the gap in the legal framework wherein the Companies Act allowed related parties to vote on (albeit not in favour of) a related party transaction while the SEBI LODR Regulations require such parties to abstain from voting. The Committee is of the view that similar to the Companies Act, the SEBI LODR Regulations may be amended to allow related parties to cast a negative vote, as such voting cannot be considered to be in conflict of interest.

Proposed amendments to SEBI LODR Regulations (with immediate effect):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 23. Related party transactions (4) All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.	**Reg 23. Related party transactions** (4) All material related party transactions shall require approval of the shareholders through resolution and no the related partyes shall ~~abstain from voting~~ vote to approve on such resolutions whether the entity is a related party to the particular transaction or not.
(7) For the purpose of this regulation, all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not.	(7) For the purpose of this regulation, all entities falling under the definition of related parties shall ~~abstain from voting~~ not vote to approve the relevant transaction irrespective of whether the entity is a party to the particular transaction or not.

5. Royalty and Brand Payments to Related Parties

Current regulatory provisions:

Currently, there are no specific provisions in the SEBI LODR Regulations pertaining to payments made pertaining to brand and royalty to related parties.

Recommendation and rationale:

A number of companies make payment towards royalty/brand usage. While royalty payments are recognized as there is value in brand strength and product technology, which drive sales or margins, shareholders must comprehend the terms and conditions of such payouts. Therefore, the Committee encourages all companies to make better disclosures on the value a company derives from a brand or technology for which it has agreed to pay royalty, brand, or technical fees to the parent company/promoters. Where royalty payout levels are high and exceed 5% of consolidated revenues, the Committee believes the terms of conditions of such royalty must require shareholder approval.

The Committee therefore recommends that payments made by listed entities with respect to brands usage/royalty amounting to more than 5% of consolidated turnover of the listed entity may require prior approval from the shareholders on a "majority of minority" basis. This sub-limit of 5% will be considered within the overall 10% limit to determine material related party transactions.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 23. Related party transactions **(1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions:** **Explanation.- A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.**	**Reg 23. Related party transactions** **(1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions:** **Explanation.-** **(i) A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.** **Insertion of a new sub-Regulation (2):** **(2) Notwithstanding the above, a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds five percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.**

6. Remuneration to Executive Promoter Directors

Current regulatory provisions:

While the Companies Act prescribes a ceiling on the compensation that can be paid to directors, there are no specific provisions in the SEBI LODR Regulations on maximum remuneration payable to executive promoter directors. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee noted various cases of disproportionate payments made to executive promoter directors as compared to other executive directors. It is felt that this issue should be subjected to greater shareholder scrutiny. The Committee recommends that shareholder approval by special resolution should be required if the total remuneration paid:

a) to a single executive promoter-director exceeds Rs. 5 crore or 2.5% of the net profit, whichever is higher; or

b) to all executive promoter-directors exceeds 5% of the net profits.

It is clarified that net profits should be calculated under Section 198 of the Companies Act. The Committee also recommends that SEBI could review the status in future based on experience gained.

Proposed amendments to SEBI LODR Regulations (w.e.f. FY starting April 1, 2018):

Current provision in SEBI LODR Regulations:	Proposed amended provision in SEBI LODR Regulations
No specific provision on minimum compensation.	**Reg 17. Board of Directors** **Insertion of a new sub-clause (e) under sub-Regulation (6):** **(e) The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if:** **(i) the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or** **(ii) where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:** **Provided that, the approval of the shareholders under this provision shall be valid only till expiry of term of such director.** Explanation: For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013.

7. Remuneration of Non-executive Directors

Current regulatory provisions:

In case of non-executive directors, the Companies Act requires the approval of shareholders for any remuneration payable to such directors exceeding 1% of the net profits in case there is a managing director or whole time director or manager and 3% in other cases. As per SEBI LODR Regulations, the board is required to recommend all fees and compensation to be paid to non-executive directors. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee deliberated upon managerial remuneration based on the data available and observed that certain non-executive directors (generally promoter directors) were receiving disproportionate remuneration from the total pool available vis-à-vis all other non-executive directors.

Based on its deliberations, the Committee recommends that in case the remuneration of a single non-executive director exceeds 50% of the pool being distributed to the non-executive directors as a whole, shareholder approval should be required. However, it is clarified that the promoter should also be allowed to vote.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision	**Reg 17. Board of Directors** **Insertion of new sub-clause (ca) under sub-regulation 6** (ca) The approval of shareholders shall be obtained every year in which the annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.

8. Materiality Policy

Current regulatory provisions:

Currently, SEBI LODR Regulations require listed entities to formulate a policy on materiality of related party transactions and on dealing with related party transactions. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee considered that while some companies have formulated their materiality policy, they have not spelt out any threshold limits for determining materiality and therefore, enforcement in such cases becomes difficult. It was therefore decided that clear threshold limits, as considered appropriate by the board of directors may be required to be disclosed in the materiality policy. The Committee also recommends that such materiality policy should be reviewed and updated at least once every three years.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Regulation 23: Related party transactions. (1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions;	**Regulation 23: Related party transactions.** (1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved by the board of directors. Insertion of a new sub-Regulation (1A): (1A) Such policy on materiality shall be reviewed by the board of directors at least once every three years and updated accordingly.

CHAPTER VI: DISCLOSURES AND TRANSPARENCY

Disclosure and transparency underpin good governance and the efficient functioning of the markets. A corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, business performance, strategic shifts, ownership, and governance of the company.

Regulations in India, have driven a large part of the disclosure and transparency construct, especially for listed entities. While companies, in general, comply with the regulatory minimum, the Committee encourages boards and managements to view disclosure and transparency as a means to build trust with stakeholders and to proactively disclose material information that may impact decision-making variables.

Accordingly, the Committee makes the following recommendations:

1. Submission of Annual Reports

Current regulatory provisions:

Currently, under the Companies Act read with Companies (Accounts) Rules, 2014, for listed entities, the financial statements may be sent *inter-alia* by electronic mode to such members (holding demat securities) whose email ids are registered with the depository for communication purposes, and by dispatch of physical copies in all other cases.

However, under SEBI LODR Regulations, soft copies of the full annual report are required to be sent to all those shareholder(s) who have registered their email address(es) for the purpose, hard copies of statement containing the salient features of all the documents, as prescribed in Section 136 of Companies Act or rules made thereunder to those shareholder(s) who have not so registered and hard copies of full annual reports to those shareholders, who request for the same. Further, under SEBI LODR Regulations, the annual report is required to be submitted to the stock exchange within 21 working days of it being approved and adopted in the AGM. (Click for *Detailed Provisions*)

Recommendation and rationale:

In the interest of environmental responsibility and in view of increased digital access, it is recommended that only a soft copy of the annual report should be given to all shareholders who have registered their email addresses either with the company or with the depository, unless the shareholder specifically asks for a physical copy. Only in case the shareholder has not provided his/her e-mail address, should he/she be sent a hard copy.

The Committee also felt that there is a need to consider making mobile numbers and e-mail addresses compulsory for demat accounts. The Committee is also of the view that SEBI may consider taking up with the depositories the linking of all demat accounts with Aadhar, wherein depositories may be permitted to pick up information like bank account details, telephone numbers and e-mail addresses from the Aadhar database.

Further, the Committee is of the opinion that requiring disclosure of annual report to the exchanges within 21 working days after the AGM results in delayed disclosures to the shareholders. Therefore, it is recommended that the annual report may be disclosed by the listed entity to the stock exchanges and on the website in the following manner:

- Copy of the annual report sent to the shareholders along with the notice of the AGM to be disclosed not later than the day as dispatched to the shareholders.

- In the event shareholders approve any amendments to any portion of the annual report, then the revised copy (with details of and explanation for the changes so approved) is to be sent no later than 48 hours after the AGM.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 34. Annual Report. (1) The listed entity shall submit the annual report to the stock exchange within twenty one working days of it being approved and adopted in the annual general meeting as per the provisions of the Companies Act, 2013. **Reg 36. Documents & information to shareholders.** (1) The listed entity shall send the annual report in the following manner to the shareholders: (a) Soft copies of full annual report to all those shareholder(s) who have registered their email address(es) for the purpose;	**Reg 34. Annual Report.** (1) The listed entity shall submit ~~the annual report~~ to the stock exchange and publish on its website; ~~within twenty one working days of it being approved and adopted in the annual general meeting as per the provisions of the Companies Act, 2013.~~ (a) Copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders; (b) In the event shareholders approve any amendments to any portion of the annual report, then the revised copy (with details of and explanation for the changes so approved) to be sent no later than 48 hours after the annual general meeting. **Reg 36. Documents & information to shareholders.** (1) The listed entity shall send the annual report in the following manner to the shareholders: (a) Soft copies of full annual report to all those shareholder(s) who have registered their email address(es) ~~for the purpose~~ either with the listed entity or with any depository.

2. Disclosures Pertaining to Holders of Depository Receipts

Current regulatory provisions:

Currently, there is no specific provision in the Companies Act or SEBI LODR Regulations on requiring disclosures of holders of Depository Receipts (ADRs/GDRs) issued by listed entities.

Recommendation and rationale:

The Committee believes that transparency in understanding a company's holding structure and voting rights requires disclosure of the holders of the depository receipts and not just the name of the overseas depository that has issued the depository receipts. The Committee recognizes that the member of the listed entity for the purpose of depository receipts issuance is the overseas depository. However, the Committee notes that the information of holders of the depository receipts is available with the overseas depository. Therefore, the Committee recommends that:

- Indian listed entity should obtain details of holders of any global depository receipts (as defined under the Companies Act, which includes American Depository Receipts) issued by such entity from the overseas depository at least on a monthly basis.
- Based on the information shared by the overseas depository, the listed entity shall disclose details of such holders of global depository receipts who hold more than 1% shareholding of the

entity to the stock exchange as a part of the disclosure on shareholding pattern on a quarterly basis.

This would enable transparency in shareholding and consequently in voting by such shareholders.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed / amended provision in SEBI LODR Regulations
No specific provision.	**Reg 31. Holding of specified securities and shareholding pattern** **Insertion of new sub-regulations(1A) and (1B):** **(1A)** The statement of holding of securities and shareholding pattern as specified in clause (1) above shall include details of names of holders of global depository receipts issued by the listed entity, if any, holding more than 1% of the total shareholding of the entity. **(1B)** The listed entities shall obtain the information on holders of global depository receipts issued by the entity, if any, from the overseas depository at least once every month.

3. Disclosures Pertaining to Credit Rating

Current regulatory provisions:

Currently, there is no specific provision in the Companies Act with respect to disclosure of credit ratings. SEBI LODR Regulations require the disclosure of revisions in credit ratings. (Click for *Detailed Provisions*)

Recommendation and rationale:

Currently, listed entities are required to disclose the changes in credit rating for different instruments from time to time to the stock exchanges as and when changes happen.

The Committee is of the opinion that an updated list of all credit ratings obtained by the listed entity be made available at one place, which would be very helpful for investors and other stakeholders.

It is therefore recommended that the listed entity may be required to disclose all credit ratings obtained by the entity for all its outstanding instruments annually to stock exchanges and also on its website which shall be updated on a regular basis as and when there is any change. In addition, SEBI may consider requiring the credit rating agencies and the stock exchanges to set up a mechanism by which the ratings may be sent directly from the credit rating agencies to the stock exchanges.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed / amended provision in SEBI LODR Regulations
No specific provision.	**Reg 46. Website.** (2) The listed entity shall disseminate the following information on its website: **Insertion of a new sub-clause (r):**

	(r) all credit ratings obtained by the entity for all its outstanding instruments, updated immediately as and when there is any revision in any of the ratings. **Schedule V: Annual Report** **C. Corporate Governance Report** The following disclosures shall be made in the section on the corporate governance of the annual report. .. **(9) General shareholder information:** .. **Insertion of a new sub-clause (q)** (q) List of all credit ratings obtained by the entity along with any revisions thereto during the relevant financial year, for all debt instruments of such entity or any fixed deposit programme or any scheme or proposal of the listed entity involving mobilization of funds, whether in India or abroad.

4. Searchable Formats of Disclosures

Current regulatory provisions:

Currently, there is no specific provision in Companies Act or SEBI LODR Regulations with respect to 'searchability' of the disclosures.

Recommendation and rationale:

While several disclosures (both event based and periodic) have been mandated under applicable law, certain concerns were raised on the manner of presentation thereof by listed entities. Specifically, information shared is often not in "searchable" formats (i.e. if an investor wishes to search for a particular word or a phrase in the voluminous disclosures, he/she is unable to do so due to the formats of the documents, especially scanned documents), substantially constraining the ease of review.

Accordingly, it is recommended that all the disclosures made by the listed entity on its website and submitted to the stock exchanges should be in a searchable format that allows users to find relevant information easily. Specifically, the Committee recommends that all disclosures made to the stock exchanges by listed entities should be in XBRL format.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Reg 38. Documents & information to shareholders.** **Insertion of a new sub-Regulation (4):** (4) All disclosures made in soft copy by the listed entity shall be in XBRL format to the stock exchanges and in any searchable format on its website.

5. Harmonization of Disclosures

Current regulatory provisions:

Currently, there is no specific provision in the Companies Act or SEBI LODR Regulations with respect to harmonized/standardized dissemination of disclosures made by the listed entities across websites of stock exchanges.

Recommendation and rationale:

The Committee felt that in the absence of such a mandated, harmonized dissemination of disclosures, there could be a risk of disclosure arbitrage. In addition, multiple disclosure formats in different exchanges as well as to the MCA place an unnecessary compliance burden on the listed entities without any consequent benefit.

Therefore, it is recommended that:

- The stock exchanges shall collectively harmonise the formats of the disclosures made by the listed entities on their respective websites no later than April 1, 2018.
- The stock exchanges shall move to disclosures by listed entities on exchange platforms in XBRL format in latest available taxonomy no later than April 1, 2018.
- Further, a common filing platform may be devised on which a listed entity may submit all filings, which could then be disseminated to all exchanges simultaneously. The exchanges shall introduce such a platform in consultation with SEBI by April 1, 2018.
- The disclosures filed with the exchanges may, as far as possible, be harmonized with the filings made to MCA.

Proposed amendments to SEBI LODR Regulations:

No amendments may be required to SEBI LODR Regulations. However, SEBI may consider issuance of a circular to the stock exchanges in this regard.

6. Disclosures Pertaining to Analyst/Institutional Investor Meets

Current regulatory provisions:

Currently, SEBI LODR Regulations require the disclosure of schedules for analyst or institutional investor meetings and presentations made by the listed entity to analysts or institutional investors on its website and to the stock exchange. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee was of the view that the disclosure of schedules of analyst/institutional investor meetings does not serve any practical purpose, and there have been instances of its misuse. Hence, the Committee recommended that the disclosure of schedules of analyst/institutional investor meetings may not be required. To clarify, the information to be shared at such meetings has to be strictly in compliance with the SEBI PIT Regulations.

Proposed amendments to SEBI LODR Regulations (with immediate effect):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 46. Website (2) The listed entity shall disseminate the following information on its website: (o) schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors simultaneously with submission to stock exchange; **SCHEDULE III , PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES** The following shall be events/information, upon occurrence of which listed entity shall make disclosure to stock exchange(s): A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30): 15. Schedule of Analyst or institutional investor meet and presentations on financial results made by the listed entity to analysts or institutional investors;	**Reg 46. Website** (2) The listed entity shall disseminate the following information on its website: (o) ~~schedule of analyst or institutional investor meet~~ and presentations made by the listed entity to analysts or institutional investors simultaneously with submission to stock exchange; **SCHEDULE III , PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES** The following shall be events/information, upon occurrence of which listed entity shall make disclosure to stock exchange(s): A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30): 15. ~~Schedule of Analyst or institutional investor meet and p~~ Presentations on financial results made by the listed entity to analysts or institutional investors;

Appropriate modifications may also be made to SEBI circular No. CIR/CFD/CMD/4/2015 dated Sep 9, 2015.

7. Disclosures of Key Changes in Financial Indicators

Current regulatory provisions:

Currently, there is no specific provision in the Companies Act or SEBI LODR Regulations requiring an entity with listed equity shares to report key changes in certain indicators and explanations for the same, other than general disclosures in the Management Discussion and Analysis (MD&A) section of the annual report. (Click for *Detailed Provisions*)

Recommendation and rationale:

While the periodic disclosure of financial information and disclosure of material events/information is mandated for listed entities, the Committee considered that in addition to the same, disclosures of significant changes in key financial indicators along with reasons thereof would enable the investors to further comprehend the company's business and financial performance.

Accordingly, it is recommended that all listed entities may be required to disclose in the section on MD&A in the Annual report, certain key financial ratios (or sector-specific equivalent ratios), as applicable, wherever there is a change of 25% or more in a particular financial year, along with detailed explanations thereof, including:

1. Debtors Turnover
2. Inventory Turnover
3. Interest Coverage Ratio

4. Current Ratio
5. Debt Equity Ratio
6. Operating Profit Margin (%)
7. Net Profit Margin (%)

In addition, the Committee recommends that the listed entity shall disclose any change in Return on Net Worth along with a detailed explanation thereof irrespective of the percentage of change in the financial year under the same section.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed / amended provision in SEBI LODR Regulations
No specific provision.	**SCHEDULE V: ANNUAL REPORT** B. Management Discussion and Analysis: 1. This section shall include discussion on the following matters within the limits set by the listed entity's competitive position: Insertion of new sub-clause (i) and (j): (i) Details of significant changes (i.e. change of 25% or more as compared to the immediately previous financial year) in key financial ratios, along with detailed explanations therefor, including: (i) Debtors Turnover (ii) Inventory Turnover (iii) Interest Coverage Ratio (iv) Current Ratio (v) Debt Equity Ratio (vi) Operating Profit Margin (%) (vii) Net Profit Margin (%) or sector-specific equivalent ratios, as applicable. (j) Details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof.

8. Utilisation of Proceeds of Preferential Issue and Qualified Institutional Placement

Current regulatory provisions:

Currently, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 *(hereinafter referred to as "SEBI ICDR Regulations")* require periodic disclosures on utilization of issue proceeds in case of public issues. However, these disclosures are not required for funds raised by way of preferential allotments and QIPs. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee felt that for better transparency, appropriate disclosures may be required on utilisation of proceeds of preferential issues and QIPs till the time such proceeds are utilised.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision	**Schedule V: Annual Report** **C. Corporate Governance Report** **(ED) Other Disclosures** **Insertion of a new clause (h):** (h) Utilization of funds raised through preferential allotment or QIPs undertaken in the relevant financial year, until such funds are fully utilized

9. Disclosures in Valuation Reports in Schemes of Arrangement

Current regulatory provisions:

Currently, there is no specific provision in the Companies Act or SEBI LODR Regulations pertaining to disclosures of the basis of the valuation arrived at in valuation reports or requirement of disclosure of assets and liabilities of the relevant entities which are part of, or subject to, the schemes of arrangement.

Recommendation and rationale:

The Committee noted that it has been observed that there are divergent market practices of disclosures made in valuation reports and the schemes of arrangement involving listed entities. This may lead shareholders not having sufficient information to make an informed decision.

Therefore, in the interest of full disclosures to the investors, it is recommended that:

- SEBI may consider issuing guidelines for overall improvement in standards of information in the valuation reports that are included as part of schemes of arrangement disclosures.
- Specific disclosures on assets, liabilities and turnover of the entities involved should be disclosed in the valuation reports on schemes of arrangement.

Proposed amendments to SEBI LODR Regulations:

No amendments may be required to SEBI LODR Regulations. However, SEBI may consider amending its circular dated March 10, 2017 on Schemes of Arrangement by listed entities in this regard.

10. Disclosures Pertaining to Directors

Current regulatory provisions:

Currently, SEBI LODR Regulations provide that at the time of the appointment of a director, the names of listed entities in which the proposed director holds directorship and membership of the committees are to be disclosed to the shareholders.

Recommendation and rationale:

The Committee felt that for better transparency, it is recommended that disclosures on details of directorships of a director as included in the Corporate Governance section of the Annual Report may additionally include details of directorships (e.g. independent/executive) in other listed entities.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Schedule V: Annual report C. Corporate Governance Report: (2) Board of directors: (c) number of other board of directors or committees in which a directors is a member or chairperson;	Schedule V: Annual report C. Corporate Governance Report: (2) Board of directors: (c) number of other board or committees in which a director is a member or chairperson, giving separately the names of the listed entities where the person is a director and category of directorship;

11. Disclosures Pertaining to Disqualification of Directors

Current regulatory provisions:

Currently, there is no provision under the Companies Act or the SEBI LODR that requires a confirmation on a regular basis of the directors of the company not having been barred to act as such by any regulatory authorities.

Recommendation and rationale:

The Committee felt that investors are often unaware whether the directors of the company have been debarred from acting as directors of a company. Therefore, the Committee recommended that disclosures on this basis be made in the annual report as certified by a practising company secretary.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	Schedule V: Annual report C. Corporate Governance Report: (10) Other Disclosures: Insertion of a new sub-clause (h) (h) A certificate from a company secretary in practice that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as directors of companies by the SEBI/MCA or any such statutory authority.

12. Disclosures on Website

Current regulatory provisions:

Currently, as per Regulation 46 of the SEBI LODR Regulations, a listed entity is required to maintain a functional website containing the basic information about itself. (Click for *Detailed provisions*)

Recommendation and rationale:

The Committee recommended that companies shall maintain a separate section for investors on its website and provide all the information mandated under Regulation 46 of SEBI LODR Regulations in a separate section, to ensure ease of availability and access of pertinent information in one place to investors and regulators alike.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Regulation 46: Website. **(2) The listed entity shall disseminate the following information on its website:**	**Regulation 46: Website.** **(2) The listed entity shall disseminate the following information on its website under a separate section:** .....

13. Disclosures of Subsidiary Accounts

Current regulatory provisions:

Currently, proviso to Section 136(1) of the Companies Act requires every company having a subsidiary to place separate audited accounts in respect of each of its subsidiary on its website, if any. Further, as per Regulation 46 of the SEBI LODR Regulations, a listed entity is required to maintain a functional website containing the certain specified information. (Click for *Detailed Provisions*)

Recommendation and rationale:

In the spirit of transparency and ease of reference for public shareholders of listed entities, the Committee recommends that a listed entity be required to have audited financial statements for the relevant financial year of each of its subsidiaries available on its website at least 21 days before the date of the annual general meeting.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Regulation 46: Website. **(2) The listed entity shall disseminate the following information on its website:**	**Regulation 46: Website.** **(2) The listed entity shall disseminate the following information:** ..... **(r) separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, uploaded at least 21 days prior to the date of the annual general meeting which has been called to *inter alia* consider accounts of that financial year.**

14. Disclosures on Long-term and Medium-term Strategy

Current regulatory provisions:

Currently, there is no specific provision on disclosure of medium-term and long-term strategy under the Companies Act, 2013 or SEBI LODR Regulations.

Recommendation and rationale:

The Committee recommends that in order to provide for disclosures pertaining to strategy of the entity, especially the medium-term and long-term strategy *(in line with the Committee's recommendation that boards devote more time on strategy)*, a guidance may be issued by SEBI to listed entities to disclose their medium and long-term strategy in their annual reports under the

MD&A section. In addition, entities should articulate a clear set of long-term metrics specific to the company's long term strategy to allow for appropriate measurement of progress. However, each entity may define its own time frame with respect to medium and long-term since it would vary across entities/sectors. Some examples of strategy and metrics in this regard that may be considered are included in Annexure 5.

Further, SEBI may review the status in future based on experience gained.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision	**Schedule V: Annual Report:** **B. Management Discussion and Analysis:** **Insertion of a new sub-clause (2)** (2) Under this section, the listed entity may also disclose, within the limits set by its competitive position, its medium-term and long-term strategy based on a time frame as determined by its board of directors.

15. Prior Intimation of Board Meeting to Discuss Bonus Issue

Current regulatory provisions:

Currently, SEBI LODR Regulations require prior intimation to the stock exchange about the meeting of the board of directors in which a proposal for the declaration of certain items including bonus shares is going to be discussed. However, where the declaration of bonus by the listed entity is not on the agenda of the meeting of board of directors, prior intimation is not required to be given to the stock exchanges. *(Click for Detailed Provisions)*

Recommendation and rationale:

The Committee felt that in view of the price sensitive nature of bonus issues, advance notice for consideration of bonus issue by the board should be required to be submitted to stock exchanges. Accordingly, it is recommended that the proviso to Regulation 29 in the SEBI LODR Regulations may be dropped.

Proposed amendments to SEBI LODR Regulations (with immediate effect):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
29. Prior intimations (1) The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered: .... (f) the proposal for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers: **Provided that** in case the declaration of bonus by the listed entity is not on the agenda of the meeting	**29. Prior intimations** (1) The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered: .... (f) the proposal for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers: ~~Provided that in case the declaration of bonus by the listed entity is not on the agenda of the meeting~~

of board of directors, prior intimation is not required to be given to the stock exchange(s).	~~of board of directors, prior intimation is not required to be given to the stock exchange(s).~~

16. Views of Committees Not Accepted by the Board of Directors

Current regulatory provisions:

Several provisions of the Companies Act and the SEBI LODR Regulations require the committees of the board (including the audit committee and the nomination and remuneration committee) to consider and recommend certain matters to the board of directors. However, except for Section 177(8) of the Companies Act (in relation to the Audit Committee), there is no provision for disclosure to shareholders if the recommendations of the relevant committee are not accepted by the board. (Click for *Detailed Provisions*)

Recommendation and rationale:

The committees constituted by the board usually provide their recommendations to the board of directors in relation to relevant matters falling within their terms of reference, after due consideration. The final decision, except in certain instances, (on whether to accept the recommendation or not) lies with the board of directors. However, the Committee is of a view that if the board of directors chooses not to accept the recommendations of the statutory committees of the board, the same should be disclosed to shareholders on an annual basis.

It is clarified that the above disclosure requirement pertains to matters which require a recommendation of the committee for the approval of the board (or submission by the committee for approval of the board), and will not affect matters that require prior approval of the relevant committee (for e.g., approval of related party transactions by the audit committee).

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	Schedule V: Annual Report (C) Corporate Governance Report: The following disclosures shall be made in the section on the corporate governance of the annual report. (2) Other Disclosures: ..... Insertion of a new sub-clause (h): (h) where the board had not accepted any recommendation of any committee of the board which is mandatorily required, in the relevant financial year, the same to be disclosed along with reasons thereof.

17. Commodity Risk Disclosures

Current regulatory provisions:

SEBI LODR Regulations require the disclosure of commodity price risk and commodity hedging activities by the listed companies in the corporate governance section of the annual report. (Click for *Detailed Provisions*)

Recommendation and rationale:

The Committee noted the lack of uniformity in disclosures with respect to the commodity risks and hedging activities by listed companies. In order to benefit the shareholders and to bring further clarity in disclosures to be made in the annual reports by the listed companies, the Committee is of the view that the listed companies should disclose their risk management activities during the year, including their commodity hedging positions in a more transparent, detailed and uniform manner for easy understanding and appreciation by the shareholders.

The Committee believes that for the consistent implementation of the requirements of SEBI LODR Regulations regarding disclosure of commodity risks and other hedging activities across listed companies, a detailed reporting format along with the periodicity of the disclosures may be outlined by SEBI which would depict the commodity risks they face, how these are managed and also the policy for hedging commodity risk, etc. followed by the company for the purpose of disclosures in the annual report.

Proposed amendments to SEBI LODR Regulations:

No amendment to the SEBI LODR Regulations required. SEBI should consider issuing a circular in this regard.

CHAPTER VII: ACCOUNTING AND AUDIT RELATED ISSUES

Financial statements are the primary document that stakeholders (including investors, lenders, customers, and suppliers) rely upon. These statements are intended and expected to depict the true nature of the business, and foretell its longevity. The Committee acknowledges that a good audit and appropriate levels of disclosure are pre-requisites for reliable financial statements. After careful consideration, the Committee makes the following recommendations with a view to improving disclosures and enhancing the quality of financial statements and audit.

