POSITION OF SPECIAL PURPOSE ACQUISITION COMPANIES IN THE INDIAN CORPORATE LANDSCAPE

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ABSTRACT

The mechanism of Special Purpose Acquisition Companies (SPACs) is a recent development in the Indian corporate landscape. These are essentially blank cheque companies constituted with the objective of raising capital through the means of public offer. These companies come into existence primarily for the purpose of acquiring another company, which is generally a private unlisted company. The SPACs do not possess any underlying business operations of their own. At the outset, this work traces the development of SPACs while addressing the shell companies and blank cheques existing in the USA in the 1980s. Further, this work has attempted to explain the mechanism and workings of the SPACs. Since the concept of SPACs is new to the Indian corporate scenario, its position in India has also been addressed in this work. Special Purpose Acquisition Companies (SPACs) face significant challenges in the Indian corporate landscape due to regulatory, market, and investor-related constraints. The absence of a dedicated SPAC framework, stringent SEBI norms, and RBI restrictions hinder their adoption. This work presents the regulatory challenges of the constitution of SPACs and the process of listing through this mechanism since there is no legislative framework in India that specifically governs and regulates SPACs.

I.DEVELOPMENT OF SPECIAL PURPOSE ACQUISITION COMPANIES

Special Purpose Acquisition Companies or SPACs are those companies that are constituted primarily for the purpose of raising funds in an initial public offering (also called the IPO), with the objective of utilizing the proceeds for acquiring or initiating a merger with already existing companies and their operations which are not identified or recognised at the time of the process of IPO.[2] It is essential to note that SPACs, also known as blank cheque or shell companies, do not possess their own underlying business operations. The SPACs are essentially structured in a way as to make the companies public on the stock market without

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[2] https://corpgov.law.harvard.edu/2018/07/06/special-purpose-acquisition-companies-an-introduction

venturing into the traditional process of initial public offering.[3] The development of SPACs can be traced to the 1980s in the United States of America. It was then that the concept of SPACs surfaced for the first time, primarily called blank cheque companies which were notorious for being unregulated, characterised as being corrupt and consequently were fraught by the penny stock fraud, which were neither registered nor traded on the National Stock Exchange. [4] They were often used as tools to defraud inexperienced investors. As a result, 1980s witnessed a surge in the extent and recurrence of swindling and corruption in the securities market.

Such incidences compelled a need to bring the penny stock companies and blank cheque companies under the radar of a concrete regulatory mechanism. Therefore, on being instructed by the US Congress, the US Securities Exchange Commission brought regulations into force thereby compelling disclosure and management requirements of the blank cheque companies.[5] However, with the enactment of federal laws governing blank cheque companies and increased surveillance, there was a visibly considerable decline in the number of blank cheque offerings post 1980s. The SEC regarded blank cheque companies as a company having no business no operation or purpose of its own except engaging with other non-recognized companies, entities, or an individual by either merging or acquiring them.[6] The corrective laws to regulate and govern the blank cheque companies was a result of the collaboration between the US Congress, the SEC, and the National Association of Securities Dealers (NASD). Finally, the monumental Securities Enforcement Remedies and Penny Stock Reform Act, 1990 was enacted by the US Congress with an objective to curb the exploitation of blank check offerings. It is essential to note that although thirty-six states in the US boycotted or restricted the blank cheque companies, however, they were not absolutely prohibited. Through the rule 419[7], adopted by the SEC which was enacted with the dual objective of not only introducing stringent regulation on the revenue of the blank cheque offering but also to safeguard the investors by giving them an opportunity to re-evaluate their investment after considering all the facts related to the company. Thus, the enactment of legislations governing and restricting the abuse of blank cheque companies as a vehicle for defrauding the investors resulted in a drastic decline in the

[3] 'What Are Spacs & The Trend In 2021 | CB Insights Research' (*CB Insights Research*, 2021).
[4] 'Spacs: What You Need To Know' (Harvard Business Review, 2021).
[5] Daniel S. Riemer, 'Special Purpose Acquisition Companies: SPAC And SPAN, Or Blank Check Redux?' [2007] Washington University Law Review.
[6] Ibid
[7] Securities Act 17 CFR § 230.419 1933.

number of blank cheque companies since the laws made the process of finding investors by such companies a daunting task.

However, it was the early years of 1990s that witnessed a resurgence of a more refined version of the blank cheque companies in the form of SPACs. A major difference between blank cheque companies and SPACs is that unlike the former, SPACs safeguard the interests of the investors.[8] The concept of SPACs was designed for the purpose of raising capital in a public stock offering by acquiring a business. The 1990s boom of SPACs was regarded as the first generation of SPACs which operated by conforming to the rule 419 and held majority of their raised funds in escrow account except a small sum required by the SPACs to function. It was David Nussbaum who established the first SPAC as early as in 1993. The SPACs also conferred upon the investors the right to rescind post the declaration of the acquisition combination[9] and in general operated in compliance with rule 419 of the Securities Act of 1934. Despite the assurance of conformity with the laws and security of investors, the success of IPO market during the 1990s impeded the popularity of the SPACs. The emergence of SPACs, however proved to be profitable for the small-scale companies since they weren't required to raise funds through their own IPOs.

However, yet again in the year 2004, SPACs re-emerged and quickly gained popularity. The years post 2004 saw an exponential rise in the SPACs and a substantial increase in the number of SPACs filings.[10] The functioning of SPACs of the second generation is not restricted by the provisions under rule 419. The popularity of SPACs essentially thrives on the exception featuring in the definition of penny stock to prevent from being subject to the rule 419. This has enabled the SPACs to establish their legitimacy and to also satisfy the SEC that is not an instrument used to commit frauds but is an establishment that conforms to the regulation while being technically exempt from the stringent rules.

II. WHAT IS A SPAC?

Concept of Special Purpose Acquisition Company

SPACs may essentially be considered as the successor of blank cheque companies. For the established companies, the traditional mode of raising capital through the Initial Public Offering has been regarded as an elixir for fulfilling the objective of raising funds and generate

[8] 'Exploring An Alternative to Ipos: Special-Purpose Acquisition Companies (Spacs)' (OpenCommons@UConn, 2021).
[9] Supra note 4 at p 945
[10] Supra note 4 at p 950

liquidity of such funds. As we are aware, there are primarily three modes through which a company can go public. It may be either through traditional IPO, direct listing or even by merger with a public company and SPAC is considered to be this public company.[11] They primarily raise revenue through the process of IPO and further utilize the proceeds of the IPO either to acquire or initiate a merger with one or more companies recognised after completion of the process of IPO. Since the SPACs, like the blank cheque companies in the US, possess no underlying business operation of their own, their sole objective is to raise funds through an IPO to acquire an existing target company.[12] The effect of this acquisition or merger of the SPAC and the target company which is inherently a private company becomes a public listed company thereby pre-empting the complex and laborious process that is involved in a traditional IPO.

The SPAC is comprised of a group of professional institutional investors who are entrusted with the task of identifying a target company to be acquired or merged within a period of two years from its formation, subject to the approval by shareholders.[13] The primary difference between SPACs and blank cheque companies is that in case of the former the company has twenty four months to identify the target company however, in case of the latter, the blank cheque companies had to identify the target company for the purpose of acquisition and merger within eighteen months of its establishment. In case the SPACs exceed the time frame of two years in the identification of the target company, the proceeds accrued from the SPAC IPO process is liable to be returned to the investors along with interest.[