1. Audit Qualifications

Current regulatory provisions:

Currently, under the Companies Act, or SEBI LODR Regulations, there is no restriction on an auditor qualifying the accounts of a company. However, both the Companies Act and SEBI LODR Regulations and circulars issued thereunder require detailed disclosures in this regard. Specifically, the SEBI LODR Regulations require quantification of the audit qualification by the auditor and if not possible, the management shall make an estimate which is to be reviewed by the auditor. [Click for *Detailed Provisions*]

Recommendation and rationale:

The Committee noted that several jurisdictions across the world proscribe a listed company from filing a set of financial results/statements on which the auditor has issued a qualified opinion. In these jurisdictions, financial statements with audit reports that express a qualified or "except for" opinion due to a departure from generally accepted accounting principles (GAAP), or state that the auditor is disclaiming an opinion on the financial statements for any reason, or state that the financial statements taken as a whole are not presented fairly in conformity with GAAP, are not considered sufficient to meet the requirements of the listing regulations. These jurisdictions consider that financial statements not in conformity with GAAP are presumed to be inaccurate or misleading, notwithstanding explanatory disclosures in footnotes or in the auditor's report. Detailed deliberations were held as to whether it is the right time to consider moving in the direction of not permitting filing of financial results with audit qualifications in India as well.

After due deliberation, the Committee concurred that it may be early to entirely proscribe the filing of financial results with audit qualifications in India. Therefore, the Committee recommends that a move may be made to strengthen disclosures by requiring quantification of audit qualifications to be mandatory, with the exception being only for matters like going concern or sub-judice matters. In such an instance, the management will be required to provide reasons, which will be reviewed by the auditors and reported accordingly.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Schedule IV, Part A: Disclosure in Financial Results The listed entity shall disclose the following while preparing the financial results:- B. If the auditor has expressed any modified opinion(s) in respect of audited financial results submitted or published under this para, the listed entity shall disclose such modified opinion(s) and	Schedule IV, Part A: Disclosure in Financial Results The listed entity shall disclose the following while preparing the financial results:- B. If the auditor has expressed any modified opinion(s) in respect of audited financial results submitted or published under this para, the listed entity shall disclose such modified opinion(s) and

cumulative impact of the same on profit or loss, net worth, total assets, turnover/total income, earning per share, total expenditure, total liabilities or any other financial item(s) which may be impacted due to modified opinion(s), while publishing or submitting such results. BA. If the auditor has expressed any modified opinion(s), the management of the listed entity has the option to explain its views on the audit qualifications and the same shall be included in the Statement on Impact of Audit Qualifications (for audit report with modified opinion). BB. With respect to audit qualifications where the impact of the qualification is not quantifiable: i. The management shall make an estimate and the auditor shall review the same and report accordingly; or ii. If the management is unable to make an estimate, it shall provide the reasons and the auditor shall review the same and report accordingly. The above shall be included in the statement on impact of audit qualifications (for audit report with modified opinion)	cumulative impact of the same on profit or loss, net worth, total assets, turnover/total income, earning per share, total expenditure, total liabilities or any other financial item(s) which may be impacted due to modified opinion(s), while publishing or submitting such results. BA. If the auditor has expressed any modified opinion(s), the management of the listed entity has the option to explain its views on the audit qualifications and the same shall be included in the Statement on Impact of Audit Qualifications (for audit report with modified opinion). BB. With respect to audit qualifications where the impact of the qualification is not quantifiable: i. The management shall mandatorily make an estimate and the auditor shall review the same and report accordingly; or Provided that the management may be permitted to not provide estimate on matters like going concern or sub-judice matters; in which case, the management shall provide the reasons and the auditor shall review the same and report accordingly. ~~ii. If the management is unable to make an estimate, it shall provide the reasons and the auditor shall review the same and report accordingly.~~ The above shall be included in the statement on impact of audit qualifications (for audit report with modified opinion)

Proposed modifications to SEBI Circular No. CIR/CFD/CMD/56/2016 dated May 27, 2016:

Current provision in SEBI circular	Proposed modified provision in SEBI circular
4.4. Where the impact of the audit qualification is not quantified by the auditor, the management shall make an estimate. In case the management is unable to make an estimate, it shall provide reasons for the same. In both the scenarios, the auditor shall review and give the comments	~~4.4. Where the impact of the audit qualification is not quantified by the auditor, the management shall make an estimate. In case the management is unable to make an estimate, it shall provide reasons for the same. In both the scenarios, the auditor shall review and give the comments.~~ *(The clause is recommended to be deleted since the aforesaid amendments to SEBI LODR Regulations incorporate the necessary requirements.)*

2. Independent External Opinion by Auditors

Current regulatory provisions:

Currently, there is no specific provision in the Companies Act or the SEBI LODR Regulations enabling an auditor to obtain an independent external opinion in relation to the audit/limited review at the cost of the listed entity.

Recommendation and rationale:

It is felt that in cases where the auditor does not concur with the opinion of an expert (e.g. lawyers, valuers, actuaries etc.) appointed by the listed entity, the auditors should have a right to obtain independent external opinions as deemed fit, at the cost of the listed entity. This would boost the independence of the auditors.

Therefore, it is recommended that SEBI LODR Regulations should be amended, providing a clear right to an auditor to independently obtain external opinions from experts.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Reg 33. Financial results.** **Insertion of a new sub-regulation (7):** (7) In case an auditor is not satisfied with the views or opinions of the management or of an expert whose services have been availed by the management, the auditors shall have the right to independently obtain external opinions from experts appointed by the auditors themselves and any expenditure incurred for such purpose shall be borne by the listed entity.

3. Group Audits

Current regulatory provisions:

Currently, there is no specific provision with respect to group audits under the Companies Act or SEBI LODR Regulations.

However, provisions for group audits are covered under the Standards on Auditing issued by ICAI which permit the holding company auditor to place reliance on the audit performed by the auditor of the subsidiaries and provide an audit opinion on the consolidated financial statements based on the audit report provided by the other auditors.

The principal auditor may, depending upon circumstances, decide that supplemental tests of the records or the financial statements of the subsidiary companies are necessary. When considered necessary, the principal auditor may require the other auditor to answer a detailed questionnaire regarding matters on which the principal auditor requires information for discharging his duties.

Recommendation and rationale:

The Committee noted that several international jurisdictions that have adopted the International Standards on Auditing (ISA) are governed by the requirements of ISA 600 which do not permit a division of responsibility between auditors of the holding company and its subsidiaries. Therefore, in such cases, the auditor of the holding company is responsible for the direction, supervision and performance of the group audit engagement.

The Committee noted that auditing standards in India (SA 600) differ from the International Standards on Auditing by allowing the holding company auditor to place reliance on the audit performed by the auditor of the subsidiaries and provide an audit opinion on the consolidated financial statements based on the audit report provided by the other auditor. While certain provisions as specified above permit auditors of the holding company to decide supplemental tests/require the other auditor to answer a detailed questionnaire, such an auditor is not completely

responsible for the direction, supervision and performance of the group audit engagement as in other jurisdictions. It was also noted that this was the only provision in which Indian auditing standards differed from their international counterpart.

It was therefore deliberated as to whether there is a need to introduce such a requirement in India in line with international standards, which will require the auditor of the holding company to take full responsibility for the audit opinion in the consolidated financial statements in respect of Indian subsidiaries and not permit a division of responsibility between the auditor of the holding company and the other auditor in the consolidated auditors' report.

Various concerns which may arise upon the introduction of such a requirement were noted by the Committee. For instance, if such a requirement is introduced, inevitably, the same auditor would be engaged for all subsidiaries as well in most of the cases and therefore, may lead to concentration. In addition, there may not be alignment in the rotation periods of auditors of the holding company and its subsidiaries due to the respective periods of appointment or regulatory requirements (e.g. SEBI requires auditors to be rotated every four years with a cooling off period of six years whereas the Companies Act requires rotation every five years). However, the Committee believes that a move needs to be made to align Indian auditing standards with global best practices.

Therefore, as a step in the right direction, but keeping in mind the concerns that may arise, it is recommended that for listed entities in India, the auditor of the holding company should be made responsible for the audit opinion of all material unlisted subsidiaries.

Proposed amendments to SEBI LODR Regulations:

No amendment may be required to the SEBI LODR Regulations. However, SEBI may consider recommending to the ICAI to introduce amendments to the relevant accounting/auditing standards to implement the above.

4. Quarterly Financial Disclosures

Current regulatory provisions:

While the Companies Act does not require a company to submit quarterly financial results, SEBI LODR Regulations have detailed provisions for the submission of quarterly financial results by a listed entity to the stock exchanges. (Click for *Detailed Provisions*)

Recommendation and rationale:

In order to strengthen periodic financial disclosures, the following recommendations are made:

(i) Consolidated financial results: Currently, the Companies Act and SEBI LODR Regulations mandate the submission of consolidated financial statements by a listed entity every financial year. However, SEBI LODR Regulations do not mandate that a listed entity submit consolidated financial results on a quarterly basis. In the interest of greater transparency at the group level, it is recommended that that disclosure of consolidated financial statements should be made mandatory for all listed entities on a quarterly basis. It is also clarified that standalone results shall continue to be required to be published. The Committee also believes that in due course, SEBI may, based on experience gained, consider requiring only consolidated accounts to be published.

(ii) Cash flow statement: It is recommended that publishing a cash flow statement on a half-yearly basis should be made mandatory for all listed entities for the following reasons:

1. It will provide timely information necessary to evaluate the operational, financial or investment decisions of the company. Such information may not be available in the quarterly financial results.

2. Cash flow statements can give investors meaningful information regarding business development directions and information on the seasonality of some activities, collection efficiency, quality of revenue or asset liquidation efforts, etc. which may not be available in the quarterly financial results.

3. Overall, half-yearly cash flow statements will enhance levels of transparency by providing quality and prompt financial and accounting information as well as contribute to the efficient management of the company and assessment of value driver potential.

(iii) Audit/limited review of quarterly financial results: The Committee believes that the audit/limited review of the listed entity does not often take into account a substantial portion of the group business since the accounts of the underlying subsidiaries often do not undergo limited review/audit. It is therefore recommended that for all listed entities, for every quarter, financial information of the group, accounting for at least 80% of each of the consolidated revenue, assets and profits, respectively, should have undergone limited review/audit.

(iv) Last quarter financial results: Currently, SEBI LODR Regulations state that the listed entity shall submit the audited financial results in respect of the last quarter along with the results for the entire financial year, with a note stating that the figures of the last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures up to the third quarter of the current financial year. The Committee believes that any material adjustments made in the results of the last quarter which pertain to earlier periods should be disclosed by the listed entity as a note in the financial results.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
Reg 33. Financial results. (3) The listed entity shall submit the financial results in the following manner: (a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter. (b) In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity may also submit quarterly/year-to-date consolidated financial results subject to following: (i) the listed entity shall intimate to the stock exchange, whether or not listed entity opts to additionally submit quarterly/year-to-date consolidated financial results in the first quarter of the financial year and this option shall not be changed during the financial year. **Provided that this option shall also be applicable to listed entity that is**	**Reg 33. Financial results.** (3) The listed entity shall submit the financial results in the following manner: (a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter. (b) In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity may shall also submit quarterly/year-to-date consolidated financial results. ~~subject to following:~~ ~~(i) the listed entity shall intimate to the stock exchange, whether or not listed entity opts to additionally submit quarterly/year-to-date consolidated financial results in the first quarter of the financial year and this option shall not be changed during the financial year.~~ ~~Provided that this option shall also be~~

required to prepare consolidated financial results for the first time at the end of a financial year in respect of the quarter during the financial year in which the listed entity first acquires the subsidiary.

(ii) in case the listed entity changes its option in any subsequent year, it shall furnish comparable figures for the previous year in accordance with the option exercised for the current financial year.

(c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:

(i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.

Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.

(ii) In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.

(d) The listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion):

Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion)

Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.

(e) The listed entity shall also submit the audited financial results in respect of the last quarter along-with the results for the entire

~~applicable to listed entity that is required to prepare consolidated financial results for the first time at the end of a financial year in respect of the quarter during the financial year in which the listed entity first acquires the subsidiary.~~

~~(ii) in case the listed entity changes its option in any subsequent year, it shall furnish comparable figures for the previous year in accordance with the option exercised for the current financial year.~~

(c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:

(i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.

Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.

(ii) In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.

(d) The listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion):

Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion)

Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.

(e) The listed entity shall also submit the audited financial results in respect of the last

financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.	quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year
(f) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.	(f) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.
	Insertion of a new clauses (g), (h) and (i):
	(g) The listed entity shall also submit as part of its standalone and consolidated financial results for the half year, by way of a note, statement of cash flows for the half-year.
	(h) The listed entity shall ensure that, for the purposes of quarterly consolidated financial results, at least eighty percent of each of the consolidated revenue, assets and profits, respectively, shall have been subject to audit or in case of unaudited results, subjected to limited review.
	(i) The listed entity shall disclose by way of a note, the aggregate effect of material adjustments made in the results of the last quarter which pertain to earlier periods.

5. Internal Financial Controls

Current regulatory provisions:

Section 143(3)(i) of the Companies Act requires the auditor to report on Internal Financial Controls (*hereinafter referred to as "IFCs"*) and Section 129(4) of the Companies Act states that the provisions of the Companies Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, *mutatis mutandis*, apply to the consolidated financial statements. However, ICAI, vide its guidance, has restricted the reporting requirements for an auditor of the consolidated financial statements, to the IFC at the Indian subsidiaries only. The Companies (Amendment) Bill, 2017 proposes to substitute the words "internal financial control system" with the words "internal financial controls with reference to financial statements". Further, while the SEBI LODR Regulations have general provisions on IFC, there is no specific provision on the coverage of the same. (Click for *Detailed Provisions*)

Recommendation and rationale:

As per the Companies Act, India has adopted IFC reporting requirements for certain companies. Therefore, while reporting on the consolidated financial statements, the auditors of companies in

India are required to report on the IFCs for Indian companies only and their foreign subsidiaries are exempt unlike in other markets, where the requirement applies to the entire group.

The Committee recommends that IFC reporting requirements be made applicable to the entire operations of the group and not just to the Indian operations. However, the Committee recognizes that companies may require adequate transition time and in this regard, recommends that IFC reporting requirements for entire operations initially be only applicable to listed entities with networth of Rs. 1000 crore and above.

Proposed amendments to SEBI LODR Regulations:

No amendments required to SEBI LODR Regulations. The Committee suggests that SEBI take up the above recommendation with ICAI.

6. Disclosure of Reasons of Resignation of Auditors

Current regulatory provisions:

The Companies Act read with Companies (Audit and Auditors) Rules, 2014 requires that upon the resignation of auditors, reasons for such resignation shall be filed with the company and the Registrar. While under SEBI LODR Regulations, a change in auditor is a deemed material event and disclosure is required to be made to the exchanges, there is no specific provision for disclosure of detailed reasons for such change. (Click for *Detailed Provisions*)

Recommendation and rationale:

Auditors are critical gatekeepers of corporate governance standards. Their role in ensuring that the financial statements of the entity provide a true and fair view of the affairs of the entity makes them critical to the corporate governance agenda. The resignation of an auditor before the expiry of the term may be a cause for concern. For the sake of greater transparency, the Committee believes that it is important for companies to disclose the reasons for the resignation of its audit firm. Moreover, audit firms too must be encouraged to truthfully disclose the reasons for their resignation as audit firms must see this disclosure as part of their fiduciary responsibility towards the shareholders.

Proposed modifications to SEBI circular (w.e.f. April 1, 2018):
Clause 7 of Annexure I of SEBI circular No. CIR/CFD/CMD/4/2015 dated September 9, 2015 may be amended by insertion of a new clause as under:
7.5. Detailed reasons for resignation of auditor as given by the said auditor.

7. Disclosures on Audit and Non-audit Services Rendered by the Auditor

Current regulatory provisions:

The Companies Act permits auditors to perform only those non-audit services as approved by the board/audit committee and specifically prohibits certain services that can be provided. Under SEBI LODR Regulations, the audit committee approves payment to statutory auditors for any other services rendered by the statutory auditors. However, there is no requirement in either the Companies Act or the SEBI LODR Regulations on disclosure of non-audit services rendered by the auditor to the entire network/group. (Click for *Detailed Provisions*)

Recommendation and rationale:

In the interest of improving transparency, the Committee recommends that the total fee paid to auditor and all entities on the network firms/network entity of which the auditor is a part shall be

disclosed by the listed entity in its annual report on a consolidated basis (i.e. paid by the listed entity and its subsidiaries).

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Schedule V: Annual report** **C. Corporate Governance Report: The following disclosures shall be made in the section on the corporate governance of the annual report.** **(10) Other Disclosures:** **Insertion of a new sub-clause (h):** **(h) total fees for all services paid by the listed entity and its subsidiaries (i.e. on a consolidated basis) to the statutory auditor and all entities in the network firm/network entity of which the auditor is a part.**

8. Audit Quality Indicators

Current regulatory provisions:

There is no specific provision in the Companies Act or SEBI LODR Regulations with respect to audit quality indicators.

Recommendation and rationale:

The quality of audit/auditors can be judged through various indicators such as workforce metrics, skill-development and training of audit team, quality metrics such as audit restatements, trends in audit metrics such as billable hours and audit fines, legal actions and fines against the firm, independence metrics such as client and group concentration, use of technology, etc.

The Committee noted that many of the aforesaid indicators are already a part of ICAI's peer review system.

The Committee believes that making such indicators public will enable transparency and comparison of the audit quality of different auditors.

Proposed amendments to SEBI LODR Regulations:

There is no specific amendment required to SEBI LODR Regulations. The Committee suggests that SEBI take up the above recommendation with ICAI.

9. Disclosures of Credentials and Audit Fee of Auditors

Current regulatory provisions:

Section 142 of the Companies Act provides for the remuneration of auditors. Section 102(1) of the Companies Act requires certain disclosures to be made in the notice convening the meeting for each item of "special business" to be transacted at the general meeting. The appointment of auditors at an annual general meeting is not considered to be a "special business" and hence does not require any statement to shareholders with requisite disclosures.

While the SEBI LODR Regulations do not prescribe any specific disclosures in relation to appointment of auditors, Regulation 4(1)(b) of the SEBI LODR Regulations imposes an obligation on the listed entity to ensure that the audit is conducted by an independent, competent and qualified auditor.

(Click for *Detailed Provisions*)

Recommendation and rationale:

In order to ensure that the shareholders are able to take informed decisions on the appointment of auditors of listed entities, the Committee is of the view that the notice being sent to shareholders should contain certain minimum disclosures in relation to the credentials and terms of appointment of the auditors who are proposed to be appointed/re-appointed.

Further, the Committee is of the view that the audit fee that is charged by some of the firms is not on parity with benchmarks such as percentage of total assets, etc. Therefore, the Committee recommends that in order to improve transparency, the proposed audit fees must be disclosed in the notice and if there is any material change in the fees paid to a new auditor as compared to the current audit fee, the rationale for the same must be provided.

Hence, the Committee recommends that the explanatory statement in relation to the item on appointment/re-appointment of auditor(s) in the relevant notice calling an annual general meeting, should include the following disclosures (in addition to any other disclosures that the board of directors may deem fit):

(a) Basis of recommendation for appointment including the details in relation to and credentials of the auditor(s) proposed to be appointed; and

(b) Proposed fees payable to the auditor(s) along with terms of appointment and in case of a new auditor, any material change in the fee payable to such auditor from that paid to the outgoing auditor and the rationale for such change.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No provision.	**Insertion of Regulation 34A** **34A Disclosure in notice to shareholders** The notice being sent to shareholders for an annual general meeting where the statutory auditor(s) is/are proposed to be appointed/re-appointed shall include the following disclosures as a part of the explanatory statement to the notice: (a) Proposed fees payable to the statutory auditor(s) along with terms of appointment and in case of a new auditor, any material change in the fee payable to such auditor from that paid to the outgoing auditor along with the rationale for such change; (b) Basis of recommendation for appointment including the details in relation to and credentials of the statutory auditor(s) proposed to be appointed.

10. IND-AS Adoption

Current regulatory provisions:

The MCA and SEBI have specified timelines for listed entities (including listed banks, NBFCs and insurance companies) to adopt IND-AS. While listed entities (other than banks, NBFCs and insurance companies) are currently required to comply with the provisions of IND-AS in preparation of their financial statements and audit,:

(i) Banks are required to prepare IND-AS based financial statements for accounting periods beginning from April 1, 2018;

(ii) Certain NBFCs (depending on net worth and whether listed/unlisted) are required to prepare IND-AS based financial statements for accounting periods beginning from April 1, 2018 or April 1, 2019, as the case may be; and

(iii) Insurance companies are required to prepare IND-AS based financial statements for accounting periods beginning from April 1, 2020.

Recommendation and rationale:

The Committee is of the view that listed banks, NBFCs and insurance companies are important financial intermediaries, critical to the sanctity of India's financial markets and its growth. Given the principle-based rules of IND-AS and resultant disclosures in financial statements, the Committee recommends full implementation of IND-AS as currently scheduled without extension, for all listed entities including banks, NBFCs and insurance companies.

Proposed amendments to SEBI LODR Regulations:

No amendments are required to the SEBI LODR Regulations. . The Committee suggests that SEBI take up the above recommendation with the relevant authorities/ regulators, as necessary.

11. Strengthening Monitoring, Oversight and Enforcement by SEBI

A. Review of Audit Qualifications

Current regulatory provisions:

Earlier, SEBI LODR Regulations had detailed provisions on the review of audit qualifications by the Qualified Audit report Review Committee (QARC) and further reference of the same to the Financial Reporting Review Board (FRRB) of ICAI. However, after consultation with SEBI Advisory Committees, ICAI, Stock Exchanges and Industry Bodies, it was decided by SEBI to discontinue with QARC mechanism and in place of the same, require disclosures on the impact of audit qualifications.

Recommendation and rationale:

The Committee is of the view that any audit qualification needs detailed scrutiny and therefore, the QARC mechanism may be revived or any other similar mechanism may be devised wherein audit qualifications are examined in greater detail. It is also recommended that the process to be followed by such committee should be time bound.

Proposed amendments to SEBI LODR Regulations:

Suitable amendments may be made as determined by SEBI.

B. Powers of SEBI with Respect to Auditors and Other Statutory Third Party Fiduciaries for Listed Entities

Current regulatory provisions:

1. The statutory audit process forms the bedrock of reliance by external stakeholders (shareholders, lenders and regulatory authorities, among others) on the financial performance of a listed entity, making statutory auditors the principal gatekeepers, enhancing corporate governance. ICAI, as the professional services regulator, regulates the profession of chartered accountants and has a mechanism in place for disciplinary proceedings against them. The Companies Act also sets forth detailed provisions for responsibilities and liabilities of auditors, which are administered by the MCA.

2. Section 11 of SEBI Act provides that subject to the provisions of the SEBI Act, it shall be the duty of SEBI to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, through such measures as it thinks fit. However, under the SEBI Act or Regulations framed thereunder, there is no specific provision which provides specific penal powers in relation to auditors.

3. In *Price Waterhouse and Co. a partnership firm registered with the Institute of Chartered Accountants of India and Ms. Shormila Karve, Partner, Price Waterhouse and Co. vs. Securities and Exchange Board of India and Whole Time Member Mr. M.S. Sahoo, Securities and Exchange Board of India* **(2011(2) BomCR173)**, the Bombay High Court has extensively considered SEBI's jurisdiction on statutory auditors (keeping in mind the provisions of the ICAI Act), where the issue of show cause notice by SEBI to auditors (the individuals as well as the firm) was challenged – relevant extracts from the said decision are set forth below:

   (a) After considering the provisions of Section 11(1) and other applicable provisions of the SEBI Act, held the following:

   17...."A reading of the said provisions discloses the scope and width of the powers vested with the SEBI to be exercised in the interest of investors and for regulating the securities market. The SEBI in its capacity as a Market Regulator can take any of the measures mentioned in sub-section (2) of Section 11 towards the said end. The said measures are only illustrative and not exhaustive and in a given case the SEBI considering the duty it is enjoined with may take such measures as it deems appropriate. In our view, the words employed in the aforesaid provisions are of wide amplitude and would therefore take within its sweep a Chartered Accountant if his activities are detrimental to the interest of the investors or the securities market."

   (b) "35...In a given case, if there is prima facie evidence in connection with the conduct of a Chartered Accountant such as fabricating the books of accounts, etc., the SEBI can certainly give appropriate direction not to utilize the services of such a Chartered Accountant in the matter of audit of a listed Company." **(emphasis supplied)**

   (c) "39...Section 11(1) of the SEBI Act empowers SEBI to inquire into as well as to initiate the proceedings like the one in question. As pointed out earlier, the proceedings started against the petitioners on the basis of some statements made by one Ramalinga Raju on the basis of e-mail to which a reference is made in the show cause notices. Whether any of the petitioners with an intention and knowledge tried to fabricate and judge the books of accounts is a matter of investigation and inquiry by the SEBI. Ultimately if any evidence in this behalf is brought on record before the SEBI during the inquiry, appropriate steps can be taken in this behalf as provided for by the SEBI Act. We must at this stage take note of the argument of Mr. Seervai that so far as his clients are concerned, they were not in any way

connected with the audit of the Company in any manner. Simply because they are Partners of Price Waterhouse Network, no notice could have been issued against his clients. However, so far as this submission is concerned, these petitioners can very well point out these facts before the concerned Member of SEBI. SEBI being a quasi-judicial authority, while adjudicating the matter, will look into this aspect and will consider as to whether any particular firm of Chartered Accountants has any role to play or for that reason any of the petitioners had played any role in any manner they may bring the matter to the notice of the SEBI. In a given case, if ultimately it is found that there was only some omission without any mens rea or connivance with anyone in any manner, naturally on the basis of such evidence the SEBI cannot give any further directions. If there is available evidence, SEBI can proceed further in the matter of giving direction against a particular Chartered Accountant as envisaged by Sections 11 and 12 of the SEBI Act and Regulations in this behalf. On the basis of detailed evidence on record, this aspect is required to be considered by SEBI. The question of jurisdictional fact depends upon the facts which may be available at the time of evidence before the SEBI. SEBI will have to answer the question as to whether on the basis of evidence on record, it has any power to give directions as provided under the SEBI Act. This aspect will depend upon the evidence which may be available at the time of inquiry. All these aspects are therefore left to the consideration of SEBI at the time of passing final order in the inquiry." (emphasis supplied).

Recommendation and rationale:

Given SEBI's mandate to protect the interests of investors in the securities market and regulating listed entities, the Committee recommends that SEBI should have clear powers to act against auditors and other third party fiduciaries with statutory duties under securities law *(as defined under SEBI LODR Regulations)*, subject to appropriate safeguards. This power ought to extend to act against the impugned individual(s), as well as against the firm in question with respect to their functions concerning listed entities. This power should be provided in case of gross negligence as well, and not just in case of fraud/connivance. This recommendation may be implemented after due consultation with the relevant stakeholders, including the relevant professional services regulators/ institutions.

Dissenting View: The ICAI has expressed its dissent on the above recommendation as the regulation of chartered accountants is covered under the Chartered Accountants Act, 1949 and to avoid jurisdictional conflict and other issues.

Proposed amendments to SEBI LODR Regulations:

No amendment may be required to SEBI LODR Regulations.

12. Strengthening the Role of ICAI

Current regulatory provisions:

The ICAI Act regulates the conduct of Chartered Accountants in India and provides a mechanism for taking disciplinary action against members who are in violation of obligations cast on such professionals. Further, ICAI Act permits ICAI to punish such a member or levy a penalty on the member not exceeding Rs. 5 lakh. It does not permit ICAI to punish or impose penalties on firms. While the Companies Act also has provisions for enhanced monetary penalties on auditors, the enforcement of the same is through the MCA and not the ICAI, which is the professional services regulator.

Recommendation and Rationale:

The Committee is of the view that reliable financial statements are at the core of corporate governance and therefore the fiduciary role of the auditor is crucial. Hence there needs to be sufficient deterrence to ensure this objective in the interest of corporate governance. In this context, the current maximum amount for penalty under the ICAI Act of Rs. 5 lakh is too low to act as a deterrent. Additionally, a need is identified for ICAI to be able to punish or impose penalties on audit firms, in addition to individual members.

Therefore, in the interest of enhancing governance of listed entities, the Committee recommends that ICAI may be given powers to increase the scope of punishment as well as the penalty amount as follows:

- On the member - penalty of up to Rs. 1 crore;
- On the audit firm- punishment or impose penalties of up to Rs. 5 crore in case of repeated violations (that is, where the number of violations exceed three).

In addition, in relation to the enforcement/disciplinary process of the ICAI, the Committee recommends:

- increased disclosure by ICAI of actions taken against members to increase transparency and act as a deterrent
- a separate team/cell for enforcement pertaining to listed entities in order to reduce the turnaround time for disciplinary proceedings
- to have a team that analyses reports of proxy advisors on audit related matters of listed entities and take appropriate action, if any, against its members.

ICAI view: This recommendation is outside the scope of the terms of reference of the Committee and ICAI has already taken up most of the aforesaid matters at appropriate levels.

Committee view: The Committee stands by its recommendation as it believes that the above is critical for enhancing corporate governance of listed Indian entities.

Proposed amendments to SEBI LODR Regulations:

No amendments required to the SEBI LODR Regulations.

The Committee suggests that SEBI take up the above recommendation with the appropriate authorities/ regulators.

13. Strengthening the Independent Functioning of QRB

Current regulatory provisions:

There is no specific provision on Quality Review Board ("QRB") under the Companies Act or SEBI LODR Regulations.

Recommendation and Rationale:

Most major economies in the world have implemented systems of independent oversight for the auditors of listed companies that provide confidence to shareholders and stakeholders. The International Forum of Independent Audit Regulators (IFIAR) is an international body established in 2006 that comprises independent audit regulators from 52 jurisdictions representing Africa, North America, South America, Asia, Oceania, and Europe. IFIAR's mission is to serve the public interest and enhance investor protection by improving audit quality globally. In India, the Quality Review Board (QRB) is mandated to conduct such reviews and has now started carrying out reviews of audits performed by various auditors. Therefore, strengthening the role of QRB assumes significance.

In view of the above, the Committee recommends that:

- QRB should be further strengthened to meet the independence criteria laid down by the International Forum of Independent Audit Regulators (IFIAR) and should become a member of IFIAR at the earliest. In this regard, QRB may also be provided requisite financial resources as well as staffed with adequate full time personnel to be able to effectively carry out its mandate. Steps should also be taken for further operational independence of QRB such as providing infrastructural support by the government, etc.
- Reasons for disagreement between the ICAI and the QRB should be recorded in writing and communicated to QRB for improving transparency in functioning.

ICAI view: This recommendation is outside the scope of the terms of reference of the Committee. Further, QRB has already applied for IFIAR membership and the dialogue is on with the IFIAR with respect to the above.

Committee view: The Committee stands by its recommendation as it believes that the above is critical for enhancing corporate governance of listed Indian entities.

Proposed amendments to SEBI LODR Regulations:

No amendments required to the SEBI LODR Regulations. The Committee suggests that SEBI take up the above recommendation with the appropriate authorities/ regulators.

CHAPTER VIII: INVESTOR PARTICIPATION IN MEETINGS OF LISTED ENTITIES

It is understood that increased and better participation by constituents enhances good governance. Accordingly, the Committee recognises that easing investor participation, including through the use of technology, is imperative. While e-voting has enabled shareholders to have a greater say in shareholder resolutions (over 70% of the voting power is being exercised in most companies), participation in general meetings continues to be limited. The Committee believes that responding to questions from shareholders promotes accountability of boards and management. Accordingly, it is important to facilitate and ease participation by removing the boundaries of physical meetings and adopting the use of technology.

The Committee also acknowledges the stewardship role that must be played by asset managers who in turn hold fiduciary responsibilities towards their own investors. It is only with the discharge of duties on both sides that the governance agenda will be served. In this context, the following recommendations have been made by the Committee.

1. Timeline for Annual General Meetings of Listed Entities

Current regulatory provisions:

Currently, under the Companies Act, listed entities in India are required to hold Annual General Meetings within six months from the end of the financial year. There is no specific provision in SEBI LODR Regulations on this matter. (Click for *Detailed Provisions*)

Recommendation and rationale:

It was observed that in many countries such as South Korea, Thailand, Italy, Singapore, Japan, etc., timelines for holding AGM were shorter than the timeline of six months provided in India. The Committee felt that in line with the global practices, and to avoid a bunching up of AGMs (especially in August/September) which results in lower shareholder participation, there is a need to reduce timelines for holding of AGMs by listed entities, albeit in a phased manner.

Therefore, it is recommended that:

- Initially, the top 100 listed entities by market capitalization (as at the end of the previous financial year) may be required to hold AGMs by August 31, 2018, i.e. within five months from the end of the next financial year. The same may be extended to other entities in a phased manner based on the experience gained.
- Over time, the target may be to reduce the timeline to four months from the end of the financial year.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision	Insertion of a new Regulation 43A: Reg 43A. Meetings of shareholders (1) The top 100 listed entities by market capitalization, determined as on March 31 of every financial year, shall hold their annual general

	meetings within a period of five months from the date of closing of the financial year with effect from the financial year beginning April 1, 2018.

2. E-voting and Webcast of Proceedings of the Meeting

Current regulatory provisions:

Currently, under the Companies Act read with Companies (Management and Administration) Rules, 2014, it is mandatory for a listed entity to provide e-voting facility to shareholders and such e-voting is permitted upto 5 p.m. one day prior to the general meeting. Further, webcast of the meeting proceedings is not mandatory. Similarly, under SEBI LODR Regulations, remote e-voting facility is mandatory in respect of all shareholder resolutions and voting results are to be submitted within forty eight hours of conclusion of the general meeting. (Click for *Detailed Provisions*)

Recommendation and rationale:

As stated above, currently, e-voting is permitted upto 5 p.m. one day prior to the general meeting and webcast of the meeting proceedings is not mandatory. Given that the e-voting timeline expires before the meeting is held, shareholders not attending the meetings in person are unable to take into account discussions at the meeting in order to make informed decisions.

For the investors to take into account the discussions during the general meeting and hence, vote with complete information, it is recommended that:

(i) Live one-way webcasts of all shareholder meetings may be introduced for top 100 listed entities on a trial basis. Based on the feedback and the experience, the same may subsequently be extended to other listed entities.; and

(ii) E-voting should be kept open till midnight (i.e. 11:59 p.m.) on the day of the general meeting. The current requirement of not permitting modification of votes cast through e-voting may continue.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision (on webcast).	**Insertion of a new clause under the new Regulation 44A as recommended above:** **Reg 44A. Meetings of shareholders** (2) The top 100 listed entities by market capitalization, determined as on March 31 of every financial year, shall provide one-way live webcast of the proceedings of all shareholder meetings held on or after April 1, 2018

The Committee suggests that SEBI take up the above recommendation with the Ministry of Corporate Affairs for amendment of the Companies (Management and Administration) Rules, 2014 to allow the facility for remote e-voting to remain open till end of the day (i.e. 11:59 p.m.) on the date of the general meeting.

3. Stewardship Code

Current regulatory provisions:

There is no specific provision for a 'stewardship code' under SEBI LODR Regulations. However, for specific institutional investors such as mutual funds, etc., certain stewardship principles such as on voting, conflict of interest, etc. have been adopted under the specific SEBI regulations as may be applicable. IRDAI in March 2017 issued a stewardship code for insurance companies in India.

Recommendations and rationale:

The Committee observed that in view of the increasing importance of institutional investors in capital markets across the world, they are expected to shoulder greater responsibility towards their clients/beneficiaries by enhancing their monitoring of and engagement with their investee companies. Such activities are commonly referred to as *'Stewardship Responsibilities'* of institutional investors. Such increased engagement is also seen as an important step towards improved corporate governance of the investee companies. The fulfillment of stewardship responsibilities by institutional investors also protects the interests of the retail investors in such companies.

Several countries such as United Kingdom, Japan, Malaysia, etc. have prescribed detailed Stewardship Codes to be followed by institutional investors in their jurisdictions on a voluntary basis. These Codes include certain principles applicable to institutional investors which require that investors have clear and comprehensive policies on:

a) Discharge of their stewardship responsibilities

b) Management of conflicts of interest in fulfilling stewardship responsibilities

c) Monitoring of investee companies

d) Intervention in investee companies

e) Collaboration with other institutional investors

f) Voting and disclosure of voting activity

g) Periodical reporting on their stewardship activities

Several other countries have also adopted one or more of the principles in different forms in their own jurisdiction. The Committee noted that one of the first steps in this regard was taken by SEBI which prescribed detailed requirements for disclosures with respect to voting policies and actual voting on different resolutions of investee companies by mutual funds in India.

The Committee was informed that based on SEBI's representation in the matter, the Financial Stability and Development Council (FSDC) directed the formation of a Committee under the Chairpersonship of SEBI with representatives from the Insurance Regulatory and Development Authority of India (IRDAI) and the Pension Fund Regulatory and Development Authority (PFRDA) to consider various aspects of introduction of a stewardship code in India. It was also informed that the said Committee has submitted its recommendations to FSDC and is pending FSDC approval. It was also noted that after the formation of the aforesaid Committee, IRDA had also issued a detailed stewardship code for insurance companies.

The Committee has taken note of the efforts made by FSDC and the regulators towards a stewardship code, and recommends that a common stewardship code be introduced in India for the entire financial sector on the lines of best practices globally based on the seven principles of stewardship as outlined above. The Committee also recommends that since SEBI is the capital

market regulator and the Code applies to investments in the capital market, the common Stewardship Code may be introduced by SEBI for investments by institutional investors in Indian capital markets.

Proposed amendments to SEBI LODR Regulations:

Amendments to SEBI Regulations, if any, may be in accordance with the framework devised by SEBI to implement the Stewardship Code in India.

4. Treasury Stock

Current regulatory provisions:

The Companies Act specifically prohibits the creation of treasury stock (i.e. shares in its own name or in the name of any trust either on its behalf or on behalf any of its subsidiary or associate companies). However, there is no requirement for cancelling/extinguishing treasury stock which existed prior to notification of provisions of the Act. Further, under SEBI LODR Regulations, there is no specific provision on treasury stock. (Click for *Detailed Provisions*)

Recommendation and rationale:

As stated above, there is no requirement to cancel/extinguish treasury stock which existed prior to notification of provisions of the Companies Act. To avoid misuse arising from exercise of voting rights in respect of shares held by employee benefit/employee welfare trusts, SEBI had withdrawn voting rights of the trustees on such shares under the SEBI (Share Based Employee Benefits) Regulations, 2014 – however, SEBI has permitted a three year sunset period in this regard. To meet the same objective as set forth above and to balance voting rights of all shareholders, the Committee recommends that a sunset clause may be imposed requiring all existing treasury stock in listed entities to not carry voting rights after three years.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2021):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	Insertion of a new Regulation 43B: **43B. Voting rights attached to Treasury Stock** In case a listed entity holds its own shares in its name or in the name of any trust either on its behalf or on behalf of any of its subsidiaries or associates (i.e. treasury stock), no voting rights attached to such shares shall be exercisable with effect from April 1, 2021.

5. Resolutions sent to Shareholders without Board's Recommendation

Current regulatory provisions:

While in certain cases the board's recommendation is required for consideration by shareholders (for e.g. declaration of dividend), there is no general rule (either in the Companies Act or in SEBI LODR Regulations) that every resolution placed before the shareholders should have been recommended by the board of directors.

Recommendation and rationale:

It is not necessary for every resolution placed before shareholders to have received a recommendation from the board of directors. The Committee recognises that there may be (exceptional) circumstances where the resolution being sent to shareholders would not have received such a recommendation. However, in such circumstances, some additional safeguards and disclosures may be made in the general meeting notice to enable the shareholders to come to an informed decision while considering the same.

In this regard, the Committee recommends the following:

(i) In the usual course, the resolution placed before the shareholders should be recommended by the board of directors. Placing a resolution before the shareholders without a board recommendation should be used sparingly and on rare occasions;

(ii) However, in exceptional circumstances, a listed entity may issue a notice of a general meeting, which may include one or more resolutions for consideration by shareholders without such resolution having been recommended by the board. In such cases, an explanatory statement for such a resolution must disclose the board's deliberated views to the shareholders.

Proposed amendments to SEBI LODR Regulations (w.e.f. April 1, 2018):

Current provision in SEBI LODR Regulations	Proposed amended provision in SEBI LODR Regulations
No specific provision.	**Reg 17. Board of Directors.** **Insertion of new clauses 11A and 11B** **11A.** The statement referred to in Section 102.1) of the Companies Act, 2013 in respect of items of special business to be transacted at a general meeting shall also set forth clearly the recommendation of the board to the shareholders. **11B.** Notwithstanding what is contained in sub-clause 11A above, in exceptional circumstances as may be determined by the board at its discretion. (i) the statement referred to above may not contain the recommendation referred to in sub-clause 11A; and (ii) instead of the recommendation, the board of directors shall, in the statement referred to in sub-clause 11A, disclose the nature of exceptional circumstances that have arisen, and their deliberated views that explains the different views on the resolution as may be applicable.

CHAPTER IX: GOVERNANCE ASPECTS OF PUBLIC SECTOR ENTERPRISES

Public Sector Enterprises (PSEs) play a prominent role in the economic development of our country, and their importance can not only be gauged from their size but also their leadership position in sensitive and strategic sectors of the economy. Further, the role of PSEs in generation of employment opportunities, welfare initiatives, balanced regional development, undertaking long-term capital intensive projects and other initiatives for the general public welfare is well acknowledged. Some of them are also listed, allowing them access to public markets for funds. These have a broader range of stakeholders. The Committee discussed various issues to enhance governance concerning PSEs and consequently improve shareholder value. This may also set the stage for more PSEs to list.

The Committee acknowledged that PSEs also face unique challenges that make their governance more complex than in the private sector, given that (i) most PSEs pursue multiple and diverse objectives in line with their broader social welfare objectives (unlike private enterprises which may focus on value maximization for their shareholders); (ii) PSEs may also have certain structural issues arising due to conflicts of interest that are inherent in cases where the same entity is both the owner and regulator; (iii) protracted decision making in PSEs owing to accountability at multiple levels. Nonetheless, there is a need for moving to enhanced governance standards.

The Committee debated several mechanisms in addressing these challenges and was of the view that all listed entities, government or private, should be treated at par on governance standards. Therefore, all listed PSEs should be compliant with the SEBI LODR Regulations. In case there is any inconsistency between the relevant legislation, if any, under which the respective PSE has been established and the SEBI LODR Regulations, appropriate harmonization of the legislation to bring the same in line with the requirement of SEBI LODR Regulations should be undertaken.

During the course of detailed deliberations, the Committee reviewed international examples on PSE governance and ownership structures (as set out in Annexure 6) and had broad consultations with different stakeholders to understand the issues in the Indian context. The Committee came to the conclusion that while this issue would require more consideration and detailed analysis, the following key guiding principles must be kept in mind for such assessment on this subject:

1. *Establish a transparent mandate for PSEs and disclose its objectives and obligations:* The government, as owner, must set clear objectives and mandates for the PSEs, and, where there are non-commercial objectives, these should be clearly articulated, quantified and transparently disclosed to the shareholders on a regular basis so that investors can take informed investment decisions.

2. *Ensure independence of the PSEs from the administrative ministry:* The government should aim at ensuring independence of the PSEs from the administrative ministry to ensure speedy decision making, functional and operational autonomy in pursuit of their stated objectives, for better commercial goals and to attract talent in a competitive market place.

3. *Consolidate the Government stake in listed PSEs under holding entity structure(s):* As a sustainable and optimal solution for minimizing conflicts arising from the ownership and regulatory dichotomy in PSEs, the government should consider consolidating its ownership and monitoring of PSEs into independent holding entity structure(s) by April 1, 2020. An independent board with diversified skill set of the holding entity(s) would also facilitate operationalizing a consistent and high quality process on significant issues such as strategy, performance monitoring, mergers and acquisitions, and recruitment of best talent.

Recommendations:

The Committee recommends that the listed PSEs fully comply with the provisions of SEBI LODR Regulations and the same be suitably enforced. Additionally, the government should assess and examine the broader issues referenced above *inter alia* concerning ownership structure for the government stake, removal of conflicts and creating a more autonomous environment for PSEs to function in the best interest of all stakeholders. The Committee believes that this will significantly enhance value of the national assets. This should be done in a time-bound manner.

CHAPTER X: LENIENCY MECHANISM

Current regulatory provisions:

Section 24B of the SEBI Act and Section 23O of the Securities Contracts (Regulation) Act, 1956 ("SCRA") provide powers to the Central Government (based on recommendations by SEBI) to grant immunity both from prosecution and imposition of penalty under the SEBI Act and the SCRA for the alleged violation, subject to certain conditions. (Click for *Detailed Provisions*)

In addition, while SEBI currently has a consent mechanism for certain categories of violations, there are no specific provisions in the regulatory framework that empower SEBI to grant leniency (by way of reduction in/waiver of penalty or immunity from prosecution) as well as to protect a whistle-blower who is allegedly in violation of relevant securities laws.

Recommendation and rationale:

A leniency programme creates structural incentives for persons connected with the commission of an infringement to come forward and disclose such violations and assist the regulatory authorities by receiving lenient treatment and protection against victimization. Currently, the Competition Commission of India has powers to grant leniency to cartel members in case they disclose true, full and vital information. The Committee felt that a leniency programme would improve effective detection of violations and enhance ease of investigation and enforcement, while also acting as a deterrent that could result in an increase in the overall compliance of securities regulations.

The Committee felt that SEBI may be empowered to grant leniency and offer protection against victimisation to whistle-blowers in certain instances determined on a case by case basis. Any such power would have to be accompanied by the rules and regulations in relation to the conditions to be satisfied for getting benefits under the leniency programme and protection against victimization, the procedure for the grant of lesser penalty or reduction in liability, the quantum of penalties that are waived when lenient treatment is meted out and protection of the whistle-blower. In a nutshell, availing of leniency provisions is a win-win situation for SEBI as well as the whistle-blower.

The Committee suggests that SEBI take up the above recommendation with the Ministry of Finance. In this regard, the drafts of proposed amendments to the SEBI Act and the SCRA are below:

Current provision in SEBI Act and SCRA	Proposed amended provision in SEBI Act and SCRA
No specific provision	Insertion of a new section [•]: (1) The Board may, if it is satisfied that any person (the Informant) who has disclosed to the Board any alleged violation(s) of this Act or rules or regulations made thereunder and has made full, true and vital disclosures in respect of the alleged violation(s), impose a lesser penalty or liability than that prescribed or waive the same, as it may deem fit, in respect of the Informant, to the extent and in the manner as may be prescribed: Provided also that lesser penalty or liability or waiver of the same shall not be imposed/granted by the Board if the Informant does not continue to cooperate with the Board till the completion of the proceedings before the Board, and if required, shall

	cooperate in any further legal proceedings: Provided also that the Board may, if it is satisfied that the informant had in the course of proceedings,— a) not complied with the condition on which the lesser penalty or liability was imposed or waiver was granted by the Board; or b) had given false evidence or material misstatements; or c) the disclosure made is not vital, and thereupon the informant may be tried for the violation/offence with respect to which lesser penalty or liability was imposed or waiver was granted by the Board and shall also be liable to the imposition of penalty/liability to which the informant has been liable, had lesser penalty or liability not been imposed or waiver not been granted. (2) The discretion of the Board, in regard to reduction in penalty or liability or grant of waiver under this Act, shall be exercised having due regard to – a) the stage at which the informant comes forward with the disclosure; b) the evidence already in possession of the Board; c) the quality of the information provided by the informant; d) role played by the informant in the said violations; and e) the entire facts and circumstances of the case. (3) The Board shall treat as confidential the identity of the informant and the information obtained from such informant and shall not disclose the identity or the information obtained unless- a) the disclosure is required by law; or b) the informant has agreed to such disclosure in writing, which has not been withdrawn in writing until the disclosure is made; or c) there has been a public disclosure by the informant. (4) The Board may require companies to offer protection to the informant or any other person against victimisation in the manner as may be prescribed.

CHAPTER VI - CAPACITY BUILDING IN SEBI FOR ENHANCING CORPORATE GOVERNANCE IN LISTED ENTITIES

Corporate governance deals not only with the *de jure* but also the *de facto* aspects of the law. In this context, SEBI's role as a regulator of capital markets assumes particular importance given that it requires diligent detection, monitoring and enforcement action. Thus, the efficacy of the Committee recommendations depends critically upon SEBI's detection and enforcement capabilities. This chapter focuses on various steps that the Committee recommends to enhance capacity of SEBI in line with global best practices. Broadly, the Committee therefore recommends that SEBI should:

A. enhance the number and skill-sets of its human resources;

B. exploit the power of data science and technology; and

C. strategically work with other agencies, especially for monitoring and enforcement.

A. Bridge the Human Resources Gap

Staff Strength: Based on the Annual Report (CY 2016) of the US Securities and Exchange Commission (SEC), the SEC has almost one employee for each listed company. However, based on SEBI's Annual Report (FY 2017), it appears that SEBI has one employee for six listed companies. In key divisions such as Corporate Finance, which *inter alia* responsible for ascertaining the quality of financial statements of listed entities, SEC has more than 15 times as many employees as SEBI (477 versus 31). Key indicative comparative data in this regard is set out below:

SEC		SEBI Equivalent	
Division	Manpower	Division	Manpower
Corporate Finance	477	Corporate Finance Department	31
Enforcement	1,380	Integrated Surveillance Department Enforcement Department, Investigations Department	214
Investment Management	183	Investment Management Department	53
Economic Analysis and Risk	151	Department of Economic and Policy Analysis (DEPA)	20
Trading and Markets	258	Market Intermediaries Regulation and Supervision Department (MIRSD) Market Regulation Department (MRD)	109
Others	2,105	Others	353
Total	4,554	Total	780

Therefore, staff strength at SEBI needs to be increased to strengthen its monitoring and enforcement functions. SEBI may also at an appropriate stage consider the need to outsource certain functions with relevant safeguards.

Staff Skill and Expertise: Successful enforcement actions by SEBI can have the twin effect of penalising the guilty, on the one hand, and creating a significant deterrent effect on the other hand. However, for such deterrent effects to be felt in India, SEBI must equip itself so that it can adroitly gather evidence with the objective of "investigate to litigate." SEBI needs to develop teams comprising data scientists, accountants, lawyers specialised in corporate law, software engineers

and academicians. The members need to have depth of knowledge within their respective areas as also possess broad expertise across functional areas. In addition, SEBI should build its market intelligence through regular review of market research and reports of proxy advisors.

Revolving Door Policy: Successful leveraging of investments in technology, data science and risk prediction requires high quality professionals. SEBI therefore needs to follow regulators across the world in utilising specialist hires. It may even consider creating a revolving door policy between employees at SEBI and in the private sector, allowing SEBI to hire laterals.

B. Use of Data Science and Risk Prediction

Form a data science department within SEBI: The Committee recommends that a separate department be set up to focus on review of the financial statements and filings to detect reporting, disclosure and audit failures. The principal goal of the department will be to create a robust data processing framework which can form the basis of further investigation, detection of violations involving misleading financial statements and disclosures. The department will also focus on identifying and exploring areas susceptible to fraudulent reporting, including ongoing review of information and use of data analytics.

A sub-unit for assessing accounting quality: The Committee recommends that SEBI set up a sub-unit for reviewing quality of audit (including forensic audit) to investigate any potential red flags in a timely manner. This sub-unit should make extensive use of modern technological tools including text analytics and artificial intelligence. Further, this sub-unit should also be responsible for conducting review of audited accounts and filings by listed entities, with at least a certain percentage of listed entities being covered every year. This percentage should increase to cover more entities over a period of time.

C. Greater collaboration between SEBI and Other Agencies

The Committee recognises that SEBI has worked on investigations in coordination with other regulatory agencies, and believes that there is substantial scope to develop cross-regulator coordination to ensure effective enforcement. In addition to domain-specific regulators like tax authorities, SEBI can work extensively with MCA and leverage stock exchanges to ensure effective investigations, not only by mining information and expertise available with a cross-section of regulators but also piecing together discrete pieces of information/evidence (which individually may not be sufficient) to build a strong case for enforcement. Gradually, cross-regulatory platforms may be built and harmonised with the use of sophisticated technology tools to ensure that an effective monitoring mechanism is established.

SEBI may consider examining the above recommendations in greater detail.

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ANNEXURES

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ANNEXURE 1: LETTER OF THE MINISTRY OF CORPORATE AFFAIRS

अमरदीप सिंह भाटिया
संयुक्त सचिव
Amardeep S Bhatia
Joint Secretary

सत्यमेव जयते

भारत सरकार
कारपोरेट कार्य मंत्रालय
नई दिल्ली
Government of India
Ministry of Corporate Affairs
New Delhi

D.O. No. 11/15/2017-CL-V
Dated: 3rd October, 2017

Dear Sir,

Please refer to the discussions held in the Committee meetings that I had the pleasure to attend wherein inter alia concerns were expressed in extending the jurisdiction through SEBI Listing Obligations and Disclosure Requirements (LODR) over provisions which are already covered under the Companies Act, 2013 (the Act). The draft report of the Committee has been examined and comments on the recommendations were also shared during the last meeting of the Committee by the representative of Ministry of Corporate Affairs.

2. While it is clearly understood that SEBI has the powers to prescribe stringent norms, over and above those prescribed for listed companies, it is felt that such prescription should only be made in exceptional circumstances where inter alia these requirements cannot be covered through the subordinate legislation under the Companies Act, 2013, are required only for listed companies and not for all companies and after examining whether the costs involved justify the benefits on account of the more stringent requirements. Reasons such as improving public accessibility through disclosures may not be sufficient enough reasons for extending jurisdiction as the disclosures made under either of the jurisdictions are publicly available.

3. It is felt that many of the proposed changes involve prescription of higher standards primarily aim at creation of jurisdiction, where there is none at the moment, through SEBI LODR and some changes also propose to extend the jurisdiction over unlisted companies (which are associates or subsidiaries). It would be pertinent to note that, in keeping with the stated Government objective of facilitating ease of doing business and reducing regulatory burden, Government has proposed changes in the Act, which are contained in the Companies (Amendment) Bill, 2017 passed by the Lok Sabha and with the Rajya Sabha for consideration, that are aimed at reducing multiple jurisdictions, where possible. To be noted are the proposed omissions of certain filings by listed companies, the prescriptive powers through Rules under the Act relating to prospectuses and provisions relating to insider trading. It is important, therefore, that in keeping with the emphasis of the Government to facilitate ease of doing business, providing for multiple jurisdictions should be avoided.

कमरा नं. 505 'ए' विंग, शास्त्री भवन, डॉ. राजेन्द्र प्रसाद रोड, नई दिल्ली-110001
Room No. 505 'A' Wing, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi-110001
Phone : 011-23389048, Fax : 011-23074113, E-mail : asonline@gov.in

4. It is also noted that the Committee proposes to make recommendations, which, inter alia, seek to empower SEBI to prescribe a number of additional requirements (through LODR) on matters which have been core company law principles and finds place, rightly so, under the Companies Act only. It is felt that the core company law principles for which specific provisions have been provided in the Act and which should be applicable to all companies uniformly should not be proposed for modification for listed companies. Kind attention is also drawn to section 24 of the Companies Act, 2013 which empowers SEBI to administer certain provisions of the Act with regard to issue and transfer of securities and non-payment of dividend only, and it would be in keeping with the intention of law makers that administration of other provisions specifically provided are not brought under SEBI through LODR.

5. A statement showing proposed recommendations of the Committee and the comments of the Ministry is enclosed. It is assumed that further comments will also be sought by SEBI, allowing for detailed examination, where required.

6. It is understood that it may be difficult to change the recommendations at this stage. In such circumstances, I would request that the comments contained in this letter are taken on record and shared with SEBI either as a part of the report or separately.

With regards,

Yours sincerely,

03/10/2017

(Anurdeep S. Bhatia)

Encls.: As above

Shri Uday Kotak,
Executive Vice Chairman and Managing Director,
Kotak Mahindra Bank Limited and
Chairman, SEBI Committee on Corporate Governance,
27 BKC, C-27, G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai - 400 051
Fax Number - 91-22-67082213

Sl. No.	Chapter No./recommendation No./Title	Remarks of MCA
1.	Ch I:1:Minimum Number of Directors on a Board	Minimum number of directors for a public company has already been prescribed in the CA, 2013. This will be an additional cost to the company. Before prescribing any such limits a study of the top companies may be conducted.
2.	Ch I: 2: Gender Diversity on the Board	The woman director may not be restricted to ID only. The issue can be addressed if a provision is made whereby there may be one woman director who is not a relative.
3.	Ch I: 3: Attendance of Directors	No comments
4.	Ch I: 4: Disclosure of Expertise/ Skills of Directors	No comments
5.	Ch I: 5: Approval for Non-executive Directors on Attaining a Certain Age	This will unduly impinge upon the freedom of the management of the company to decide its non-executive directors
6.	Ch I: 6: Minimum Number of Board Meetings	There is no need to increase the minimum number of Board meetings. There is a provision under proviso to section 173 whereby the Central Government may change the requirement of minimum number of Board meetings for a certain class of companies. Necessary changes if required can be brought under the Companies Act, 2013 through issue of a notification
7.	Ch I: 7: Updation of Knowledge of the Board Members	No comments
8.	Ch I: 9: Quorum for Board meetings	This would directly conflict with the provisions of the CA, 2013. LODR is not required to prescribe the quorum.
9.	Ch I: 10: Separation of the Roles of Non-executive Chairperson and Managing Director/CEO	No comments
10.	Ch I: 11: Matrix Reporting Structure	No comments
11.	Ch I: 13: Disclosures on Board Evaluation	No comments
12.	Ch II: 1: Minimum Number of Independent Directors	No comments
13.	Ch II: 2: Eligibility Criteria for Independent Directors	Ideally, all requirements for IDs should be covered under the Act provisions (including the Schedule) rather than under two statutes.
14.	Ch II: 3: Minimum Compensation to Independent Directors	There is no need to fix the lower limit of compensation to be received by the IDs
15.	Ch II: 4: Disclosures on Resignation of Independent Directors	There is a clarity required as to what would be the consequence of saying that there was no material reason for resignation, when there was actually a material reason. This can be in the form of a guidance since the matter is already covered in the Act
16.	Ch II: 5: Directors and Officers Insurance for Independent Directors	No comments
17.	Ch II: 6: Induction and Training of Independent Directors	No comments
18.	Ch II: 7: Alternate Directors for Independent Directors (IDs)	The requirement of alternate director cannot be done away as it would conflict with existing

		provisions of the Companies Act, 2013. There is no need for a separate prescription under LODR.
19.	Ch II: 8: Lead Independent Director in Companies with Non-independent Chairperson	No comments
20.	Ch II: 9: Exclusive Meeting of Independent Directors	No comments
21.	Ch II: 10: Casual Vacancy of Office of Independent Director (ID)	No comments
22.	Ch III: 1: Minimum Number of Committee Meetings	No comments
23.	Ch III: 2: Role of Audit Committee	No comments.
24.	Ch III: 3: Composition of Nomination and Remuneration Committee	Such amendment in the LODR will have an effect of making the provision in the Companies Act, 2013 completely non-est. This will not be desirable.
25.	Ch III: 5: Composition and Role of Stakeholders Relationship Committee	No comments
26.	Ch III: 6: Quorum for Committee Meetings	No comments
27.	Ch III: 7: Applicability and Role of Risk Management Committee	No comments
28.	Ch III: 8: Membership and Chairpersonship Limit	No comments
29.	Ch IV: 1: Obligation on the Board of the Listed Entity with Respect to Subsidiaries	This would amount to an encroachment into the unlisted space which is regulated by the MCA. The intent and object of the review is also not clear.
30.	Ch IV: 2: Group Governance Unit/ Committee and Policy:	This would amount to an encroachment into the unlisted space which is regulated by the MCA. It is an extension of jurisdiction over unlisted companies indirectly.
31.	Ch IV: 3: Secretarial Audit	If any changes are required then the same may be done only through Companies Act, 2013. The Committee may recommend the changes in the Companies Act, 2013
32.	Ch V: 1: Sharing of Information with Controlling Promoters/ Shareholders with Nominee Directors	No comments
33.	Ch V: 2: Re-classification of Promoters /Classification of Entities as Professionally Managed	No comments
34.	Ch V: 3: Disclosure of Related Party Transactions	In case of half-yearly disclosures there is no objection. LODR and Companies Act, 2013 thresholds should be harmonized.
35.	Ch V: 5: Royalty and Brand Payments to Related Parties	The Committee may consider bringing down the threshold to 2% from 5%
	Ch V: 6. Remuneration to Executive Promoter Directors	The proposed amendment should be subject to the over-arching requirement of section 197 r/w Schedule V.
	Ch V: 7. Remuneration of Non-Executive Directors	The proposed amendment should be subject to the over-arching requirement of section 197 r/w Schedule V.

36.	Ch V: 8: Materiality Policy	Changes in such policies should not have the effect of increasing the limits of RPT provided in the Companies Act, 2013 and rules made thereunder
37.	Ch VI: 1: Submission of Annual Reports	Suggestions may be given for incorporation of similar provisions in the Companies Act, 2013 or the Rules thereunder.
38.	Ch: VI:2. Disclosures Pertaining to Holders of Depository Receipts	The Companies (Amendment) Bill, 2017 contains a provision for maintenance of a register of 'significant beneficial ownership'. The proposed provision may be kept in mind while suggesting newer provisions for disclosure under LODR
39.	Ch VI: 3: Disclosures Pertaining to Credit Rating	No comments
40.	Ch VI: 4: Searchable Formats of Disclosures	No comments
41.	Ch VI: 5: Harmonization of Disclosures	Suggestions may be made so that all disclosures may be made at one place only, for example on MCA21.
42.	Ch VI: 6. Disclosures Pertaining to Analyst/Institutional Investor Meets	No comments
43.	Ch VI: 7. Disclosures of Key Changes in Financial Indicators	There is a need for convergence of reporting requirements under LODR and Companies Act, 2013, as it creates more confusion for the shareholders.
44.	Ch VI: 8. Utilisation of Proceeds of Preferential Issue and Qualified Institutional Placement	No comments
45.	Ch VI: 9. Disclosures in Valuation Reports in Schemes of Arrangement.	The disclosures pertaining to schemes of arrangement and the valuation thereto should be covered by the Companies Act, 2013.
46.	Ch VI: 10 Disclosures Pertaining to Directors	Details of directorship of all directors based on their DIN is freely available on the MCA portal.
47.	Ch VI: 11 Disclosures Pertaining to Disqualification of Directors	No comments
48.	Ch VI: 14 Disclosures on Long-term and Medium-term Strategy	No comments
49.	Ch VI: 15 Prior Intimation of Board meeting to Discuss Bonus Issue	No comments
50.	Ch. VII: 1: Audit Qualifications	No comments
51.	Ch. VII: 2: Independent External Opinion by Auditors	It is not clear as to how it would be ensured that the auditor will appoint an independent expert. In fact there may be inherent incentive for the auditor not to do so. It needs to be ensured that such independent expert is independent of the management as well of the auditor/audit firm.
52.	Ch VII:3: Group Audits	No comments
53.	Ch VII:4: Quarterly Financial Disclosures	No comments
54.	Ch VII: 5: Internal Financial Controls	No comments
55.	Ch VII: 6: Disclosure of Reasons of Resignation of	No comments

	Auditors	
56.	Ch VII: 7: Disclosures on Audit and Non-audit Services Rendered by the Auditor	No comments
57.	Ch VII: 8: Audit Quality Indicators	No comments
58.	Ch VII: 11: Strengthening Monitoring, Oversight and Enforcement by SEBI	Once NFRA is established, it will provide for review. There is no need to include this in the LODR
59.	Ch VII: 11B: Powers of SEBI with Respect to Auditors and Other Statutory Third Party Fiduciaries for Listed Entities	This issue is required to be examined.
60.	Ch. VII:12: Strengthening the Role of ICAI	No comments
61.	Ch: VIII-1:Timeline for Annual General Meetings of Listed Entities	There is a need to align this requirement with the Companies Act, 2013 as prosecutions are launched against defaulting companies based on these timelines.
62.	Ch VIII: 2: E-voting and Webcast of Proceedings of the Meeting	Recommendation was given: E-voting cannot go beyond the closure of AGM. The proposed amendment in any case would violate rule 20(4)(vii) of the Companies (Management & Administration) Rules, 2014. This provision has been dropped at this stage by the Committee.
63.	Ch VIII:3: Stewardship Code	No comments
64.	Ch VIII: 4: Treasury Stock	Suggestions may be given so that a sunset provision may be introduced in the Companies Act, 2013 or the Rules thereunder so as to cover all classes of companies or to provide further clarity, as required.
	Ch VIII: 5. Resolutions sent to Shareholders without Board's Recommendation Many resolutions are sent for approval of the shareholders without obtaining any previous approval of the Board. The proposed amendment requires that the statement under section 102 of the CA, 2013 sent to the shareholders should spell out the recommendation of the Board for each resolution. However in exceptional circumstances to be explained in writing, the Board may not suggest its view on the resolution.	This provision may not be required as the contours of "exceptional circumstances" has not been provided clearly. Such changes, if required should be applicable to all companies and should be covered under the Companies Act, 2013 or the Rules thereunder. Needs further deliberations.
66	Ch XI: Capacity building in SEBI for Enhancing Corporate Governance in Listed Entities	No comments

ANNEXURE 2: LETTER OF THE MINISTRY OF FINANCE

MOST IMMEDIATE
BY SPEED POST/E-MAIL

F. No. 11/00/2017-PM
Ministry of Finance
Department of Economic Affairs
Financial Markets Division

Room No.63, North Block, New Delhi
Dated: the 5th October, 2017

To,

Shri Uday Kotak
Executive Vice Chairman and Managing Director,
Kotak Mahindra Bank Limited and
Chairman, SEBI Committee on Corporate Governance,
27 BKC, C-27, G Block,
Bandra Kurla Complex, Bandra (E), Mumbai-400051

Subject: SEBI's Committee on Corporate Governance

Sir,

Kind reference is invited to the above subject.

2. In this regard, I am directed to enclose herewith the observation/comments of Joint Secretary (Financial Markets) on the report of the above-mentioned committee (copy enclosed). The same may be appropriately incorporated in the report. In case the Committee is not able to incorporate any of the suggestion/observation, it should be included as observation note in the report.

3. This issues with the approval of Joint Secretary (Financial Markets).

Yours faithfully,

(Deepak Rajan)
Deputy Director (Primary Markets)
Tele: 011-23092300

Copy to: Ms. Nila Khanolkar, Assistant General Manager (AGM), Corporate Finance Department, SEBI Bhavan, Plot No. C-4A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051.

Observations/ comments of Joint Secretary (Financial Markets) on the revised report of the Committee on Corporate Governance set up by Securities and Exchange Board of India (SEBI)

Chapter 1: Composition and Role of the Board of Directors

1: Minimum number of Directors on the Board

It has been recommended by the committee that for any listed entity, a minimum of six directors may be required on the Board of Directors. At present, the Companies Act, 2013 requires a minimum of three directors in a public limited company.

While this recommendation is agreeable in principle, it is suggested that this change in the composition of the board of directors of Indian companies should be brought about in a phased manner and compliance of the six director requirement should be made applicable only to the top 500 listed companies initially and subsequently to all companies. With the help of such incremental iterations, the small and medium sized companies will get adequate time to realign their internal compliances.

4: Disclosure of expertise/skills of directors:

It was recommended by the committee that the board of directors of every listed entity should be required to list the competencies/expertise that it believes its directors should possess. It should also be required to disclose the list of competencies/ expertise that its board members actually possess.

While agreeing with the recommendation, it is suggested that in case of a mismatch in the skill set of the directors, the reasons as to why it does not match should be mentioned/disclosed by companies.

Chapter 2: The Institution of Independent Directors

5. Directors and Officers Insurance for Independent Directors

It is not mandatory under the Companies Act, 2013 for a company to undertake such D&O insurance. It was recommended by the committee that it may initially be made mandatory for Top 500 companies by market capitalization, to undertake D&O insurance for its IDs, which may be subsequently extended to all listed entities. However, it may be left to the board of directors of the listed entity to determine the quantum of and types of risks covered under such insurance.

While we agree with the recommendation of the committee, it is suggested that the types of risks covered under such insurance may be predetermined for companies. Quantum may be left to the decision of the board of directors.

7. Alternate Directors for Independent Directors (IDs)

Companies Act, 2013 permits alternate directors (alternate for a director during his absence for a period of not less than three months (non-India) for all directors including IDs. It also

states that no person shall be appointed as an alternate director for an ID unless he is qualified to be appointed as an ID under the provisions of this Act. The committee was of the opinion that it may not be in the spirit of law to permit alternate directors for IDs.

The recommended amendment would create practical difficulties. On the one hand, the committee recommends requirement of at least 50% attendance for independent directors, and on the other hand, it is suggesting that no alternate director may be permitted in place of an independent director. This will create a situation where crucial decisions would have to be taken without the presence of IDs. Section 161 of Companies Act, 2013 prescribes the eligibility for Alternate Directors that may be followed.

Further, it is suggested that an individual may not be appointed as an alternate director for more than one director in the same company at the same time.

Therefore, we do not agree with the current recommendation.

Chapter V- Promoters/Controlling Shareholders and Related Party Transactions

2. Re-classification of Promoters /Classification of Entities as Professionally Managed

Presently, the Companies Act, 2013 is silent on reclassification of promoters, while the SEBI LODR Regulations permit reclassification of promoters in limited circumstances.The Committee has recommended that for where there are multiple promoters/promoter groups and where there is only one specific promoter/ promoter group who wishes to be reclassified can go for reclassification as per the recommendations of the report that where there is no identifiable promoter/promoter group, the existing 1% threshold to be able to classify the entity as professionally managed is too low and merits an increase to 10% for the stated reasons. It is suggested that this threshold may be decreased to 5% instead of the proposed 10% to protect the interest of the investors.

Chapter VI- Disclosures and Transparency

2. Disclosures pertaining to Holders of Depository Receipts

In respect of the recommendation on disclosures pertaining to holders of depository receipts, there is a Working group under Joint Secretary (Financial Markets) comprising of Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI), Central Board of Direct Taxes (CBDT), Ministry of Corporate Affairs (MCA) looking into the issues relating to Depository Receipts including Beneficial Owners. As the issue is being deliberated upon by the Ministry of Finance and SEBI, any recommendation by us in this report prior to the outcome of the working group would not be acceptable.

Chapter VII- Accounting and Audit related Issues

3. Group Audits

The recommendation that for listed entities in India, the auditor of the holding company should be made responsible for audit opinion of all material unlisted Indian subsidiaries is acceptable to the extent that the term 'responsible' is more specifically defined in the report particularly for the purpose of its legal implications.

Chapter XII- Capacity building in SEBI for Enhancing Corporate Governance in Listed Entities

Since inception of SEBI, there is already provision in SEBI Act, 1992 for strengthening the staff strength of SEBI. Under Section 9 of SEBI Act, 1992 the Board has been empowered to appoint such officers and employees as it considers necessary for the efficient discharge of its functions under this Act. SEBI is independent regulator and may appoint officers as it may deem fit.

Moreover, it is not the mandate of the Committee. This committee that has been mandated to report on ways to improve the Governance Standards of listed entities and it is the administrative matter for SEBI to examine and take appropriate steps to enhance capacity of SEBI.

ANNEXURE 3: DETAILED REGULATORY PROVISIONS

1. Minimum Number of Directors on a Board

Companies Act, 2013

Sec 149: Company to have Board of Directors.—

(1) Every company shall have a Board of Directors consisting of individuals as directors and shall have—

(a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and

(b) a maximum of fifteen directors:

Provided that a company may appoint more than fifteen directors after passing a special resolution:

SEBI LODR Regulations

No specific provision.

(Back to Recommendation)

2. Gender Diversity on the Board

Companies Act, 2013

Second Proviso to Sec 149.

Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

Companies (Appointment and Qualification of Directors) Rules, 2014

Rule 3: Woman director on the Board.-

The following class of companies shall appoint at least one woman director-

(i) every listed company;

SEBI LODR Regulations

Reg 17(1)(a)

Board of directors shall have an optimum combination of executive and nonexecutive directors with at least one woman director and not less than fifty percent. of the board of directors shall comprise of non-executive directors;

(Back to Recommendation)

3. Attendance of Directors

Companies Act, 2013

Section 167(1) The office of a director shall become vacant in case-

(b) He absents himself from all the meetings of the Board of Directors held during the period of twelve months with our without seeking leave of absence of the Board

SEBI LODR Regulations

No specific provision.

(Back to Recommendation)

4. Disclosure of Expertise/Skills of Directors

Companies Act, 2013

Sec 152(5) of Companies Act, 2013:

A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed:

Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.

Rule 5 of Companies (Appointment and Qualification of Directors) Rules, 2014:

Qualifications of independent director.-

An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business

SEBI LODR Regulations

Reg 36(3)- Documents & information to shareholders.

(3)In case of the appointment of a new director or re-appointment of a director, the shareholders must be provided with the following information:

(a) a brief resume of the director;

(b) nature of his expertise in specific functional areas;

(c) disclosure of relationships between directors inter-se;

(d) names of listed entities in which the person also holds the directorship and the membership of Committees of the board; and

(e) shareholding of non-executive directors.

(Back to Recommendation)

5. Approval for Non-executive Directors on Attaining a Certain Age

While no specific provision exists for approval for non-executive directors on attaining a certain age, the following provisions are in relation to approval for executive directors on attaining a certain age:

Companies Act, 2013

Sec 196(3)

No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who —

(a) is below the age of twenty-one years or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

SEBI LODR Regulations

No specific provision.

(Back to Recommendation)

6. Minimum Number of Board Meetings

Companies Act, 2013
Sec 173(1):
Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board:
Provided that the Central Government may, by notification, direct that the provisions of this subsection shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.

SEBI LODR Regulations
Reg 17(2)
The board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.

(Back to Recommendation)

7. Updation of Knowledge of the Board Members

Companies Act, 2013
Schedule IV (III)(1):
The independent directors shall undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company.

SEBI LODR Regulations
Reg (4)(2)(f)(iii)(4)
The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.

Reg 17(3)
The board of directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity, prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliances.

Reg 25(7)
The listed entity shall familiarise the independent directors through various programmes about the listed entity, including the following:
(a) nature of the industry in which the listed entity operates,
(b) business model of the listed entity;
(c) roles, rights, responsibilities of independent directors; and
(d) any other relevant information.

(Back to Recommendation)

8. Quorum for Board Meetings

Companies Act, 2013

Sec 174. Quorum for meetings of the Board.

(1) The quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

Relevant provision of the Companies Act (Amendment) Bill, 2017

Where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter which shall not be dealt through video conferencing or other audio visual means.

"In section 173 of the principal Act, in sub-section (2), after the first proviso, the following proviso shall be inserted, namely:—
"Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso".

SEBI LODR Regulations

No specific provision.

(Back to Recommendation)

9. Separation of the Roles of Non-executive Chairperson and Managing Director/CEO

Companies Act, 2013

Proviso to Sec 203.

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

(a) the articles of such a company provide otherwise; or

(b) the company does not carry multiple businesses:

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

SEBI LODR Regulations

Schedule II: Corporate Governance:

Part E: Discretionary Requirements

D. Separate posts of chairperson and chief executive officer

The listed entity may appoint separate persons to the post of chairperson and managing director or chief executive officer.

(Back to Recommendation)

10. Matrix Reporting Structure

Companies Act, 2013

Sec 179. Powers of the Board

(1) The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:

(3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—

(a) to make calls on shareholders in respect of money unpaid on their shares;
(b) to authorise buy-back of securities under section 68;
(c) to issue securities, including debentures, whether in or outside India;
(d) to borrow monies;
(e) to invest the funds of the company;
(f) to grant loans or give guarantee or provide security in respect of loans;
(g) to approve financial statement and the Board's report;
(h) to diversify the business of the company;
(i) to approve amalgamation, merger or reconstruction;
(j) to take over a company or acquire a controlling or substantial stake in another company;
(k) any other matter which may be prescribed:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify:

SEBI LODR Regulations

Reg 4(2)(f)

(ii) Key functions of the board of directors-

(1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.

(2) Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.

(3) Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.

(4) Aligning key managerial personnel and remuneration of board of directors with the longer term interests of the listed entity and its shareholders.

(5) Ensuring a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.

(6) Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.

(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

(8) Overseeing the process of disclosure and communications.

(9) Monitoring and reviewing board of director's evaluation framework.

(iii) Other responsibilities:

(1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.

(2) The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.
(3) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.
(4) The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.
(5) Where decisions of the board of directors may affect different shareholder groups differently, the board of directors shall treat all shareholders fairly.
(6) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.
(7) The board of directors shall exercise objective independent judgment on corporate affairs.
(8) The board of directors shall consider assigning a sufficient number of nonexecutive members of the board of directors capable of exercising independent judgment to tasks where there is a potential for conflict of interest.
(9) The board of directors shall ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the listed entity to excessive risk.
(10) The board of directors shall have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the listed entity's focus.
(11) When committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors.
(12) Members of the board of directors shall be able to commit themselves effectively to their responsibilities.
(13) In order to fulfil their responsibilities, members of the board of directors shall have access to accurate, relevant and timely information.
(14) The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors.

(Back to Recommendation)

11. Maximum Number of Directorships

Companies Act, 2013

Sec 165. Number of directorships.

(1) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time:

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation.— For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

Relevant provisions of the Companies Act (Amendment) Bill, 2017

For reckoning the limit of directorships, the directorship in a dormant company shall not be included.

In section 165 of the principal Act, in sub-section (1), the Explanation shall be renumbered as Explanation I and after Explanation I as so numbered, the following Explanation shall be inserted, namely:—

"Explanation II.—For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.".

SEBI LODR Regulations

Reg 25. Obligations with respect to independent directors.

(1) A person shall not serve as an independent director in more than seven listed entities:

Provided that any person who is serving as a whole time director in any listed entity shall serve as an independent director in not more than three listed entities.

(Back to Recommendation)

12. Disclosures on Board Evaluation

Companies Act, 2013

Sec 134(3)

There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;

Sec 178(2)

The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

SCHEDULE IV: CODE FOR INDEPENDENT DIRECTORS

II. Role and functions. (2) The independent directors shall bring an objective view in the evaluation of the performance of board and management;

V. Re-appointment: The re-appointment of independent director shall be on the basis of report of performance evaluation.

VII. Separate meetings:

(1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;

(2) All the independent directors of the company shall strive to be present at such meeting;

(3) The meeting shall: (a) review the performance of non-independent directors and the Board as a whole; (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors; (c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

VIII. Evaluation mechanism:

(1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.

(2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

Companies (Accounts and Audit) Rules, 2014
Rule 8 (4)
Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

Relevant provisions of the Companies Act (Amendment) Bill, 2017

In section 134 of the principal Act, in sub-section (3), in clause (p) the language proposed to be changed.

For the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" shall be substituted.

SEBI LODR Regulations
Reg 4(2)(f)(ii): Key functions of the board of directors-
(9) Monitoring and reviewing board of director's evaluation framework.

Reg 17(10):
The performance evaluation of independent directors shall be done by the entire board of directors; **Provided that** in the above evaluation the directors who are subject to evaluation shall not participate:

Reg 25:
(3) The independent directors of the listed entity shall hold at least one meeting in a year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.
(4) The independent directors in the meeting referred in sub-regulation (3) shall, inter alia- (a) review the performance of non-independent directors and the board of directors as a whole; (b) review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors; (c) assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

Schedule II (PART D) (A) ROLE OF NOMINATION AND REMUNERATION COMMITTEE:
Role of committee shall, inter-alia, include the following:
(2)formulation of criteria for evaluation of performance of independent directors and the board of directors;
(4) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.
(5) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.

Schedule V: Corporate Governance Report.
The following disclosures shall be made in the section on the corporate governance of the annual report.
(4) Nomination and Remuneration Committee:
(d) performance evaluation criteria for independent directors

(Back to Recommendation)

13. Minimum Number of Independent Directors

Companies Act, 2013
Sec 149 (4): Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.
Explanation.—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

Companies (Appointment and Qualification of Directors) Rules, 2014:
Rule 4: The following class or classes of companies shall have at least two directors as independent directors -
(i) the Public Companies having paid up share capital of ten crore rupees or more; or
(ii) the Public Companies having turnover of one hundred crore rupees or more; or
(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:
Provided that in case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it:
Provided further that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later:
Provided also that where a company ceases to fulfil any of three conditions laid down in sub-rule (1) for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions;
Explanation. - For the purposes of this rule, it is hereby clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:
Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.

SEBI LODR Regulations
Reg 17(1) (b):
Where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:
Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

Explanation.-For the purpose of this clause, the expression "related to any promoter" shall have the following meaning: (i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it; (ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

(Back to Recommendation)

14. Eligibility Criteria of Independent Directors

Companies Act, 2013

Sec 134 (3)(d):
There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include a statement on declaration given by independent directors under sub-section (6) of section 149.

Sec 149 (6):
An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—
(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
(e) who, neither himself nor any of his relatives—
(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of -
(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or
(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company; or
(f) who possesses such other qualifications as may be prescribed.

Sec 149 (7):
Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6).

Relevant provisions of the Companies Act (Amendment) Bill, 2017

Some changes in definition of Independent Director have been proposed.

In section 149 of the principal Act, (ii) in sub-section (6), for clause (a)[5], the following clause shall be substituted, namely:—

"(a) none of whose relatives—

(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or

(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);";

Schedule IV: Code for Independent Directors
IV. Manner of Appointment
(3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.

SEBI LODR Regulations
Reg 16(1)(b):
"independent director" means a non-executive director, other than a nominee director of the listed entity:

[5] none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(i) who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience;
(ii) who is or was not a promoter of the listed entity or its holding, subsidiary or associate company;
(iii) who is not related to promoters or directors in the listed entity, its holding, subsidiary or associate company;
(iv) who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
(v) none of whose relatives has or had pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed from time to time, whichever is lower, during the two immediately preceding financial years or during the current financial year;
(vi) who, neither himself, nor whose relative(s) —
(A)holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
(B) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of —
(1)a firm of auditors or company secretaries in practice or cost auditors of the listed entity or its holding, subsidiary or associate company; or
(2) any legal or a consulting firm that has or had any transaction with the listed entity, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
(C) holds together with his relatives two per cent or more of the total voting power of the listed entity; or
(D)is a chief executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts or corpus from the listed entity, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the listed entity;
(E) is a material supplier, service provider or customer or a lessor or lessee of the listed entity;
(vii) who is not less than 21 years of age.

(Back to Recommendation)

15. Minimum Compensation to Independent Directors

Companies Act, 2013

Sec 197. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits

(1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits: Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent of the net profits of the company, subject to the provisions of Schedule V: Provided further that, except with the approval of the company in general meeting,—
(i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent of the net profits of the company and if there is more than one such

director remuneration shall not exceed ten per cent of the net profits to all such directors and manager taken together;
(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—
(A) one per cent of the net profits of the company, if there is a managing or whole-time director or manager;
(B) three per cent of the net profits in any other case.
(2) The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (5) A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board: Provided that the amount of such fees shall not exceed the amount as may be prescribed: Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed.

Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.
Rule 4: Sitting Fees
A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof:
Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

SEBI LODR Regulations
No specific provision.

(Back to Recommendation)

16. Disclosure on Resignation of Independent Directors

Companies Act, 2013
Proviso to Section 168(1): Provided that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

Companies (Appointment and Qualification of Directors) Rules, 2014:
Rule 16: Where a director resigns from his office, he shall within a period of thirty days from the date of resignation, forward to the Registrar a copy of his resignation along with reasons for the resignation in Form DIR-11 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

SEBI LODR Regulations
No specific provision.

SEBI circular No. CIR/CFD/CMO/4/2015 dated September 09, 2015 (Annexure I)
7. Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), Auditor and Compliance Officer:

7.1.reason for change viz. appointment, resignation, removal, death or otherwise;
7.2.date of appointment/cessation (as applicable) & term of appointment;
7.3.bnef profile (in case of appointment);
7.4.disclosure of relationships between directors (in case of appointment of a director).

(Back to Recommendation)

17. Directors and Officers Insurance for Independent Directors

Companies Act, 2013
Sec 197(13):
Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel:
Provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.

Schedule IV: Code for Independent Directors
Para (IV)(4)(d): The appointment of independent directors shall be formalised through a letter of appointment, which shall set out provision for Directors and Officers (D and O) insurance, if any;

SEBI LODR Regulations
No specific provision.

(Back to Recommendation)

18. Induction and Training of Independent Directors

Companies Act, 2013:
Schedule IV (III)(1):
The independent directors shall undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company.

SEBI LODR Regulations:
Reg (4)(2)(f)(ii)(4)
The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.

Reg 25(7)
The listed entity shall familiarise the independent directors through various programmes about the listed entity, including the following:
(a) nature of the industry in which the listed entity operates;
(b) business model of the listed entity;
(c) roles, rights, responsibilities of independent directors; and
(d) any other relevant information.

(Back to Recommendation)

19. Alternate Directors for Independent Directors

Companies Act, 2013
Section 161 (2)
The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate

directorship for any other director in the company, to act as an alternate director for a director during his absence for a period of not less than three months from India:
Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act:
Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India:
Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

SEBI LODR Regulations
No specific provision.

(Back to Recommendation)

20. Exclusive Meeting of Independent Directors

Companies Act, 2013
Schedule IV: Code for Independent Directors
VII. Separate Meetings:
(1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;
(2) All the independent directors of the company shall strive to be present at such meeting;
(3) The meeting shall:
- c) review the performance of non-independent directors and the Board as a whole;
- d) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
- e) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

SEBI LODR Regulations
Reg 25
(3) The independent directors of the listed entity shall hold at least one meeting in a year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.
(4) The independent directors in the meeting referred in sub-regulation (3) shall, interalia-
- (a) review the performance of non-independent directors and the board of directors as a whole;
- (b) review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors;
- (c) assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

(Back to Recommendation)

21. Casual Vacancy of Office of Independent Director

Companies Act, 2013
Section 161(4)
In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board:
Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

Schedule IV: Code for Independent Directors
VII. Resignation or Removal :
(2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be.

Companies (Appointment and Qualification of Director) Rules, 2014
Second Proviso to Rule 4:
Provided further that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later

Relevant provisions of the Companies Act (Amendment) Bill, 2017

The approval of members will be required to fill the casual vacancy of IDs.

The casual vacancy in the office of Independent Director shall be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting.

SEBI LODR Regulations
Reg 25(6)
An independent director who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by listed entity at the earliest but not later than the immediate next meeting of the board of directors or three months from the date of such vacancy, whichever is later:
Provided that where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director shall not apply.

(Back to Recommendation)

22. Minimum Number of Committee Meetings

Companies Act, 2013
No specific provision on meetings of Audit Committee.

SEBI LODR Regulations
Reg 18(2)(a)
The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.

(Back to Recommendation)

23. Role of Audit Committee

Companies Act, 2013
Sec 177. Audit Committee
(4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia*, include,—
- **(i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;**
- **(ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;**
- **(iii) examination of the financial statement and the auditors' report thereon;**
- **(iv) approval or any subsequent modification of transactions of the company with related parties;**
  Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;
- **(v) scrutiny of inter-corporate loans and investments;**
- **(vi) valuation of undertakings or assets of the company, wherever it is necessary;**
- **(vii) evaluation of internal financial controls and risk management systems;**
- **(viii) monitoring the end use of funds raised through public offers and related matters.**

(5) The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.

(6) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.

SEBI LODR Regulations
Reg 18(2)(c):
The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

Schedule II Part C: Role of The Audit Committee And Review Of Information By Audit Committee

A. The role of the audit committee shall include the following:

(1) oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;

(2) recommendation for appointment, remuneration and terms of appointment of auditors of the listed entity;

(3) approval of payment to statutory auditors for any other services rendered by the statutory auditors;

(4) reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:

(a) matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;

(b) changes, if any, in accounting policies and practices and reasons for the same;

(c) major accounting entries involving estimates based on the exercise of judgment by management;

(d) significant adjustments made in the financial statements arising out of audit findings;

(e) compliance with listing and other legal requirements relating to financial statements;

(f) disclosure of any related party transactions;

(g) modified opinion(s) in the draft audit report;

(5) reviewing, with the management, the quarterly financial statements before submission to the board for approval;

(6) reviewing, with the management, the statement of uses/application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the board to take up steps in this matter;

(7) reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process;

(8) approval or any subsequent modification of transactions of the listed entity with related parties;

(9) scrutiny of inter-corporate loans and investments;

(10) valuation of undertakings or assets of the listed entity, wherever it is necessary;

(11) evaluation of internal financial controls and risk management systems;

(12) reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;

(13) reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;

(14) discussion with internal auditors of any significant findings and follow up there on;

(15) reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board;

(16) discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;

(17) to look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors;

(18) to review the functioning of the whistle-blower mechanism;

(19) approval of appointment of chief financial officer after assessing the qualifications, experience and background, etc. of the candidate;

(20) Carrying out any other function as is mentioned in the terms of reference of the audit committee.

8. The audit committee shall mandatorily review the following information:
(1) management discussion and analysis of financial condition and results of operations;
(2) statement of significant related party transactions (as defined by the audit committee), submitted by management;
(3) management letters/letters of internal control weaknesses issued by the statutory auditors;
(4) internal audit reports relating to internal control weaknesses; and
(5) the appointment, removal and terms of remuneration of the chief internal auditor shall be subject to review by the audit committee.
(6) statement of deviations:
(a) quarterly statement of deviation(s) including report of monitoring agency, if applicable, submitted to stock exchange(s) in terms of Regulation 32(1).
(b) annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice in terms of Regulation 32(7).

(Back to Recommendation)

24. Composition of Nomination and Remuneration Committee

Companies Act, 2013
Sec 178(1)
The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors.

Relevant provision of the Companies Act (Amendment) Bill, 2017

The word "public" is proposed to be added.

Every listed public company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee

SEBI LODR Regulations
Reg 19(1)(c)
(1) The board of directors shall constitute the nomination and remuneration committee as follows:
(c) at least fifty percent of the directors shall be independent directors.

(Back to Recommendation)

25. Role of Nomination and Remuneration Committee

Companies Act, 2013
Sec 178
(2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.
(3) The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a

policy, relating to the remuneration for the directors, key managerial personnel and other employees.

(4) The Nomination and Remuneration Committee shall, while formulating the policy under subsection (3) ensure that—

(a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;

(b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and

(c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals:

Provided that such policy shall be disclosed in the Board's report.

SEBI LODR Regulations

Schedule II: Corporate Governance

Part D (A): Role of Nomination And Remuneration Committee:

Role of committee shall, inter-alia, include the following:

(1) formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board of directors a policy relating to, the remuneration of the directors, key managerial personnel and other employees;

(2) formulation of criteria for evaluation of performance of independent directors and the board of directors;

(3) devising a policy on diversity of board of directors;

(4) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.

(5) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.

(Back to Recommendation)

26. Composition and Role of Stakeholders Relationship Committee

Companies Act, 2013

Sec 178

(5) The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a nonexecutive director and such other members as may be decided by the Board.

(6) The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

SEBI LODR Regulations

Reg 20

(1) The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders.

(2) The chairperson of this committee shall be a non-executive director.

(3) The board of directors shall decide other members of this committee.

(4) The role of the Stakeholders Relationship Committee shall be as specified as in Part D of the Schedule II.

Schedule II: Corporate Governance
Part D (B): Stakeholders Relationship Committee
The Committee shall consider and resolve the grievances of the security holders of the listed entity including complaints related to transfer of shares, non-receipt of annual report and non-receipt of declared dividends.

(Back to Recommendation)

27. Quorum for Committee Meetings

Companies Act, 2013
No specific provision.

SEBI LODR Regulations
The provision for quorum for Audit Committee meetings are specified hereunder:
Reg 18(2)(b):
The quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater, with at least two independent directors.

(Back to Recommendation)

28. Applicability and Role of Risk Management Committee

Companies Act, 2013
No specific provision.

SEBI LODR Regulations
Regulation 21: Risk Management Committee.
(5) The provisions of this regulation shall be applicable to top 100 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

(Back to Recommendation)

29. Membership and Chairpersonship Limit

Companies Act, 2013
No specific provision.

SEBI LODR Regulations
Regulation 26.
(1) A director shall not be a member in more than ten committees or act as chairperson of more than five committees across all listed entities in which he is a director which shall be determined as follows:
...
(b) for the purpose of determination of limit, chairpersonship and membership of the audit committee and the Stakeholders' Relationship Committee alone shall be considered.

[Back to Recommendation]

30. Obligation on the Board of the Listed Entity with Respect to Subsidiaries

Companies Act, 2013

No specific provision.

SEBI LODR Regulations

Reg 24. Corporate governance requirements with respect to subsidiary of listed entity.

(1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, incorporated in India.

(2) The audit committee of the listed entity shall also review the financial statements, in particular, the investments made by the unlisted subsidiary.

(3) The minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity.

(4) The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.

Explanation.-For the purpose of this regulation, the term "significant transaction or arrangement" shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted material subsidiary for the immediately preceding accounting year.

(5) A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than fifty percent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal.

(6) Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal.

(7) Where a listed entity has a listed subsidiary, which is itself a holding company, the provisions of this regulation shall apply to the listed subsidiary in so far as its subsidiaries are concerned.

(Back to Recommendation)

31. Secretarial Audit

Companies Act, 2013

Section 204: Secretarial audit for bigger companies.

(1) Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.

(2) It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.

(3) The Board of Directors, in their report made in terms of sub-section (3) of section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report under sub-section (1).

(4) If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in

practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Companies (Appointment and Remuneration Of Managerial Personnel) Rules, 2014
Rule 9. Secretarial Audit Report.--
(1) For the purposes of sub-section (1) of section 204, the other class of companies shall be as under-

(a) every public company having a paid-up share capital of fifty crore rupees or more; or
(b) every public company having a turnover of two hundred fifty crore rupees or more.

(2) The format of the Secretarial Audit Report shall be in Form No. MR.3.

SEBI LODR Regulations
No specific provision.

(Back to Recommendation)

32. Sharing of Information with Controlling Promoters/Shareholders with Nominee Directors

SEBI PIT Regulations
Regulation 3(1):
No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purpose, performance of duties or discharge of legal obligations.

Regulation 3(2):
No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

SEBI LODR Regulations
Regulation 4(1)(f)
The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles: ... Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by investors.

Regulation 4(2)(c)(i)
Equitable treatment: The listed entity shall ensure equitable treatment of all shareholders, including minority and foreign shareholders, in the following manner:... All shareholders of the same series of a class shall be treated equally.

Regulation 4(2)(e)(ii)
Disclosure and transparency: The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity, in the following manner:.... Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by users.

(Back to Recommendations)

33. Re-classification of Promoters /Classification of Entities as Professionally Managed

Companies Act, 2013
No specific provision.

SEBI LODR Regulations
Reg 31A:
(2) The stock exchange, specified in sub-regulation (1), shall allow modification or reclassification of the status of the shareholders, only upon receipt of a request from the concerned listed entity or the concerned shareholders along with all relevant evidence and on being satisfied with the compliance of conditions mentioned in this regulation.
(3) In case of entities listed on more than one stock exchange, the concerned stock exchanges shall jointly decide on the application of the entity/shareholders, as specified in sub-regulation(2).
(5) When a new promoter replaces the previous promoter subsequent to an open offer or in any other manner, re-classification may be permitted subject to approval of shareholders in the general meeting and compliance of the following conditions:
(a) Such promoter along with the promoter group and the Persons Acting in Concert shall not hold more than ten per cent of the paid-up equity capital of the entity. (b) Such promoter shall not continue to have any special rights through formal or informal arrangements. All shareholding agreements granting special rights to such entities shall be terminated. (c) Such promoters and their relatives shall not act as key managerial person for a period of more than three years from the date of shareholders' approval: Provided that the resolution of the said shareholders' meeting must specifically grant approval for such promoter to act as key managerial person.
(6) Where an entity becomes professionally managed and does not have any identifiable promoter the existing promoters may be re-classified as public shareholders subject to approval of the shareholders in a general meeting.
Explanation.- For the purposes of this sub-regulation an entity may be considered as professionally managed, if-

(i) No person or group along with persons acting in concert taken together shall hold more than one per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/Depository Receipts: Provided that any mutual fund, bank, insurance company, financial institution, foreign portfolio investor may individually hold up to ten per cent paid-up equity capital of the entity including any holding of convertibles/outstanding warrants/Depository Receipts.
(ii) The promoters seeking reclassification and their relatives may act as key managerial personnel in the entity only subject to shareholders' approval and for a period not exceeding three years from the date of shareholders' approval.
(iii) The promoter seeking reclassification along with his promoter group entities and the persons acting in concert shall not have any special right through formal or informal arrangements. All shareholding agreements granting special rights to such outgoing entities shall be terminated.

(7) Without prejudice to sub-regulations (5) and (6), re-classification of promoter as public shareholders shall be subject to the following conditions:

(a) Such promoter shall not, directly or indirectly, exercise control, over the affairs of the entity.
(b) Increase in the level of public shareholding pursuant to re-classification of promoter shall not be counted towards achieving compliance with minimum public shareholding requirement under rule 19A of the Securities Contracts (Regulation) Rules, 1957, and the provisions of these regulations.

(c) The event of re-classification shall be disclosed to the stock exchanges as a material event in accordance with the provisions of these regulations.
(d) Board may relax any condition for re-classification in specific cases, if it is satisfied about non-exercise of control by the outgoing promoter or its persons acting in concert.

(Back to Recommendation)

34. Disclosure of Related Party Transactions

Companies Act, 2013
Sec 188. Related Party Transactions
(2) Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

Sec 189. Register of contracts or arrangements in which directors are interested.
(1) Every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (2) of section 184 or section 188 applies, in such manner and containing such particulars as may be prescribed and after entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting.

SEBI LODR Regulations
Reg 2(1)(zc)
"related party transaction" means a transfer of resources, services or obligations between a listed entity and a related party, regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract:
Provided that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);

Reg 27 (2)
(a) The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s) within fifteen days from close of the quarter.
(b) Details of all material transactions with related parties shall be disclosed along with the report mentioned in clause (a) of sub-regulation (2).

Reg 46(2)(g)
The listed entity shall disseminate the following information on its website: ... policy on dealing with related party transactions.

Schedule V: Annual report
The annual report shall contain the following additional disclosures:
A. Related Party Disclosure:
1. The listed entity shall make disclosures in compliance with the Accounting Standard on "Related Party Disclosures".

2. The disclosure requirements shall be as follows:

Sr.No.	In the accounts of	Disclosures of amounts at the year end and the maximum amount of loans/advances/investments outstanding during the year.
1.	Holding Company	• Loans and advances in the nature of loans to subsidiaries by name and amount. • Loans and advances in the nature of loans to associates by name and amount. • Loans and advances in the nature of loans to firms/companies in which directors are interested by name and amount.
2.	Subsidiary	Same disclosures as applicable to the parent company in the accounts of subsidiary company.
3.	Holding Company	Investments by the loanee in the shares of parent company and subsidiary company, when the company has made a loan or advance in the nature of loan.

For the purpose of above disclosures directors' interest shall have the same meaning as given in Section 184 of Companies Act, 2013.

3. The above disclosures shall be applicable to all listed entities except for listed banks.

C. Corporate Governance Report

The following disclosures shall be made in the section on the corporate governance of the annual report.

(10) Other Disclosures:

(a) disclosures on materially significant related party transactions that may have potential conflict with the interests of listed entity at large;

(f) web link where policy on dealing with related party transactions;

(Back to Recommendation)

35. Approval of Related Party Transactions

Companies Act, 2013

Sec 188. (1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—

(a) sale, purchase or supply of any goods or materials;

(b) selling or otherwise disposing of, or buying, property of any kind;

(c) leasing of property of any kind;

(d) availing or rendering of any services;

(e) appointment of any agent for purchase or sale of goods, materials, services or property;

(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and

(g) underwriting the subscription of any securities or derivatives thereof, of the company:

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a resolution:

Provided further that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:

SEBI LODR Regulations

Reg 23(4) All material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party to the particular transaction or not.

(Back to Recommendation)

36. Remuneration to Executive Promoter Directors

Companies Act, 2013

Sec 197. Overall maximum managerial remuneration and managerial remuneration in cases of absence or inadequacy of profits.

(1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:

Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting,—

(i) the remuneration payable to any one managing director, or whole-time director or manager shall not exceed five per cent of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent of the net profits to all such directors and manager taken together;

(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(A) one per cent of the net profits of the company, if there is a managing or whole-time director or manager;

(B) three per cent of the net profits in any other case.

SEBI LODR Regulations

No specific provision.

(Back to Recommendation)

37. Remuneration of Non-executive Directors

Companies Act, 2013

Sec 197. Overall maximum managerial remuneration and managerial remuneration in cases of absence or inadequacy of profits.

(1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:

Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting,—

(i) the remuneration payable to any one managing director or whole-time director or manager shall not exceed five per cent of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent of the net profits to all such directors and manager taken together;

(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(A) one per cent of the net profits of the company, if there is a managing or whole-time director or manager;

(B) three per cent of the net profits in any other case.

SEBI LODR Regulations

Reg. 17 Board of directors

(6) (a) The board of directors shall recommend all fees or compensation, if any, paid to non-executive directors, including Independent directors and shall require approval of shareholders in general meeting.

(b)The requirement of obtaining approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government.

(c)The approval of shareholders mentioned in clause (a), shall specify the limits for the maximum number of stock options that may be granted to non-executive directors, in any financial year and in aggregate.

(d)Independent directors shall not be entitled to any stock option.

(Back to Recommendation)

38. Materiality Policy

Companies Act, 2013

No specific provisions.

SEBI LODR Regulations

Reg 23(1):

(1)The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions:

(3)Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely-

(a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;

(Back to Recommendation)

39. Submission of Annual Reports

Companies Act, 2013

Companies (Accounts) Rules, 2014

Rule 11: Manner of circulation of financial statements in certain cases.-

In case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent-

(a) by electronic mode to such members whose shareholding is in dematerialised format and whose email ids are registered with Depository for communication purposes;

(b) where Shareholding is held otherwise than by dematerialised format, to such members who have positively consented in writing for receiving by electronic mode; and

(c) by dispatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.

SEBI LODR Regulations

Reg 34. Annual Report.

(1) The listed entity shall submit the annual report to the stock exchange within twenty one working days of it being approved and adopted in the annual general meeting as per the provisions of the Companies Act, 2013

Reg 36. Documents & Information to shareholders.

(2) The listed entity shall send the annual report in the following manner to the shareholders:

(a) Soft copies of full annual report to all those shareholder(s) who have registered their e mail address(es) for the purpose;

(b) Hard copy of statement containing the salient features of all the documents, as prescribed in Section 136 of Companies Act, 2013 or rules made thereunder to those shareholder(s) who have not so registered;

(c) Hard copies of full annual reports to those shareholders, who request for the same.

(3) The listed entity shall send annual report referred to in sub-regulation (1), to the holders of securities, not less than twenty-one days before the annual general meeting.

(Back to Recommendation)

40. Disclosures Pertaining to Credit Rating

Companies Act, 2013

No specific provision.

SEBI LODR Regulations

Reg 52(4): The listed entity, while submitting half yearly / annual financial results, shall disclose the following line items along with the financial results:

(a) credit rating and change in credit rating (if any);

Reg 55:

Each rating obtained by the listed entity with respect to non-convertible debt securities shall be reviewed at least once a year by a credit rating agency registered by the Board

Reg 56(1)(c):

The listed entity shall forward the following to the debenture trustee promptly-

intimations regarding :

(i) any revision in the rating

Reg 84:
(1) Every rating obtained by the listed entity with respect to securitised debt instruments shall be periodically reviewed, preferably once a year, by a credit rating agency registered by the Board.
(2) Any revision in rating(s) shall be disseminated by the stock exchange(s)

SCHEDULE III: PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES
A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):
3. Revision in Rating(s).

SEBI circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015 (Annexure I)
3. Revision in Rating(s)
The listed entity shall notify the stock exchange(s), the details of any new rating or revision in rating assigned from a credit rating agency to any debt instrument of the listed entity or to any fixed deposit programme or to any scheme or proposal of the listed entity involving mobilization of funds whether in India or abroad. In case of a downward revision in ratings, the listed entity shall also intimate the reasons provided by the rating agency for such downward revision.

(Back to Recommendation)

41. Disclosures Pertaining to Analyst/Institutional Investor Meets

Companies Act, 2013
No specific provision.

SEBI LODR Regulations
Reg 46. Website
(2) The listed entity shall disseminate the following information on its website:
(o) schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors simultaneously with submission to stock exchange;

SCHEDULE III, PART A: DISCLOSURES OF EVENTS OR INFORMATION: SPECIFIED SECURITIES
The following shall be events/information, upon occurrence of which listed entity shall make disclosure to stock exchange(s):
A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):
15. Schedule of Analyst or institutional investor meet and presentations on financial results made by the listed entity to analysts or institutional investors;

SCHEDULE V: ANNUAL REPORT
C. Corporate Governance Report: The following disclosures shall be made in the section on the corporate governance of the annual report.
8. Means of communication:
(e) presentations made to institutional investors or to the analysts.

(Back to Recommendation)

42. Disclosure of Key Changes in Financial Indicators

Companies Act, 2013
No specific provisions.

SEBI LODR Regulations
Regulation 52
(4) The listed entity, while submitting half yearly / annual financial results, shall disclose the following line items along with the financial results:
(a) credit rating and change in credit rating (if any);
(b) asset cover available, in case of non convertible debt securities;
(c) debt-equity ratio;
(d) previous due date for the payment of interest/ dividend for non-convertible redeemable preference shares/ repayment of principal of non-convertible preference shares /non convertible debt securities and whether the same has been paid or not; and,
(e) next due date for the payment of interest/ dividend of non-convertible preference shares /principal along with the amount of interest/ dividend of non-convertible preference shares payable and the redemption amount;
(f) debt service coverage ratio;
(g) interest service coverage ratio;
(h) outstanding redeemable preference shares (quantity and value);
(i) capital redemption reserve/debenture redemption reserve;
(j) net worth;
(k) net profit after tax;
(l) earnings per share:
Provided that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non banking financial companies registered with the Reserve Bank of India.
Provided further that the requirement of this sub- regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities

SCHEDULE V: ANNUAL REPORT
B. Management Discussion and Analysis:
1. This section shall include discussion on the following matters within the limits set by the listed entity's competitive position:
(a) Industry structure and developments.
(b) Opportunities and Threats.
(c) Segment–wise or product-wise performance.
(d) Outlook
(e) Risks and concerns.
(f) Internal control systems and their adequacy.
(g) Discussion on financial performance with respect to operational performance.
(h) Material developments in Human Resources / Industrial Relations front, including number of people employed.

(Back to Recommendation)

43. Utilisation of Proceeds of Preferential Issue and Qualified Institutional Placement

Companies Act, 2013
No specific provision.

SEBI LODR Regulations
No specific provision.

SEBI ICDR Regulations
Monitoring agency.
16. (1) If the issue size, excluding the size of offer for sale by selling shareholders, exceeds one hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by one of the scheduled commercial banks named in the offer document as bankers of the issuer:
Provided that nothing contained in this clause shall apply to an issue of specified securities made by a bank or public financial institution or an insurance company.
(2) The monitoring agency shall submit its report to the issuer in the format specified in Schedule IX on a quarterly basis, till at least ninety five percent of the proceeds of the issue, excluding the proceeds under offer for sale and amount raised for general corporate purposes, have been utilized.
(3) The Board of Directors and the management of the company shall provide their comments on the findings of the monitoring agency as specified in Schedule IX.
(4) The issuer shall, within forty five days from the end of each quarter, publically disseminate the report of the monitoring agency by uploading the same on its website as well as submitting the same to the stock exchange(s) on which its equity shares are listed.

(Back to Recommendation)

44. Disclosures on Website

SEBI LODR Regulation
Regulation 46: Website.
(1) The listed entity shall maintain a functional website containing the basic information about the listed entity.
(2) The listed entity shall disseminate the following information on its website:

- **(a) details of its business;**
- **(b) terms and conditions of appointment of independent directors;**
- **(c) composition of various committees of board of directors;**
- **(d) code of conduct of board of directors and senior management personnel;**
- **(e) details of establishment of vigil mechanism/ Whistle Blower policy;**
- **(f) criteria of making payments to non-executive directors , if the same has not been disclosed in annual report;**
- **(g) policy on dealing with related party transactions;**
- **(h) policy for determining 'material' subsidiaries;**
- **(i) details of familiarization programmes imparted to independent directors including the following details:-**
  - **(i) number of programmes attended by independent directors (during the year and on a cumulative basis till date),**

(ii) number of hours spent by independent directors in such programmes (during the year and on cumulative basis till date), and

(iii) other relevant details

(j) the email address for grievance redressal and other relevant details;

(k) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;

(l) financial information including:

(i) notice of meeting of the board of directors where financial results shall be discussed;

(ii) financial results, on conclusion of the meeting of the board of directors where the financial results were approved;

(iii) complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc;

(m) shareholding pattern;

(n) details of agreements entered into with the media companies and/or their associates, etc;

(o) schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors simultaneously with submission to stock exchange;

(p) new name and the old name of the listed entity for a continuous period of one year, from the date of the last name change;

(q) items in sub-regulation (1) of regulation 47 .

(3) (a)The listed entity shall ensure that the contents of the website are correct.

(b) The listed entity shall update any change in the content of its website within two working day from the date of such change in content.

(Back to Recommendation)

45. Disclosures of Subsidiary Accounts

Companies Act, 2013

Sec 136. (1) Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting:

Provided that in the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements:

Provided further that the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed:

Provided also that a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company:

Provided also that every company having a subsidiary or subsidiaries shall,—
(a) place separate audited accounts in respect of each of its subsidiary on its website, if any;
(b) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.

(Back to Recommendation)

46. Prior Intimation of Board Meeting to Discuss Bonus Issue

Companies Act, 2013
No specific provision.

SEBI LODR Regulations
Reg 29. (1) The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered:
(f) the proposal for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers:
Provided that in case the declaration of bonus by the listed entity is not on the agenda of the meeting of board of directors, prior intimation is not required to be given to the stock exchange(s).

(Back to Recommendation)

47. Views of Committees Not Accepted by the Board of Directors

Companies Act, 2013
Sec 177. Audit Committee
(8) The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.
(Back to Recommendation)

48. Commodity Risk Disclosures

Companies Act, 2013
No specific provision.

SCHEDULE V: ANNUAL REPORT
C. Corporate Governance Report: The following disclosures shall be made in the section on the corporate governance of the annual report.
9. General Shareholder Information:
(n) commodity price risk or foreign exchange risk and hedging activities.

(Back to Recommendation)

49. Audit Qualifications

Companies Act, 2013

Sec 134. Financial statement, Board's report, etc.

(3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include-

(f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—

(i) by the auditor in his report;

Sec 143. Powers and duties of auditors and auditing standards.

(3) The auditor's report shall also state—

(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

(4) Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.

Sec 145. Auditor to sign audit reports, etc.

The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141, and the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

SEBI LODR Regulations

Reg 33- Financial results.

(3)(d)The listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion):

Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion)

Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.

(4) The applicable formats of the financial results and Statement on Impact of Audit Qualifications (for audit report with modified opinion) shall be in the manner as specified by the Board.

(6) The Statement on Impact of Audit Qualifications (for audit report with modified opinion) and the accompanying annual audit report submitted in terms of clause (d) of sub-regulation (3) shall be reviewed by the stock exchange(s)

Reg 34- Annual report.

(2) The annual report shall contain the following:

(a) audited financial statements i.e. balance sheets, profit and loss accounts etc. and Statement on Impact of Audit Qualifications as stipulated in regulation 33(3)(d), if applicable;

Reg 95- Statement on Impact of Audit Qualifications accompanying Annual Audit Report.
The recognised stock exchange(s) shall review the Statement on Impact of Audit Qualifications and the accompanying annual audit report submitted in terms of clause (d) of sub-regulation (3) of regulation 33 and clause (a) of sub-regulation (3) of regulation 52.

Schedule IV, Part A: Disclosure in Financial Results
The listed entity shall disclose the following while preparing the financial results:-
B. If the auditor has expressed any modified opinion(s) in respect of audited financial results submitted or published under this para, the listed entity shall disclose such modified opinion(s) and cumulative impact of the same on profit or loss, net worth, total assets, turnover/total income, earning per share, total expenditure, total liabilities or any other financial item(s) which may be impacted due to modified opinion(s), while publishing or submitting such results.
BA. If the auditor has expressed any modified opinion(s), the management of the listed entity has the option to explain its views on the audit qualifications and the same shall be included in the Statement on Impact of Audit Qualifications (for audit report with modified opinion).
BB. With respect to audit qualifications where the impact of the qualification is not quantifiable:

i. The management shall make an estimate and the auditor shall review the same and report accordingly; or
ii. If the management is unable to make an estimate, it shall provide the reasons and the auditor shall review the same and report accordingly.

The above shall be included in the statement on impact of audit qualifications (for audit report with modified opinion)
C. If the auditor has expressed any modified opinion(s) or other reservation(s) in his audit report or limited review report in respect of the financial results of any previous financial year or quarter which has an impact on the profit or loss of the reportable period, the listed entity shall include as a note to the financial results –

(i) how the modified opinion(s) or other reservation(s) has been resolved; or
(ii) if the same has not been resolved, the reason thereof and the steps which the listed entity intends to take in the matter.

SEBI Circular No. CIR/CFD/CMD/56/2016 dated May 27, 2016
4.2. For audit reports with modified opinion, a statement showing impact of audit qualifications shall be filed with the stock exchanges in a format as specified in Annexure I.
4.3. The management of the listed entity shall have the option to explain its views on the audit qualifications;
4.4. Where the impact of the audit qualification is not quantified by the auditor, the management shall make an estimate. In case the management is unable to make an estimate, it shall provide reasons for the same. In both the scenarios, the auditor shall review and give the comments.
4.5. The aforesaid statements on impact of audit qualifications filed by the listed entities shall be a part of regular monitoring by the stock exchanges as specified in Regulation 97 of the Listing Regulations. In case of non-compliance, the stock exchanges shall take action against such entities as deemed fit and report to SEBI on a regular basis. The stock exchanges shall coordinate with one another in case the scrip is listed on more than one stock exchange

(Back to Recommendation)

50. Quarterly Financial Disclosures

Companies Act, 2013
No specific provision.

SEBI LODR Regulations
Reg 33:
(1) While preparing financial results, the listed entity shall comply with the following:
a) The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 or Indian Accounting Standard 34 (AS 25/ Ind AS 34 – Interim Financial Reporting), as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable.
b) The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India:
c) Provided that in addition to the above, the listed entity may also submit the financial results, as per the International Financial Reporting Standards notified by the International Accounting Standards Board.
d) The listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India.
e) The listed entity shall make the disclosures specified in Part A of Schedule IV.
(2) The approval and authentication of the financial results shall be done by listed entity in the following manner:
a) The quarterly financial results submitted shall be approved by the board of directors:
b) Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.
c) The financial results submitted to the stock exchange shall be signed by the chairperson or managing director, or a whole time director or in the absence of all of them; it shall be signed by any other director of the listed entity who is duly authorized by the board of directors to sign the financial results.
d) The limited review report shall be placed before the board of directors, at its meeting which approves the financial results, before being submitted to the stock exchange(s).
e) The annual audited financial results shall be approved by the board of directors of the listed entity and shall be signed in the manner specified in clause (b) of sub-regulation (2).
(3) The listed entity shall submit the financial results in the following manner:
a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.
b) In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity may also submit quarterly/year-to-date consolidated financial results subject to following:
   (i) the listed entity shall intimate to the stock exchange, whether or not listed entity opts to additionally submit quarterly/year-to-date consolidated financial results in the first quarter of the financial year and this option shall not be changed during the financial year.

Provided that this option shall also be applicable to listed entity that is required to prepare consolidated financial results for the first time at the end of a financial year in respect of the quarter during the financial year in which the listed entity first acquires the subsidiary.

(ii) In case the listed entity changes its option in any subsequent year, it shall furnish comparable figures for the previous year in accordance with the option exercised for the current financial year.

c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:

(i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.

Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.

(ii) In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.

(a) The listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion):

Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion)

Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.

(b) The listed entity shall also submit the audited financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.

(c) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.

(4) The applicable formats of the financial results and Statement on Impact of Audit Qualifications (for audit report with modified opinion) shall be in the manner as specified by the Board.

(5) For the purpose of this regulation, any reference to "quarterly/quarter" in case of listed entity which has listed their specified securities on SME Exchange shall be respectively read as "half yearly/half year" and the requirement of submitting 'year-to-date' financial results shall not be applicable for a listed entity which has listed their specified securities on SME Exchange.

(6) The Statement on Impact of Audit Qualifications (for audit report with modified opinion) and the accompanying annual audit report submitted in terms of clause (d) of sub-regulation (3) shall be reviewed by the stock exchange(s).

(Back to Recommendation)

51. Internal Financial Controls

Companies Act, 2013

Sec 134

(5) The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that—

(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Explanation.—For the purposes of this clause, the term —internal financial controls means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

Sec 143

(3) The auditor's report shall also state—

(i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;

Sec 177

(4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia*, include,—

(vii) evaluation of internal financial controls and risk management systems;

Schedule IV: CODE FOR INDEPENDENT DIRECTORS, II. Role and functions:

(4) The independent directors shall satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible

SEBI LODR Regulations

SCHEDULE II: CORPORATE GOVERNANCE

PART B: COMPLIANCE CERTIFICATE

The following compliance certificate shall be furnished by chief executive officer and chief financial officer:

C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.

D. They have indicated to the auditors and the Audit committee

(1) significant changes in internal control over financial reporting during the year;

(2) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and

(3) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

PART C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE

A. The role of the audit committee shall include the following:

(11) evaluation of internal financial controls and risk management systems;

(12) reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;

(15) reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board;

B. The audit committee shall mandatorily review the following information:

(4) internal audit reports relating to internal control weaknesses;

SCHEDULE V: ANNUAL REPORT

B. Management Discussion and Analysis:

(f) internal control systems and their adequacy.

(Back to Recommendation)

52. Disclosure of Reasons of Resignation of Auditors

Companies Act, 2013

Sec 140(2)

The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.

Companies (Audit and Auditors) Rules, 2014

Rule 8

Resignation of auditor- for the purposes of sub-section (2) of section 140, when an auditor has resigned from the company, he shall file a statement in Form ADT-3.

SEBI LODR Regulations

No specific provision for disclosure of detailed reasons on change/resignation of auditors.

SEBI circular No. CIR/CFD/CMD/4/2015 dated September 09, 2015 (Annexure II)

7. Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), Auditor and Compliance Officer:

7.1.reason for change viz. appointment, resignation, removal, death or otherwise;

7.2.date of appointment/cessation (as applicable) & term of appointment;

7.3.brief profile (in case of appointment);

7.4.disclosure of relationships between directors (in case of appointment of a director).

(Back to Recommendation)

53. Disclosures on Audit and Non-audit Services Rendered by the Auditor

Companies Act, 2013

Sec 144. Auditor not to render certain services.—

An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company), or its holding company or subsidiary company, namely:—

(a) accounting and book keeping services; (b) internal audit; (c) design and implementation of any financial information system; (d) actuarial services; (e) investment advisory services; (f) investment banking services (g) rendering of outsourced financial services; (h) management services; and (i) any other kind of services as may be prescribed:

Provided that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.

Explanation.—For the purposes of this sub-section, the term —directly or indirectly shall include rendering of services by the auditor,—

(i) in case of auditor being an individual, either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual;

(ii) in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.

SEBI LODR Regulations

SCHEDULE II: CORPORATE GOVERNANCE, PART C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE

The role of the audit committee shall include the following:

(3) approval of payment to statutory auditors for any other services rendered by the statutory auditors;

(Back to Recommendation)

54. Disclosures of Credentials and Audit Fee of Auditors

Companies Act, 2013

Sec 142. Remuneration of auditors.

(1) The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein:

Provided that the Board may fix remuneration of the first auditor appointed by it.

(2) The remuneration under sub-section (1) shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

102. Statement to be annexed to notice.—(1) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—

(i) every director and the manager, if any;

(ii) every other key managerial personnel; and

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

(2) For the purposes of sub-section (1),—

(a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than—

(i) the consideration of financial statements and the reports of the Board of Directors and auditors;

(ii) the declaration of any dividend;

(iii) the appointment of directors in place of those retiring;

(iv) the appointment of, and the fixing of the remuneration of, the auditors; and.....

SEBI LODR Regulations

4. (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles...:

(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(Back to Recommendation)

55. Timeline for Annual General Meetings of Listed Entities

Companies Act, 2013

Sec 96. Annual general meeting.—

(1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

SEBI LODR Regulations

No specific provision.

(Back to Recommendation)

56. E-voting and Webcast of Proceedings of the Meeting

Companies Act, 2013

Section 108. Voting through electronic means.—

The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

Companies (Management and Administration) Rules, 2014

Rule 20. Voting through electronic means.-

(2) Every company other than a company referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 having its equity shares listed on a recognised stock exchange or a company having not less than one thousand members, shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at general meetings by electronic means.

(4)(vi) the facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

SEBI LODR Regulations

Reg 44.

(1) The listed entity shall provide the facility of remote e-voting facility to its shareholders, in respect of all shareholders' resolutions.

(2)The e-voting facility to be provided to shareholders in terms of sub-regulation (1), shall be provided in compliance with the conditions specified under the Companies (Management and Administration) Rules, 2014, or amendments made thereto.

(3)The listed entity shall submit to the stock exchange, within forty eight hours of conclusion of its General Meeting, details regarding the voting results in the format specified by the Board.

(4) The listed entity shall send proxy forms to holders of securities in all cases mentioning that a holder may vote either for or against each resolution.

(Back to Recommendation)

57. Treasury Stock

Companies Act, 2013

Section 233 (10):

A transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation.

SEBI LODR Regulations

No specific provision

(Back to Recommendation)

58. Leniency Mechanism

SEBI Act, 1992

Sec 24B. Power to grant immunity

(1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of the alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity: Provided further that recommendation of the Board under this sub-section shall not be binding upon the Central Government.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

SCRA, 1956

Sec 23-O. Power to grant immunity.

(1) The Central Government may, on recommendation by the Securities and Exchange Board of India, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

Provided further that the recommendation of the Securities and Exchange Board of India under this sub-section shall not be binding upon the Central Government.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted

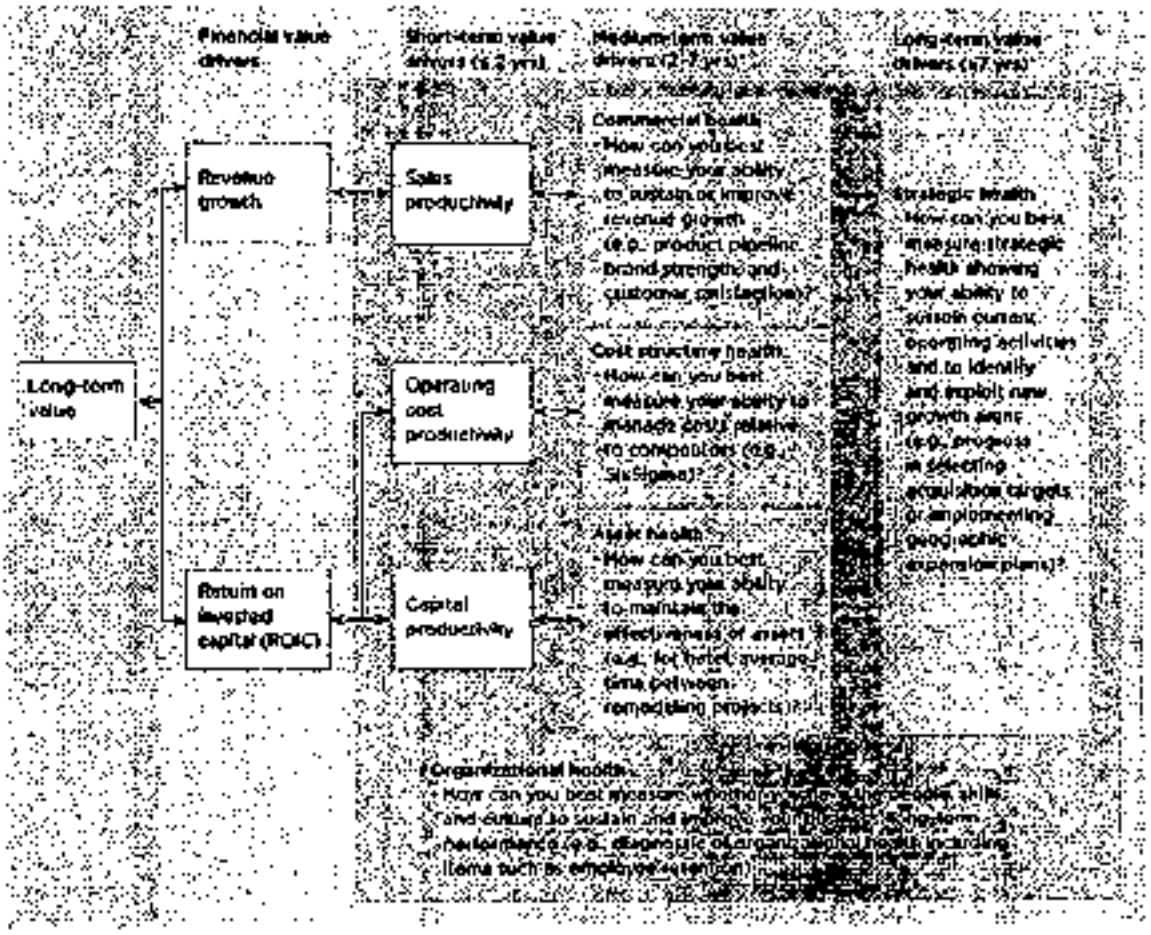
(Back to Recommendation)

ANNEXURE 4: ILLUSTRATIVE PARAMETERS – BOARD SKILL EVALUATION

Industry knowledge/experience
Experience
Industry knowledge
Understanding of relevant laws, rules, regulation and policy
International Experience
Technical skills/experience
Accounting and finance
Marketing
Information Technology
Talent Management
Leadership
Compliance and risk
Behavioural Competencies
Integrity and ethical standards
Mentoring abilities
Interpersonal relations

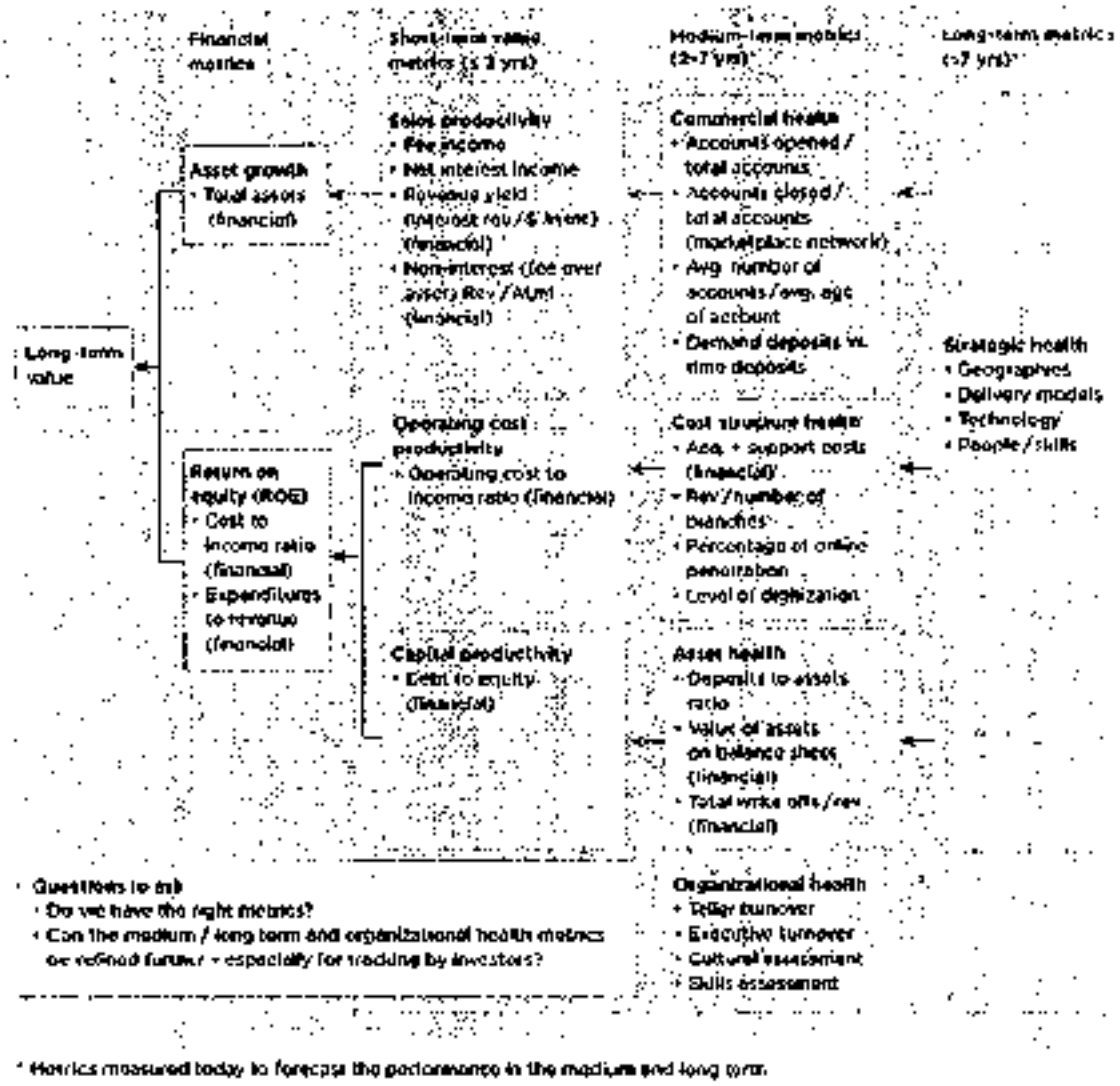
ANNEXURE 5: STRATEGY - KEY METRICS

Questions to ask while developing medium and long-term metrics



Source: 2015 Report of the Focusing Capital on the Long Term (FCLT)

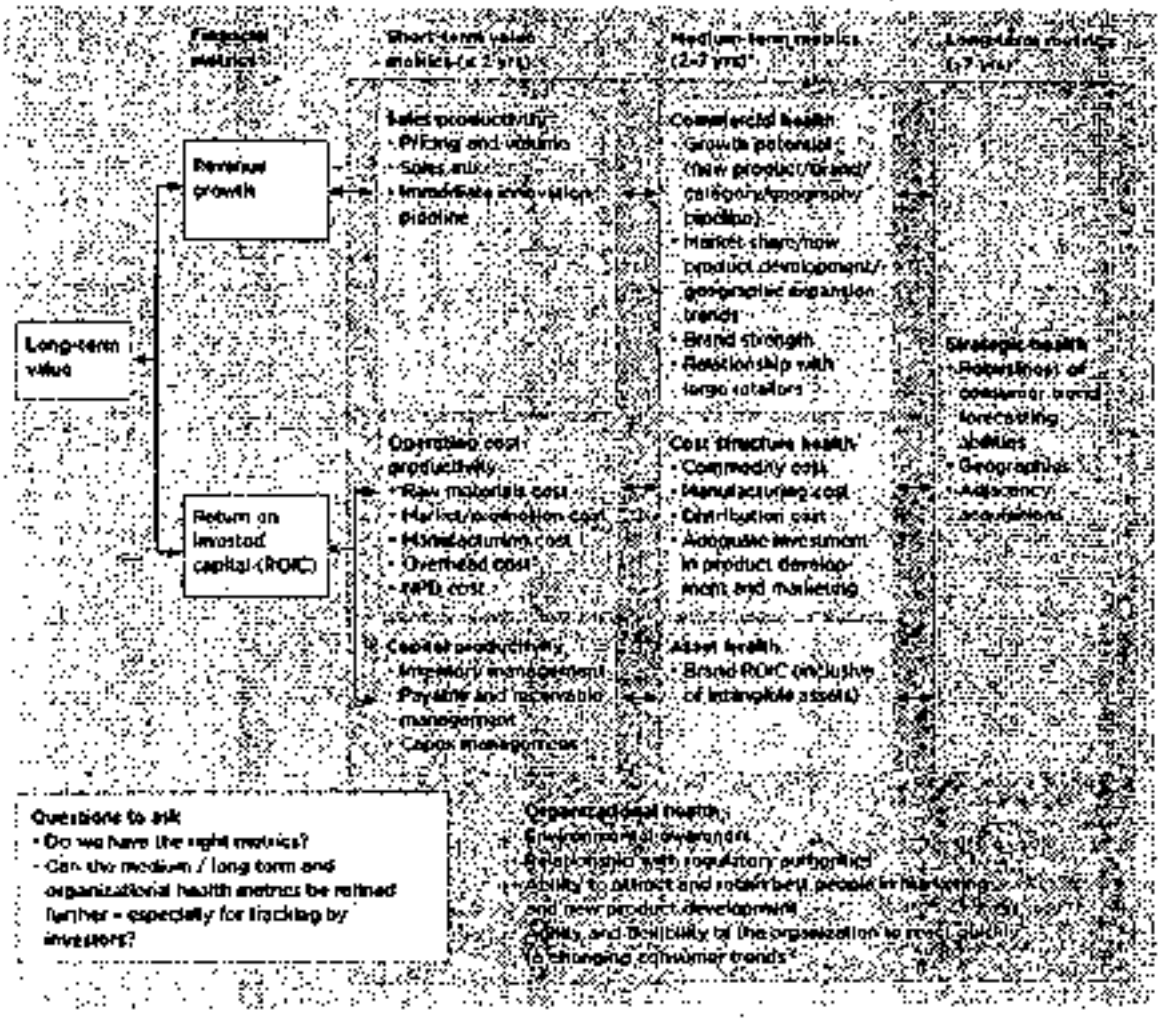
Fundamental value driver tree for a simple retail bank



* Metrics measured today to forecast the performance in the medium and long term.

Source: 2015 Report of the Focusing Capital on the Long Term (FCLT)

Fundamental value driver tree for consumer packaged goods



* Metrics measured today to forecast the performance in the medium and long term

Source: 2015 Report of the Focusing Capital on the Long Term (FCLT)

Case Studies

Long-term strategy element	Company	Description
1. Clear statement of purpose, mission and vision	World's second-largest appliance maker by units sold, with net sales of SEK 109.2 billion	Lays out clearly in one page the vision ("Who we want to be"), mission ("What we want to achieve"), strategy ("How we aim to do it") and the values ("The base for our work") of the company. Electrolux defines its mission as four financial goals (operating margin, capital turnover rate, return on assets, average growth), which have remained mostly unchanged over the past few years.
2. How long-term value is created	NEDBANK One of South Africa's four largest banking groups by assets and deposits, with total assets of R 790 billion (FY2015)	Links how value is created in the business through three steps (i.e., what we do, flow of money, and value added), and gives detailed explanation and figures for each segment of its businesses (i.e., Lending, deposit-taking and funding activities, Transactional, advisory, trading, investment, insurance and other services Operations, and Tax and other). The company has also dedicated a website to communicating their long-term strategy (**Fairshare 2030**)
Long-term strategy element	**Company**	**Description**
3. Management's market view	A supplier of technology and services to the building, oil and gas industries, operating in more than 50 countries, with 6.3 billion (net sales (FY2015))	Explains a value of Metso's key industries (mining, construction, oil and gas) describing the market drivers, market trends, short-term market outlook, organic growth potential, acquisition potential, share of orders received from the last year during the year, and service intensity.
4. Competitive advantage	Turkey's second-largest private bank, with consolidated assets of $107 billion (as of September 30, 2015)	Garanti's annual report dedicates a full page to highlighting its competitive advantages and supporting fact base. For example, one of its competitive advantages is being a single point of contact for all financial needs. The strength of this statement is substantiated by the following: • International banking operations in the Netherlands, Russia, and Romania since 1990's • Leader in bancassurance • 30% of all pension participants in Turkey choose Garanti • With TL 0.6 billion business volume, maintains its leading position in factoring • Leader in number of leasing contracts • Turkey's first asset management company • Strong presence in capital markets with 0.5% brokerage market share

5. Strategic goals	An American multinational biopharmaceutical company, with a presence in more than 75 countries and total revenue of $18.7 billion (FY2013)	At an investor day presentation in April 2011, Amgen outlined the company's long-term strategy and gave financial guidance for 2015, which was supported by a seven-point plan, including building one of their product franchises to $3–$4 billion of worldwide sales by 2015, an operating plan to drive margin improvement and a clear capital allocation plan. The company then provided clear financial guidance for 2015: • Revenues of $16–$18 billion, • Adjusted net income of $6–$7 billion • Adjusted earnings per share (EPS) of $7.25–$8.60, representing a compound annual growth rate of between 7 and 11 percent
6. Detailed execution roadmap	A German multinational conglomerate operating in more than 200 regions worldwide, with revenue of €72 billion (FY2014)	In 2014, Siemens published its new long-term strategy, Vision 2020, in a strategy report independent of its annual reports. It detailed three specific steps to implementation. The focus in the short term was to drive performance through re-tailoring structures and responsibilities; in the medium term, it was to strengthen core businesses through reallocation of resources. Finally in the long-term, it aspired to seize further growth opportunities in new fields.
Long-term strategy element	**Company**	**Description**
7. Medium- and long-term metrics and targets	Top 5-listed companies by market capitalization on the Australian Securities Exchange Limited, with global assets of A $677.5 billion (2013)	In 2012, Westpac defined 10 objectives aligned with their three sustainability strategies for 2013–17. In 2013 it introduced a scoreboard for these objectives that included the following for each objective: • what was done in 2013 • an objective (e.g. help our customers meet their financial goals in retirement) • a metric to measure (e.g. "Westpac Group customers with Westpac Group superannuation (%)") • 2013 actuals • 2014 and 2017 targets
8. Capital and non-capital investments	South African energy and chemicals company, one of the top 10 most valuable companies listed on the Johannesburg Stock Exchange with turnover of R 202.7 billion (FY2014)	Being a company in a resource-intensive industry and South Africa's second-biggest emitter of greenhouse gases, Sasol and its disclosures receive close review. Their annual report clearly defines the criteria that Sasol takes into account when allocating resources. The criteria cover six types of capital: natural, human, social and relationship, intellectual, manufactured, and finance. Resource allocation decisions are designed to minimize the negative impact of capital inputs while maximizing positive outcomes. The report gives a detailed explanation of each capital type and outcome (impact on the relevant capital stock), as well as activities conducted to minimize the negative impact for each type of capital.

9. Risks	One of the world's leading integrated telecommunications companies, with 145 million mobile customers and revenue of €69.1 billion	Deutsche Telekom categorizes risks (classified as "Industry, competition and strategy", "Regulation", "Operational", "Brand, communication and reputation", "Litigation" as well as antitrust and consumer protection proceedings" and "Financial") by low, medium, and high risks, assessing them according to the probability of occurrence and potential impact. The company's annual report also provides the change in risk level compared to the prior year.
10. Executive and director compensation	A British luxury house builder, with £1.4 billion revenue (FY2013) and voted Britain's Most Admired Company in 2011 across all industries	Berkeley Group developed a long-term incentive plan which extends to 2021. Under the incentive plan, the Executive Directors would receive up to 5 million shares in 2021 if the company were to meet its long-term strategic targets (see Section 2).

Source: 2015 Report of the Focusing Capital on the Long Term (FCLT)

ANNEXURE 6: PSE GOVERNANCE (INTERNATIONAL PRECEDENTS)

Publish precise rationale for why government owns PSEs; divest those which no longer fulfill this rationale

Norway publishes rationale regularly and accordingly divests unjustifiable PSEs

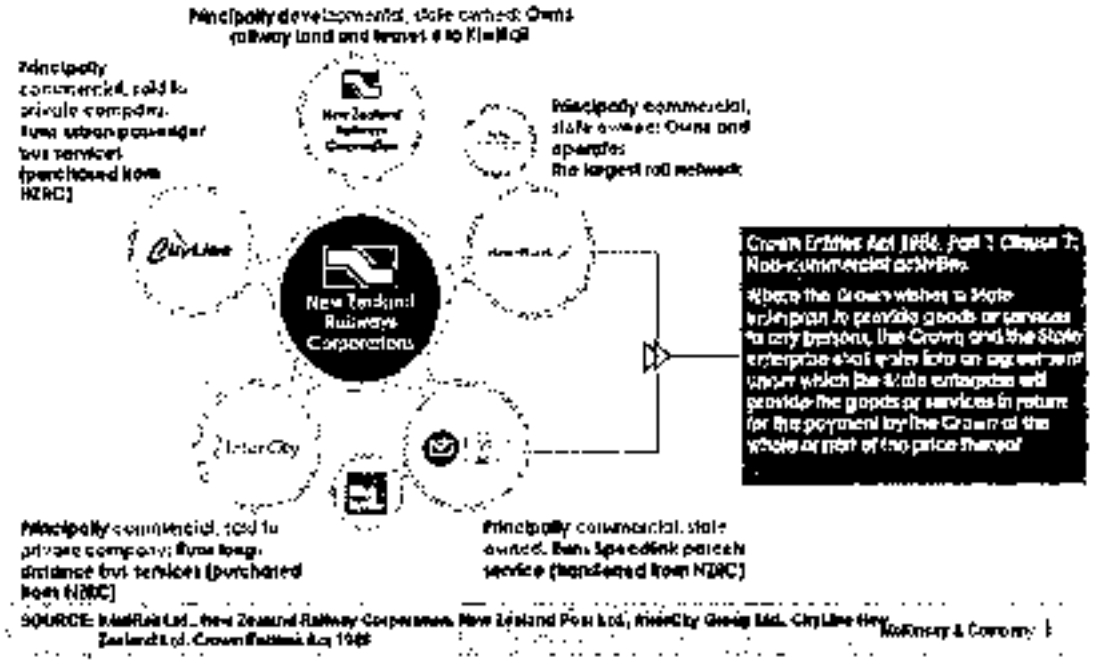
Ministry of Trade, Industry & Fisheries tables a report to the Storting every 3–4 years

The 2014 report recommended adjusting state shareholding according to the ongoing relevance of the rationale for owning SOEs

Rationale for ownership	Recommendation	# SOEs
Commercial objectives + other, specifically defined objectives (to address market failure or cultural/natural resources)	Maintain shareholding	10
Sectoral policy objectives (e.g. to ensure cultural sector)	Maintain shareholding	26
Commercial objectives + maintain HQ in Norway	Reduce stake to 34%	8
Purely commercial objectives	Divest	8

SOURCE: Diverse and Value Creating Ownership, 2013-14 Report to the Storting; McKinsey & Company

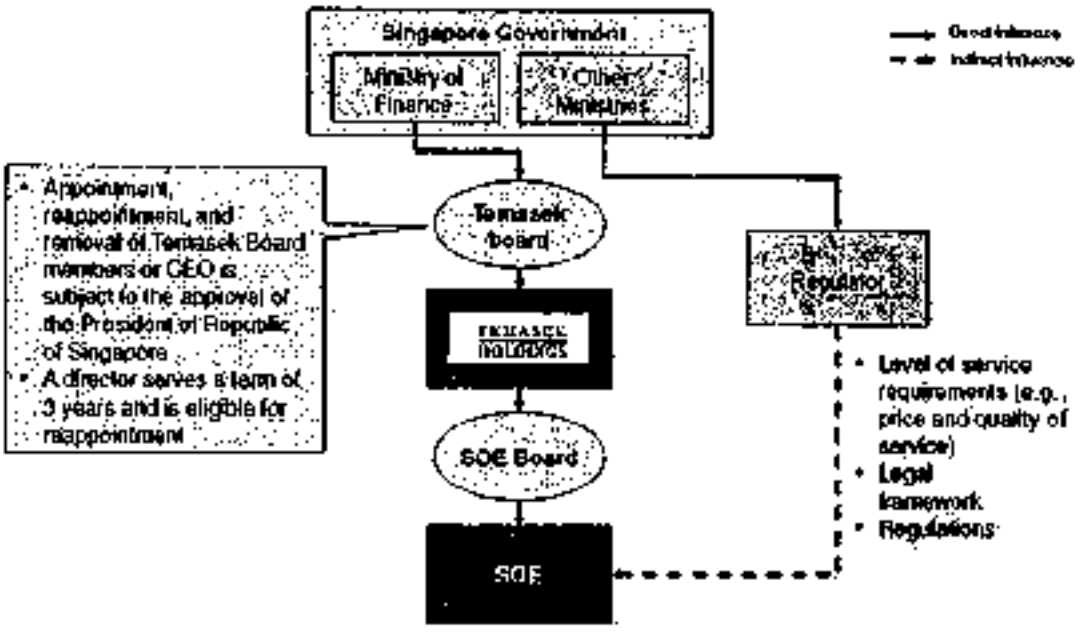
Make PSE developmental activities transparent by ring-fencing them, by separately funding and reporting them, or by splitting them into a separate PSE



SOURCE: KiwiRail Ltd., New Zealand Railway Corporation, New Zealand Post Ltd, InterCity Group Ltd, CityLine Ltd, New Zealand Gazette, Crown Entities Act 1996

Treasury & Commerce

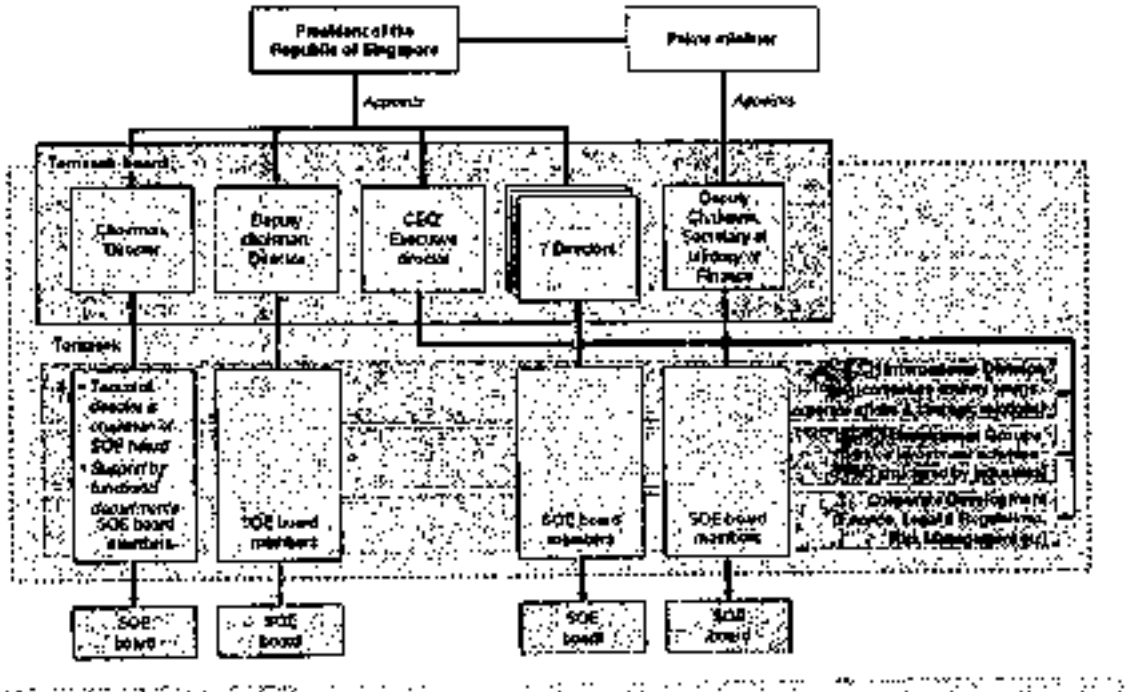
Case example: Temasek only reports to the Ministry of Finance and independently supervises its PSEs



SOURCE: Press search; Team analysis

McKinsey & Company

Case example: The Temasek structure provides PSE portfolio companies with isolation against direct interference from the State



SOURCE: Temasek website; Interviews

McKinsey & Company

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India
SEBI BHAVAN BKC
PLOT NO.C4-A, 'G' BLOCK, BANDRA-KURLA COMPLEX,
BANDRA (EAST), MUMBAI - 400051, MAHARASHTRA

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ANNEXURE - A12

Introduction of provisions relating to appointment or re-appointment of persons who fail to get elected as directors, including as Whole-time directors or Managing Directors or Managers, at the general meeting of a listed entity

1. **Objective**

1.1. This memorandum seeks approval of the Board to introduce provisions in the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**" / "**LODR**") relating to appointment or re-appointment of persons who fail to get elected as directors, including as Whole-time directors or Managing Directors or Managers, at the general meeting of a listed entity.

2. **Background**

2.1. As per Section 152(2) of the Companies Act, 2013 ("**CA 2013**", "**Act**"), unless otherwise provided for, every director shall be appointed by the company in a general meeting.

2.2. As per Section 196 of the CA 2013, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the board of directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company. A special resolution shall be required in case the terms of appointment/re-appointment is beyond the thresholds specified inter-alia for age (70 years or more) or remuneration (if the director is part of promoter / promoter group, annual remuneration to single Executive Director exceeding ₹5 Crore or 2.5% of the net profits, whichever is higher (or) annual remuneration to all such executive directors exceeding 5% of the net profits etc.) in the Act and / or the LODR Regulations.

2.3. It was observed that, as a practice, companies appoint persons as Managing Directors / Whole-Time Directors, by way of seeking approval from shareholders through two different resolutions – one for appointment of such persons as a

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director (under section 152 of the CA 2013) and the second for appointment of such directors as the Managing Director (MD) or Whole-time Director (WTD) along with terms and conditions for their appointment (under sections 196, 197 and 198 read with Schedule V of the CA 2013).

2.4. In case of two different resolutions, there is a possibility of the ordinary resolution for appointment as a director being approved by the shareholders and the second resolution, which may be a special resolution, for designating such appointed directors as WTD / MD along with terms & conditions, including remuneration, being rejected by the shareholders. For ease of understanding, the issue being discussed is explained with a hypothetical example in the following paragraphs.

2.5. A person 'X' has been appointed on the board of a company 'ABC Ltd.' as the Managing Director on certain terms & conditions and subject to shareholders' approval. The remuneration payable to 'X' is above the thresholds specified in the CA 2013 and SEBI LODR Regulations and therefore needs to be approved through a special resolution. In the general meeting, 'ABC Ltd.' introduces two resolutions viz.,1) Appointment of Mr. X as a Director of the Company (Ordinary Resolution) and 2) Appointment of Mr. X as a Managing Director of the Company (Special Resolution). In case of two resolutions with different approval thresholds i.e., Ordinary and Special, there is a possibility of different results on both the resolutions, though both relate to appointment of a single person. In the general meeting, both the resolutions got 55% votes in favour and 45% against them. The first resolution being an ordinary resolution (for appointment of X as a director) got approved but the second resolution being a special resolution (for appointment for Mr. X as the Managing Director) failed to get through at the general meeting.

2.6. As per Section 161(1) of the CA 2013, the board cannot appoint a person who fails to get elected as a director at a general meeting, as an Additional Director. However, the CA 2013 does not explicitly prohibit the board from re-appointing a person whose appointment, as MD / WTD alone, was rejected by the

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shareholders earlier at a general meeting (as in case of Mr.X), while the persons' appointment as a director got approved due to split resolutions. Therefore, in such cases, the person got elected as a director at the general meeting (due to split resolution) but failed to get elected as a MD / WTD.

2.7. There were few instances where resolutions on appointment of persons as MD / WTD were rejected by shareholders (though appointment as director was approved); however, such companies immediately reappointed those persons as MD / WTD and further, in certain instances, there was considerable delay in obtaining shareholders' approval for such appointments.

2.8. With increased shareholder awareness and activism being witnessed in recent times, there has been an increasing trend of rejection of resolutions on directors' appointments (including appointment as MD / WTD) by shareholders at general meetings. In the absence of explicit legal provisions, listed entities continue to re-appoint such persons despite rejection by shareholders, which is against the principle of shareholder supremacy in the matter of appointment of directors. Therefore, a need was felt for a policy intervention to include specific provisions in the LODR Regulations to deal with such circumstances.

3. Discussions in PMAC and public consultation

3.1. A proposal to introduce specific provisions in the LODR relating to appointment or re-appointment of directors who failed to get elected at the general meeting of a company was placed before PMAC in December 2020. After deliberations, PMAC suggested SEBI to go for a public consultation on the proposal. MCA, which is part of the PMAC, requested SEBI to place the matter once again before the PMAC after receiving feedback from the stakeholders.

3.2. As suggested by PMAC, SEBI issued a Consultation Paper in January 2021 (Flag A) (*Available on the SEBI website*). The key proposals included in the Consultation Paper are given below:

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a) Greater due diligence by the Nomination and Remuneration Committee (NRC) and the Board of Directors while re-appointing persons rejected as Managing Director / Whole-Time Director at the general meeting.
b) Time-bound shareholder approval (within 3 months) for such appointments.
c) Greater disclosures by listed entities while re-appointing such rejected persons.
d) If shareholders reject such persons for a second time, restraint period of 2 years on such persons for serving as a director on the board of that particular listed entity.

3.3. The summary of comments received along with the rationale given by commentators is tabulated and placed at **Flag B** (*Excised for reasons of confidentiality*). Public comments on the proposal were mainly on the following lines:

a) Suggestion to mandatorily have an independent director in the board meeting while re-appointing such a rejected person.
b) The appointment should be conditional upon the shareholders' approval and not any time before. The proposal in the consultation paper restores the power of a rejected person to act as MD or WTD for 3 months; that is clearly opposed to shareholders' democracy.
c) Restraint period to act as a director is against the provisions of the CA 2013 and therefore may be limited to acting as MD / WTD. Such rejected persons can continue as non-executive directors on the board.

4. Revised proposal before PMAC

4.1. Based on the comments received from the public, the matter was once again placed before the PMAC in its meeting held on September 3, 2021 (**Flag C** - *Excised for reasons of confidentiality*). The following changes were made to the proposal contained in the consultation paper:

a) Mandatory presence of an Independent Director in the quorum of the Board meeting re-appointing such rejected persons.

b) Recommendations of the Board and the NRC along with reasons for re-appointing a rejected person have to be disclosed within 24 hours of such re-appointment.

c) The two-year restraint in case of subsequent rejection was limited to appointment as MD / WTD in that particular listed entity.

d) The post of 'Manager' was included in the revised proposal.

4.2. During the discussions in the PMAC meeting, MCA's representative put forth his views on the revised proposal. MCA was of the view that any appointment by the board, without shareholders' approval, of a person who failed to get himself appointed as a director in general meeting, irrespective of the fact that the appointment was for executive directorship or non-executive directorship, would violate the provisions under Section 161(1) of the CA 2013. In order to act again as a MD/ WTD/ Manager, the concerned person has to be appointed again by the shareholders. Therefore, MCA had concerns over the proposed provision in the consultation paper that allowed the board to re-appoint such rejected persons for a period of 3 months, without shareholders' approval.

4.3. After deliberations, the PMAC agreed that there was a gap in the implementation of law with respect to reappointment of persons who fail to get elected as MD / WTD / Manager. It was pointed out that due to split resolution, if the shareholders approve appointment of a person as a director but reject his appointment as MD / WTD, companies continue to appoint such rejected persons as MD / WTD as Section 161(1) does not explicitly prohibit the board from re-appointing such persons.

4.4. The members felt that in the spirit of the law as it stands today, any director, including MD / WTD, once rejected by the shareholders should come back to the board only with the consent of the shareholders, as noted by MCA. Therefore, PMAC suggested to modify the proposal accordingly.

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3. **Proposed changes**

5.1. As suggested by PMAC, the proposal is revised to include prior approval of shareholders mandatory for appointment or re-appointment of any person whose appointment / re-appointment as MD / WTD / Manager has been rejected by shareholders at a general meeting. This would ensure that such an appointment / re-appointment is in line with the spirit of Section 161(1) of the CA 2013 and upholds the principle of shareholder supremacy in matters relating to appointment of directors in a company.

5.2. In view of PMAC's suggestion to make prior approval of shareholders' mandatory for reappointment of rejected directors, it is felt that the restraint period of 2 years for such rejected persons, proposed in the consultation paper, may no longer be required and therefore, it is proposed to be omitted.

5.3. With respect to the provisions on greater disclosures to the shareholders, the same may be extended to re-appointment of any rejected person (irrespective of rejection as a MD/WTD/Manager or as a Non-Executive Director). This would be in the interest of good corporate governance at listed entities.

5.4. Provisions relating to greater due diligence by the NRC & the board and disclosures by listed entity after such an appointment, as proposed in the consultation paper, are no longer relevant since the proposal is being modified to make it obligatory to get prior approval of shareholders for appointment or re-appointment of persons rejected by shareholders at a general meeting.

5.5. Regulation 17(1C) of the LODR Regulations, which will be effective from January 1, 2022, is reproduced below:

"(1C). The listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors is taken at the next general meeting or within a time period of three months from the date of appointment whichever is earlier."

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5.6. It is proposed to insert the provisions relating to appointment or reappointment of persons rejected by shareholders, as discussed above, as a proviso to regulation 17(1C) of the LODR Regulations. It is also proposed to insert the words "as a Manager" after the words "Board of Directors" in regulation 17(1C) to ensure that the proposed provisos are aligned with the aforementioned sub-regulation. Proposed amendments to the LODR regulations is placed as **Annexure.**

6. **Applicability**

6.1. The amendment shall be effective from the date of notification in the Official Gazette.

7. **Proposal for consideration of the Board**

7.1. The Board is requested to approve the amendments to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, placed as Annex, and authorize the Chairman to take consequential and incidental steps to give effect to the decision of the Board.

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An texture

(To be notified at a later date)

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ANNEXURE – A13

Introduction of provisions relating to appointment or re-appointment of persons who fail to get elected as directors, including as Whole-time directors or Managing Directors or Managers, at the general meeting of a listed entity

The Board considered and approved the proposals contained in the Memorandum.

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Board Meetings

Select Year: ‹ 2021 ›

Select Date to see Results of the Meeting: ‹ Thursday 25th March | Tuesday 29th June | Friday 6th August | Tuesday 28th September | Thursday 28th December ›

Meeting of the Board at Mumbai

Sr. No.	Subject	Agenda*	Decision
1	Review of the role of KYC Registration Agencies (KRAs)		
2	Review of book building framework for public issues		
3	Introduction of provisions relating to appointment or re-appointment of persons who fail to get elected as directors, including as Whole-time directors or Managing Directors or Managers, at the general meeting of a listed entity		
4	Amendment to SEBI (Mutual Funds) Regulations, 1996.		
5	Review of provisions related to Preferential Issues under Chapter V of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018		
6	Proposed amendments to the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018		
7	Amendment to Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 and SEBI (Depositories and Participants) Regulations, 2018 to provide for revised Networth requirement for Trading Members (TMs), Self-Clearing Members (SCMs), Clearing Members (CMs), Professional Clearing Members (PCMs), Depository Participants (DPs) and Deposit & Fees requirement for members in Electronic Gold Receipt (EGR) segment		
8	Amendments to SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003		
9	Amendments to Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018		
10	Review of certain aspects of public issue framework including objects of the issue and monitoring of issue proceeds		
11	Amendment to the SEBI (Foreign Portfolio Investors) Regulations, 2019		
12	Amendment to SEBI (Mutual Funds) Regulations, 1996		
13	Introduction of Special Situation Fund as a new sub-category of Alternative Investment Funds (AIFs)		
14	Amendments to Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 for issuance of securities in demat form in case of investor service requests		

* The proposals contained in the Agenda items are as submitted to the Board and their adoption is subject to the decision of the Board, including changes, if any. The decision of the Board would be uploaded after confirmation of the same in the next Board Meeting.

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ANNEXURE A15

23rd August 2023

National Stock Exchange of India Limited
Exchange plaza,
Bandra-Kurla Complex, Bandra (E)
Mumbai - 400051

Scrip Code: ADANIENT

Dear Sir,

Sub.: Application for waiver of fines levied as per the provisions of SEBI SOP Circular

Ref.: (i) NSE letter # NSE/LIST-SOP/COMB/FINES/0861, dated 21st August 2023 (received through email dated 21st August 2023) regarding - Notice for non-compliance with SEBI (LODR) Regulations, 2015 ("Listing Regulations") and / or Regulation 76 of SEBI (Depository and Participants) Regulations, 2018 ("Depository Regulations") and (ii) BSE email dated 21st August 2023 regarding Fines as per SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020 ("Exchange Letters")

BSE Limited ("BSE") and National Stock Exchange of India Limited ("NSE") vide their communication dated 21st August 2023 imposed fine in terms of SEBI Circular No. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020 for non-compliance of Regulation 17(1A) [i.e. non-compliance with the requirements pertaining to appointment or continuation of Non-executive director who has attained the age of seventy-five years] of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI Listing Regulations").

In this regard, we hereby submit our application for waiver of fines to the designated stock exchange i.e. NSE, as per NSE Circular ref. no. 0388/2022, dated 31st March 2022.

Subject matter leading to filing of waiver of fines application:

Mr. V Subramanian, Independent Director (Non-executive) attained the age of 75 years on 17th June 2023. The shareholders' approval under the provisions of Regulation 17(1A) of SEBI Listing Regulations have been obtained by the Company at its 31st Annual General Meeting (AGM) held on 18th July 2023. Stock Exchanges are of the view that no prior approval of the shareholders of the Company was obtained under Regulation 17(1A) of the SEBI Listing Regulations for continuation of office as Independent Director by Mr. V Subramanian. Consequently, BSE and NSE have, vide their communication dated 21st August 2023, imposed fine on the Company with respect to certain non-compliance / delayed compliance under Regulation 17(1A) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Company Submission:

Adani Enterprises Limited
"Adani Corporate House",
Shantigram, Near Vaishno Devi Circle
S. G. Highway, Khodiyar
Ahmedabad - 382 421
Gujarat, India
CIN: L51100GJ1993PLC019067

Tel +91 79 2656 5555
Fax +91 79 2555 5500
investor.ael@adani.com
www.adanienterprises.com

adani

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1. Regulation 17(1A) states that – "No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person".

   Please note that the shareholders of the Company at its 29th AGM held on 12th July 2021 passed a special resolution approving the reappointment of Mr. V Subramanian as Independent Director (Non-Executive) for a term of 5 years i.e. upto August 2026 ("current term"). The said Special Resolution and Explanatory Statement forming part of the same specifically mentions justification for his appointment, his age of 72 years and date of birth and the reference of compliance of applicable provisions of the Companies Act and also SEBI Listing Regulations. Copy of the above Special Resolution and Explanatory Statement forming part of the same are enclosed herewith as **Annexure I** for your ready reference.

2. We wish to submit that at the time of said approval, Mr. Subramanian was already 72 years of age and hence, his reappointment (for 5 years) covered his tenure beyond his attaining age of 75 years. The said shareholders' approval remained valid and subsisting and hence, he was not disqualified from continuing his office as an Independent Director (Non-Executive) beyond the age of 75 years.

3. Hence, prior approval of the shareholders was already in place (2021) to continue office as an Independent Director by Mr. V Subramanian during the current term notwithstanding he would attain the age of 75 years (in 2023) in terms of Regulation 17(1A) of SEBI Listing Regulations.

4. However, as an abundant caution, the Board of Directors of the Company, based on the recommendations of the Nomination and Remuneration Committee and on the basis of the report of performance evaluation of Independent Directors, at its meeting held on 4th May 2023, recommended and approved the continuation of office by Mr. V Subramanian as an Independent Director (Non-Executive) of the Company for the current term, notwithstanding that he will attain age of 75 years, subject to approval of the shareholders at the ensuing AGM, by way of **another special resolution**.

5. We further wish to submit that Regulation 17(1A) should be read in conjunction with the Regulation 17(1C) of SEBI Listing Regulations. These regulations do not use the word "prior approval" for any appointment / reappointment and allows a company to regularise the appointment / reappointment at the next general meeting or within a period of three months, whichever is earlier. As such, the intent of legislation is clear that prior approval is not required for such appointment / reappointment.

6. The legislative intent as mentioned in para 4 is further corroborated by the Securities Appellate Tribunal ("SAT") in its Order in Nectar Life Sciences Ltd v SEBI (copy enclosed as **Annexure II**) in which Regulation 17(1A) has been interpreted, as under:

Adani Enterprises Limited
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Regulation 17(1A) of the Listing Regulations which states that "No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect...", *the SAT observed that - "The word 'unless' depicted in Regulation 17(1A) does not mean "prior approval" nor the requirement of passing a special resolution is a qualificatory condition for appointment of a person as a Director."*
(emphasis added)

Regulation 17(1C) of SEBI Listing Regulation states that the listed entity shall ensure that approval of shareholders for appointment or re-appointment of a person on the Board of Directors or as a manager is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.

7. In our case, Mr. Subramanian was due to attain the age of 75 year on 17th June 2023. Considering that the Board of Directors of the Company at its meeting held on 4th May 2023, recommended and approved the continuation of office by Mr. V Subramanian as an Independent Director (Non-Executive) of the Company for the current term, notwithstanding that he will attain age of 75 years, subject to approval of the shareholders at the ensuing AGM. Thereafter, the shareholders of the Company at its 31st AGM held on 18th July 2023 have by way of special resolution approved the continuation of Mr. V. Subramanian as an Independent Director (Non-Executive) of the Company for his current term of appointment notwithstanding that he will attain age of 75 years i.e. upto August 2026. Hence, it can be seen that process of his continuation of office was initiated before his attaining the age of 75 year and the requisite shareholders' approval was taken within 3 months of his attaining the age of 75 years, which is in compliance of the abovementioned SAT order and SEBI Listing Regulations.

8. We wish to highlight that wherever the legislative intent is to mandate "prior approval", the provisions / regulations of the Companies Act, 2013/SEBI Listing Regulations specifically provide the phrase "prior approval" rather than using the word "unless".

9. We humbly submit that in view of the above-referred legislative intent is supported by the order of SAT, the Company is in due compliance of the provisions of the Regulation 17(1A) of the SEBI Listing Regulations.

10. We at Adani follow corporate governance and ensure due compliance of applicable rules and regulations. Please note that the Company has taken adequate steps (in terms of prior approval as well as post-facto approval of the shareholders) as per the provisions of Regulation 17(1A) of SEBI Listing Regulations.

Company Requests:

11. In view of the above submissions, we humbly request your good selves:

Adani Enterprises Limited
"Adani Corporate House",
Shantigram, Near Vaishno Devi Circle
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Ahmedabad – 382 421
Gujarat, India
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- to take the compliance made by the Company on records and kindly grant us full waiver of the fines as mentioned in the Exchange Letters dated 21st August, 2023; and

- till the time the waiver request is decided by the Exchange, further penal actions under the SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020 may be kept on hold.

If you require any further information from us, we would be pleased to furnish the same.

Thanking you,

Yours faithfully,
For **Adani Enterprises Limited**

Jatin Jalundhwala
Company Secretary &
Joint President (Legal)

TRUE COPY

Adani Enterprises Limited
"Adani Corporate House",
Shantigram, Near Vaishno Devi Circle
S. G. Highway, Khodiyar
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Gujarat, India
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ANNEXURE – A 16

December 01, 2023

The Secretary
National Stock Exchange of India Limited
Exchange Plaza, 5th Floor
Plot No- 'C' Block, G Block
Bandra-Kurla Complex, Bandra (East)
Mumbai-400051
Scrip Code: EROSMEDIA

SUB: Request letter for waiver of Penalty imposed with respect to Non-compliance with Regulation 17(1A) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Ref: Letter dated November 21, 2023 of NSE addressed by Rachna Jha, Manager, Listing Compliance, National Stock Exchange of India Limited (NSE) to Compliance Officer of Eros International Media Limited in relation to Notice for non-compliance with SEBI (LODR) Regulations, 2015.

Dear Sir / Ma'am,

This is with reference to the above letter regarding levying of fines for non-compliance under Regulation 17(1A) of SEBI Listing Regulation with respect to appointment or continuation of Non-executive director who has attained the age of seventy-five years for the quarter ended September 2023.

The fines levied are for the quarter ended September 30, 2023 in respect of non-compliance for appointment or continuation of Non-executive director who has attained the age of seventy-five years. The non-compliance pointed out by NSE is appointment of Mrs. Urvashi Saxena as Non-Executive Independent Director into the Board of the Company who has exceeded the age of seventy-five years shall be processed once special resolution in terms of regulation 17(1A) as per SEBI LODR Regulations, 2015, is passed.

In this regard, we hereby submit as under:

It would be pertinent to clarify that on August 11, 2023 Mrs. Urvashi Saxena was appointed as an Additional Director under the provisions of Section 161 of the Companies Act, 2013 ("the Act"). The relevant exuract of the said provision is as below:

161. Appointment of Additional Director, Alternate Director and Nominee Director

(1) The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an Additional Director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

It is submitted that the power to co-opt a Director under Section 161 of the Act is a special emergency power granted to a Company for a limited period of time. The Board's power to appoint additional directors in the section is not fettered and/or circumscribed by provisions in the Companies Act or any other legislation including SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 ("SEBI Listing Regulations, 2015"). The fact that the said power to appoint an additional director is an emergency power which is unfettered is evident from various cases including *Ananthalakshmi (K.) Ammal And Anr. vs The Indian Trades and Investments Ltd., AIR 1953 Mad 467, Zimmers Ltd. v Zimmer, (1951) WN 600*. In light of the same, it would be incorrect to interpret and/or assume that Section 161 of the Act is subject to the provisions of Regulation 17(1A) of SEBI Listing Regulations, 2015.

However, such additional directors are competent to hold office only upto the next Annual General Meeting ("AGM") wherein their appointment to the Board needs to be approved by the shareholders. The expression upto the date of AGM has been interpreted by various courts to mean upto the date when the next AGM ought to be held at the latest. A similar logic is applicable to the retiring auditors and the same is applicable to additional directors appointed under the said section.

In light of the above, it would be clear that Section 161 of the Act does not have any specific restriction on age, unlike the provisions of Regulation 17(1A) of SEBI Listing Regulations, 2015. Her appointment as an Independent Director is however regulated by Regulation 17(1A) of SEBI Listing Regulations, 2015 which prescribes a Special Resolution to be passed by Shareholders justifying such an appointment, which has been complied with during the AGM on September 26, 2023.

In light of the above, it is submitted that there lies no confusion with regard to the fact that Mrs. Urvashi Saxena's tenure as an Independent Director only starts once the Special Resolution is passed i.e. from September 26, 2023.

It is further submitted that the imposition of fine is unjustified in view of the fact that the Shareholders' approval was obtained by the Company in accordance with applicable laws and also pursuant to the settled law in the matter of *Nectar Life Sciences Ltd v. SEBI*, in which Regulation 17(1A) has been interpreted, as under:

> *(viii) Therefore on a harmonious reading of the proviso to Section 152(5) and Regulation 17(1A), we are of the opinion that when an appointment of an Independent Director above the age of 75 years is made by the Board of Directors under Section 161(4) such appointment is required to be approved by the shareholders of the Company in the next general meeting to be passed by a special resolution. The Board of Director would be required to indicate in the explanatory statement that the person fulfils the qualifications specified in the Act and also quote reasons for appointing such person who has crossed the age of 75 years.*
>
> *(ix) Section 17(1A) should be read harmoniously with the provisions of Sections 152, 161(4) of the Companies Act read with Rule 4 of the Rules and Regulation 17(1C) of the LODR Regulations which makes it clear that even if a person above the age of 75 years is appointed by the Board of Directors to fill up a casual vacancy, such appointment is required to be approved subsequently within the prescribed period by a special resolution in the next general meeting by the members of the Company.*
>
> *(x) The word "unless" depicted in Regulation 17(1A) does not mean "prior approval" nor the requirement of passing a special resolution is a qualificatory condition for appointment of a person as a Director.*

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25. In view of the aforesaid, the finding of the respondent that no persons can be appointed or continued to be appointed as a Non-Executive Director unless prior approval of the shareholders is made is erroneous.

Regulation 17(1C) of the Listing Regulation states that the listed entity shall ensure that approval of shareholders for appointment or re-appointment of a person on the Board of Directors or as a manager is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.

We further wish to submit that Regulation 17(1A) should be read in conjunction with the Regulation 17(1C) of SEBI Listing Regulations. These regulations do not use the word "prior approval" for any appointment / re-appointment and allows a company to regularize the appointment / re-appointment at the next general meeting or within a period of three months, whichever is earlier. As such, the intent of legislation is clear that prior approval is not required for such appointment / re-appointment, and hence, there is no non-compliance of provisions of Regulation 17(1A) of the SEBI Listing Regulations.

We therefore request you to waive off the fines levied since the Company has always been compliant in respect of stock exchange compliances and Corporate Governance has always been a top priority of the management of the Company.

Please note that necessary waiver processing fees of Rs. 10,000/- (subject to TDS) has been paid by the Company to the designated exchange i.e., NSE *via* NEFT bearing UTR No. N335232762167814 dated December 01, 2023.

Your kind and immediate cooperation in the matter is requested.

Thanking you

Yours faithfully,

For Eros International Media Limited

Vijay Thaker
VP-Company Secretary & Compliance Officer

TRUE COPY

SAL SHAH ALLOYS LTD.

Corp. Office : Shah Alloys Corporate House, Sola - Kalol Road, Sarkej Ta. Kalol, Dist. Gandhinagar- 382721
Regd. Office : 61, Shreeji Nagar, 5th Floor, Behind M.J. Library, Ashram Road, Ahmedabad- 6 INDIA
Phone : (02764) 661160 | E-mail : info@shahalloys.com

02nd December, 2023

To,

The Manager,
National Stock Exchange of India Limited
Exchange Plaza, Plot No C/1, G-Block,
Bandra – Kurla Complex, Bandra (E),
Mumbai – 400051
NSE Symbol – SHAHALLOYS

Kind Attention: Ms. Rachna Jha,
Ms. Sonam Yadav,
Mr. Kunal Rohra,

Ref: Fine under SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020.

Sub: Waiver Request Letter as per the BSE Policy for exemption of fines levied as per the provisions of SEBI SOP Circular (Reasons for waiver/reduction of penalty levied under SEBI SOP circular No. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020.

Dear Ma'am/Sir,

We are in receipt of your mail dated 21st November, 2023, with respect to the above-mentioned subject, in which a fine of Rs. 82,600/- (Includes GST) was levied against non-compliance with regard to Regulation 17(1A) SEBI [Listing Obligations and Disclosure Requirement] Regulations, 2015, pursuant to the appointment of Shri Ambalal Chhitabhai Patel (DIN: 00037870), as an Additional Director in the category of non-executive independent director by way of a board resolution & further appointed as an Independent Director by passing Special Resolution in the Annual General Meeting.

Pursuant to the said appointment & in compliance with above regulations, we have submitted our replies vide our letter dated 30th October, 2023 & 18th November, 2023 in which we have mentioned all our explanations & practical aspects pertaining to the said appointment. We also sought the guidance/advice from the Exchange, but no answer or any guidance received by us.

The Process taken in the Appointment of Shri Ambalal Chhitabhai Patel, is within the ambit of law as clearly described in our previous letters. Recently, also a very much

SAL SHAH ALLOYS LTD.

Corp. Office : Shah Alloys Corporate Tower, Sola - Kalol Road, Santej, Ta. Kalol, Dist. Gandhinagar- 382721
Regd. Office : 5/1, Shree Ji House, 5th Floor, Behind M. J. Library, Ashram Road, Ahmedabad- 8 India
Phone : 02764 - 661100 E-mail : info@shahalloys.com

similar case in the Appeal filed before Securities Appellate Tribunal (SAT) by 20 Microns Limited Vs. BSE and SEBI, the SAT directed the Exchanges to not initiate any penalty regarding the matter which is 99.99% similar case to us. A copy of said order is attached herewith for your ready reference.

Referring to the observations of the Hon'ble SAT and the provisions of the Companies Act, 2013 and LODR, and also considering the fact that neither the intent of the Company including its management, directors and officers is to defraud the stakeholders in any way whatsoever nor the Company including its management, directors and officers has taken any undue advantage from the said appointment, rather the intent of the Company including its management, directors and officers is to maintain optimum Board composition at all times and is committed to comply with the applicable provisions and orders of the Hon'ble SAT, we request you to not to levy any penalty as there is no mala-fide intent whatsoever on the part of the company including its management, directors and officers.

Considering our submissions we request you to kindly remove or waive off the penalty imposed and do not initiate any adverse actions. Your immediate action in this regard would be highly appreciated.

Please find enclosed herewith the copy of the details of the payment of Rs. 11,800/- in favour of "BSE Ltd." (Designated Stock Exchange).

Cheque No.	Bank Name	Date	Amount (in Rs.)
066863	ICICI BANK LIMITED	02/12/2023	11,800

Thanking you.

Yours faithfully,

For & on behalf of

Shah Alloys Limited

Mayank Chadha

Mayank Chadha

Company Secretary and Compliance Officer

TRUE COPY

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ANNEXURE - A-18

CIN : L26942TG1979PLC002485
GST No : 36AAECK1863J1ZE

KAKATIYA CEMENT SUGAR & INDUSTRIES LIMITED

1-10-140/1, 'GURUKRUPA', Ashok Nagar, Hyderabad - 500 020.

REF:KCSIL:SEC:2023:   December 7, 2023

The Manager,
Listing Department,
National Stock Exchange of India Ltd.,
Exchange Plaza, 5th Floor,
Plot No.C/1, G Block,
Bandra-Kurla Complex, Bandra (E),
MUMBAI - 400 051.

Dear Sirs,

Sub : Application seeking waiver of the fine levied for non-compliance with Regulation 17(1A) of the SEBI (LODR) Regulations, 2015

Ref : Scrip Code : KAKATCEM (NSE) and 500234 (BSE)

This has reference to your e-mail dated 21.11.2023 received from the Stock Exchange alleging non-compliance with the provisions of Regulation 17(1A) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 pertaining to the appointment of Shri V Sivarama Krishna Murthy as an Independent Director of the Company w.e.f. 4th August, 2023 and levying fine of 1,04,000/- (Excluding GST).

In this regard, your attention is drawn to our letter dated October 13, 2023 and the following submissions :

- The Board of Directors at its meeting held on 4th August, 2023 had considered the recommendation of the Nomination and Remuneration Committee and accorded its approval for the appointment of Shri V. Sivarama Krishna Murthy as an independent director, subject to the approval of the members, for a term of five years w.e.f. 4th August, 2023.
- In this regard, we would like to draw your attention to the provisions of Section 152(2), 152(5) and 161(1) of the Companies Act, 2013 reproduced hereunder :

152(2). Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.

152(5) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed:]

SESHA SAYEE VORUGANTI

Regd. Off. : Phones : 040-27637717, 27633627, Fax : 040-27630172, E-mail : info@kakatiyacements.com
Works : CEMENT : Cement Nagar, Chintalapalem (Mdl), Suryapet (Dist.) - 508 246, Phones : 08683-200044, Fax : 08683-285051
SUGAR & POWER : Pedavaram Village, Nandi Gama (Mdl), Khammam (Dist.) 507 204, Ph. 08761-287237, Fax : 08761-287238

CIN : L26942TG1979PLC002485
GST No.: 36AABCK1868J1ZG

KAKATIYA CEMENT SUGAR & INDUSTRIES LIMITED

1-10-140/1, 'GURUKRUPA' Ashok Nagar, Hyderabad - 500 020.

Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.

161. Appointment of Additional Director, Alternate Director and Nominee Director

(1) The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an Additional Director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

From the above, it is clear that the Board of a Company can appoint a person as an Additional Director provided there is an enabling provision in the Articles of Association of the Company. Such person who is appointed as an Additional Director shall hold office up to the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Article 36 (e) of the Articles of Association of the Company contains the enabling provision for appointment of additional director as follows:

36 (e): The Board of Directors shall have power to appoint additional Directors provided such additional Directors shall hold office only up to the date of the next Annual General Meeting of the Company, and provided further that the number of Directors and additional Directors together shall not exceed maximum strength fixed for the Board by the Articles.

From a reading of the above provisions of Section 152(2) and 161(1) read with Article 36(e) of the Articles of Association, it is clear that a Director can only be appointed by the shareholders of the Company in the general meeting. However, in case of appointment of Additional Director during the year in the period between two general meetings, such person can continue as an Additional Director till the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

In our case, as the Annual General Meeting was to be held on or before 30th September, 2023, Shri V Sivarama Krishna Murthy, who was appointed as an Additional Director on 4th August, 2023, continues to be the Director of the Company till such AGM held.

SESHA SAYEE VORUGANTI

CIN : L26942TG1970PLC001...
GST No.: 36AABCK1180...

KAKATIYA CEMENT SUGAR & INDUSTRIES LIMITED

1-10-140/1, 'GURUKRUPA' Ashok Nagar, Kukatpally - 500 020.

- Regulation 17(1A) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 stipulate that *no listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy-five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.*

  From a plain reading of the said provision, it appears that in case a Company wants to appoint a person who has attained the age of seventy five, as a Director, a Special resolution would be required before such appointment.

  In this regard, it is pertinent to note that under the proviso to Section 152(5) of the Companies Act, 2013, the Board of Directors has to justify that the person who is going to be appointed as an Independent Director fulfills the conditions for appointment of such Director as specified in the Act whereas under Regulation 17(1A), a special resolution is required to be passed indicating the justification for the appointment of such person.

- However, Regulation 17(1C) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, stipulates that the listed entity shall ensure that the approval of shareholders for appointment [or re-appointment] of a person on the Board of Directors [or as a manager] is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.

- Accordingly, our Company has obtained the approval of the members by way of a Special Resolution, for the appointment of Shri V Sivarama Krishna Murthy (who has attained the age of seventy five years) as an Independent Director w.e.f. 4th August, 2023 for a period of five years at the Annual General Meeting held on 25th September, 2023 (which is within the three month period from the date of appointment).

- The justification for the appointment of Shri V Sivarama Krishna Murthy as an Independent Director has been given in the Explanatory statement along with the date of birth and other details of Shri V Sivarama Krishna Murthy (in the annexure to the notice) and a copy of the extract of the Notice convening the 44th Annual General Meeting is enclosed for your perusal and reference purposes.

- Your attention is also drawn to the judgment dated 27.04.2023 passed by the Hon'ble Securities Appellate Tribunal in the matter of Nectar Life Sciences Limited Vs. SEBI and others (Appeal No. 185/2023) wherein SAT has held that

SESHA SAYEE VORUGANTI

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CIN : L26942TG1979PLC002485
GST No.: 36AABCK1868J1ZB

KAKATIYA CEMENT SUGAR & INDUSTRIES LIMITED

1-10-140/1, "GURUKRUPA" Ashok Nagar, Hyderabad - 500 020.

24(iv) Appointment of a Director made by the Board of Directors is required to be approved by the shareholders/members of the Company in the next general meeting or within three months from the date of appointment whichever is earlier as provided in Regulation 17(1C) of the LODR Regulations read with the proviso to Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

(v) Regulation 17(1A) cannot be read in isolation. It has to be read alongwith Section 152(5) of the Companies Act, 2013....

....

(vii) Thus, under the proviso to Section 152(5) of the Companies Act, 2013, the Board of Directors has to justify that the person who is going to be appointed as an Independent Director fulfills the conditions for appointment of such Director as specified in the Act whereas under Regulation 17(1A), a special resolution is required to be passed indicating the justification for the appointment of such person.

....

(x) The word 'unless' depicted in Regulation 17(1A) does not mean "prior approval" nor the requirement of passing a special resolution is a qualificatory condition for appointment of a person as a Director."

25. In view of the aforesaid, the finding of the respondent that no persons can be appointed or continued to be appointed as a Non-Executive Director unless prior approval of the shareholders is made is erroneous.

- Even though we are of the view that there has been no non-compliance with the provisions of Regulation 17(1A) of SEBI (LODR) Regulations, 2015, as alleged, we have already remitted the fine amount of Rs. 1,22,720/- (including GST of Rs.18,720) under protest to the Exchange on 28.11.2023 by way of NEFT bearing UTR No. SBIN423332099025 through State Bank of India.
- The processing charges of Rs. 10,000/- (Rupees Ten Thousand only) + GST have been paid by way of NEFT bearing UTR No. UBIN0233419769 dated 07.12.2023 and you are requested to kindly acknowledge the same.

Hence, we wish to submit that Regulation 17(1A) should be read in conjunction with the Regulation 17(1C) of SEBI Listing Regulations and other applicable provisions of the Companies Act, 2013 and rules prescribed thereunder. These regulations do not use the word "prior approval" for any appointment / reappointment and allows a company to regularize the appointment / reappointment at the next general meeting or within a period of three months, whichever is earlier. As such, the intent of legislation is clear that prior approval is not required

SESHA SAYEE VORUGANTI

Regd. Off. Phone: 040-27637717, 27534627, Fax: 040-27630172, E-mail: [illegible]
Works: CEMENT: [illegible] Fax: [illegible]
SUGAR & POWER: [illegible] Fax: [illegible]

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CIN: L26942TG1979PLC002485
GST No.: 36AABCK1820J1Z[illegible]

KAKATIYA CEMENT SUGAR & INDUSTRIES LIMITED

1-10-140/1, 'GURUKRUPA' Ashok Nagar, Hyderabad - 500 020.

for such appointment / reappointment, and hence, there is no non-compliance of provisions of Regulation 17(1A) of the SEBI Listing Regulations.

In view of the above submissions, we request you to consider our application favourably and grant waiver of the fine levied for the alleged non-compliance with the provisions of Regulation 17(1A) of SEBI (LODR) Regulations, 2015, at the earliest and oblige, for which act of kindness, we shall be grateful to you.

Thanking You,

Yours faithfully,
For Kakatiya Cement Sugar & Industries Limited

SESHA SAYEE VOBILISETTI (Digitally signed by SESHA SAYEE VOBILISETTI)
V Sesha Sayee
Company Secretary &
Compliance Officer

Encl.: 1) Copy of our letter dated 13.10.2023 along with extract of the Notice convening the 44[th] Annual General Meeting.
2) Proof of payment of the fine levied
3) Proof of payment of Processing Charges to NSE Limited

TRUE COPY

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ANNEXURE – A-19

D P WIRES LIMITED

+91 88739 31861, +91 7412 261130

info@dpwires.co.in, investors@dpwires.co.in

www.dpwires.co.in

December 11th 2023

To,
Ms. Sonam Yadav, Mr. Kunal Rohra,
Listing Manager
National Stock Exchange of India Limited
Exchange Plaza, 5th Floor, Plot No – C Block, G Block
Bandra Kurla Complex, Mumbai- 400 051

Subject: – Response to Notice raised vide e-mail dated November 21, 2023 and December 07, 2023

Dear Sir/Madam

Pursuant to Regulation 30 of SEBI Listing Regulations, we would like to inform that National Stock Exchange of India Limited ("NSE") have, vide their communication dated November 21, 2023, NSE/LIST-SOP/COMB/FINES/1204 and December 07, 2023, NSE/SOP/RBF/1264 ("Exchange Letters"), imposed fine on the Company with respect to certain non-compliance / delayed compliance under Regulation 17(1A) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

The Company wish to clarify that imposition of fine by NSE is improper, since the shareholders' approval was obtained by the Company in accordance with applicable laws and also pursuant to the settled law in the matter of Nectar Life Sciences Ltd v/s SEBI, in which Regulation 17(1A) has been interpreted, as under:

> *Regulation 17(1A) of the Listing Regulations which states that "No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect…", the SAT observed that "The word 'unless' depicted in Regulation 17(1A) does not mean "prior approval" nor the requirement of passing a special resolution is a qualificatory condition for appointment of a person as a Director."*
>
> (emphasis added)
>
> Regulation 17(1C) of the Listing Regulation states that the listed entity shall ensure that approval of shareholders for appointment or re-appointment of a person on the Board of Directors or as a manager is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.

We further wish to submit that Regulation 17(1A) should be read in conjunction with the Regulation 17(1C) of SEBI Listing Regulations. These regulations do not use the word "prior approval" for any appointment / reappointment and allows a company to regularize the appointment / reappointment at the next general meeting or within a period of three months,

whichever is earlier. As such, the intent of legislation is clear that prior approval is not required for such appointment /reappointment, and hence, there is no non-compliance of provisions of Regulation 17(1A) of the SEBI Listing Regulations.

We would like to further inform that the Company is in the process of making applications to NSE with detailed justifications highlighting that the Company is in due compliance of provisions of Regulation 17(1A) of the SEBI Listing Regulations and requesting for waiver of fines, imposed by the respective authorities.

The details as required under SEBI Listing Regulations read with SEBI Circular No. SEBI/HO/CFD/CFD-PoD1/P/CIR/2023/123 dated 13th July, 2023 are enclosed in Annexure I.

Request you to take the same on records.
Thanking you

Yours Faithfully,
For **DPWIRES Limited**

KRUTIKA MAHESHWARI

Digitally signed by KRUTIKA MAHESHWARI
Date: 2023.12.11 18:26:51 +05'30'

Krutika Maheshwari
Company Secretary & Compliance Officer

TRUE COPY

M/S Nagreeka EXPORTS LIMITED
(STAR TRADING HOUSE RECOGNISED BY GOVT. OF INDIA)
REGD. OFFICE : 18, R. N. MUKHERJEE ROAD, KOLKATA - 700 001, INDIA
Ph.: 2210-8828, 2248-4922/4943, Fax: 91-33-2248 1693, E-mail: [illegible]@nagreeka.com

Oeko-Tex

NEL/SE/2023-24

Date: 13-12-2023

To	Cc:
The Deputy General Manager Corporate Relationship Dept. **Bombay Stock Exchange Limited** 1st Floor, New Trading Ring Rotunda Building, P.J. Towers Dalal Street Fort Mumbai 400 001 **Scrip Code - 521109**	The Deputy General Manager Corporate Relationship Dept **National Stock Exchange of India Limited** Exchange Plaza Bandra Kurla Complex Bandra (E) Mumbai 400 051 **Scrip Name - NAGREEKEXP**

ISIN: INE123B01028

Dear Sir/Madam,

Sub: Application for seeking waiver of the fine imposed on the Company by BSE Ltd. amounting to Rs. 75,520/- and National Stock Exchange of India Ltd. amounting to Rs. 75,520/-.

Ref: Your email dated 7th December, 2023

This is with reference to your email dated 7th December, 2023 wherein you have imposed a fine on the Company of Rs 75,520/- in connection with the alleged violation of Regulation 17(1A) of the SEBI (LODR) Regulations, 2015.

We would like to inform you that we had received two observations from NSE dated 27th October, 2023 and 15th November, 2023 regarding the filing of Corporate Governance Report for the quarter ended 30th September, 2023 for which we have submitted clarifications dated 7th November, 2023 and 17th November, 2023 with NSE respectively. Thereafter, we have also submitted our response dated 11th December, 2023 in respect of mails received from both the Stock Exchanges (BSE and NSE) dated 7th December, 2023 imposing a fine of Rs. 75,520/- for non-compliance of provisions of Regulation 17(1A) of the SEBI (LODR) Regulations, 2015.

In view of the above, we would like to clarify that the appointment of Mr. Amitava Mazumder, Independent Director was in due compliance of the provisions of Section 149, 152(2), 161 of Companies Act, 2013 and Regulation 17(1A) and 17(1C) SEBI (LODR) Regulations, 2015.

A reading of Section 152(2) and 161(1) of the Companies Act makes it clear that a director can only be appointed by the shareholders of the Company in an Annual General Meeting.

M/S Nagreeka EXPORTS LIMITED
(STAR TRADING HOUSE RECOGNISED BY GOVT. OF INDIA)
REGD. OFFICE : 18, R. N. MUKHERJEE ROAD, KOLKATA - 700 001, INDIA

However, the board of directors can appoint any person as an additional director who will hold office up to the date of the next Annual General Meeting.

In this connection, we would also like to state that the Appointment of Mr. Amitava Mazumder as an Additional Director under the category of non-executive independent director had been recommended by Nomination and Remuneration Committee and approved by the Board of Directors in their meeting held on 28th August, 2023, but it was subject to the approval of shareholders in the forthcoming Annual General Meeting. Subsequently, the Company has also taken approval of the shareholders in its 34th Annual General Meeting held on 29th September, 2023 by passing a Special Resolution (**Copies of resolutions passed in AGM alongwith explanatory Statement attached as Annexure-I**).

In this connection, we would also like to draw your kind attention towards Securities Appellate Tribunal (SAT) Order in the case of **"Nectar Life Sciences Ltd. vs. SEBI & Others, Appeal no. 105 of 2023 decided on April 27, 2023" and "20 Microns Limited vs. SEBI & Others, Appeal no. 845 of 2023 decided on November 28, 2023"** (**Copies of orders annexed as Annexure-II**), wherein the SAT has stated that on combined reading of Sections 149, 152(2) and 161 of the Companies Act, 2013, and Regulation 17(1A) and 17(1C) of the SEBI (LODR) Regulations, 2015, it is clear that Board can appoint a person of over 75 years of age as Independent Director subject to the approval by members by passing Special Resolution within 3 months, which was duly complied with in this case. The word 'unless' in Regulation 17(1A) does not mean 'prior approval'. This reference has been drawn down from recently concluded judgements by Securities Appellate Tribunal in which the levy of penalty was quashed.

On the grounds of the above clarifications, we request you to consider this waiver application for which we have also made a payment of fees of **Rs. 10,000 + GST Charges of Rs. 1,800 i.e. 11,800/-**, the details of which are mentioned below:

Date	Bank Name	NEFT/ UTR No.	Amount Paid
13-12-2023	CANARA BANK	NEFT Dr-P347230226787944-1CIC000104-BSE LTD-	11,800

Therefore, we would like to request you to kindly consider this waiver application on the ground of above clarifications and not initiate any action against the Company until we receive intimation of the decision pertaining to our waiver application.

Yours faithfully,
For Nagreeka Exports Limited

JYOTI SINHA BANERJEE

Jyoti Sinha Banerjee
Company Secretary & Compliance Officer

TRUE COPY

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ANNEXURE A-21

PAVNA INDUSTRIES LTD.

Date: 18.12.2023

BSE Limited, New Trading Ring, Rotunda Building, P.J. Towers, Dalal Street, MUMBAI-400001 **Scrip Code: 543915**	The National Stock Exchange of India Ltd. Exchange Plaza, Bandra-Kurla Complex, Bandra (East), MUMBAI-400 051 **Scrip Code: PAVNAIND**

Dear Sir/Madam,

Subject-Waiver application for penalty paid for non-compliance with SEBI (LODR) Regulations, 2015 ("Listing Regulations") and Fines as per SEBI circular no. SEBI/HO/CFD/PoD2/CIR/P/2023/120 dated July 11, 2023 (Chapter-VII(A)-Penal Action for Non-Compliance)

This is with reference to the email received on November 21, 2023 (Reference: NSE/LIST-SOP/COMB/FINES/1204) from NSE and BSE (Reference: SOP-Review/Sep23-Q/21-11-2023) regarding notice for non-compliance/delayed compliance with Regulation 17(1A) of the SEBI (LODR) Regulations, 2015. A fine had been imposed on the Company for the same by the NSE and BSE.

We have paid the following fine whose details are mentioned below:

5 Dec 2023	NEFT Dr-ICIC0000104-BSE LIMITED-SASNI GATE A-N339232767976077	000000008291	05 Dec 2023	60,480.00
05 Dec 2023	NEFT Dr-IBKL0001000-NATIONAL STOCK EXCHANGE OF INDIA LTD-SASNI GATE A-N339232767977551	000000006290	05 Dec 2023	60,480.00

*10%TDS has been deducted

In this regard, we would like to give the reference of the Order of the Securities Appellate Tribunal Mumbai in the following cases:

1. 20 Microns Limited-Appeal No.845 & 846 of 2023 dated 28th November, 2023

The Tribunal considered that Regulation 17(1A) and 17(1C) has to be read harmoniously with the provisions of Section 152(2) and 161(1) of the Companies Act which will make it clear that a person above the age of 75 years can be appointed by the board of directors. Such appointment is required to be approved subsequently within the prescribed period by a special resolution in the next general meeting by the members of the Company which in the instant case was done within the prescribed period.

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PAVNA INDUSTRIES LTD.

In view of the aforesaid, no penalty could have been imposed by the BSE and NSE for violation of Regulation 17(1A) of the LODR Regulations. In view of the aforesaid, the impugned orders cannot be sustained and are quashed. The appeals are allowed with no order as to costs.

2. Nectar Life Sciences Limited –Appeal No.185 of 2023 dated 27th April, 2023

In the given case, the Tribunal considered the provisions of Regulations 17(1A) with other provisions and held that the word "unless" as depicted in Regulation 17(1A) does not mean "prior approval" nor the requirement of passing a special resolution was a qualificatory condition for appointment as a director.

In view of the aforesaid, the impugned order cannot be sustained. No penalty could have been imposed for violation of Regulation 17(1A) of the LODR Regulations. Nothing has been brought on record to indicate violation of any provision of the Companies Act or Regulation 17(1C) of the LODR Regulations. In view of the aforesaid, the impugned order cannot be sustained and is quashed. The appeal is allowed.

Similarly, in the our case, The Board of Directors of Company recommended for appointment of Mr. Achyutanand Ramchandra Mishra on September 1, 2023 as an Additional-Non-Executive Independent Director subject to the approval of the Shareholders of the Company through special resolution. He was appointed as Non-Executive Independent Director by Shareholders of the Company in Annual General Meeting held on September 29, 2023 through passing a special resolution for which a justification for appointing him was also provided in the explanatory statement annexed to the notice of Annual General Meeting for such motion. The said Special Resolution was passed as per Regulation 17(A) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 on September 29, 2023 by the shareholders of the Company in the AGM.

So, in view of the aforesaid order passed by the SAT, no penalty could have been imposed by the BSE and NSE for violation of Regulation 17(A) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 as we have complied with the said Regulation.

We hereby requesting you to waive of the Penalty imposed on the Company by the BSE and NSE.

The above two Orders of the SAT has been enclosed herewith for your reference.

For Pavna Industries Limited

charu singh

Charu Singh
Company Secretary & Compliance Officer
M.No. A 48357

Encl: As Above

TRUE COPY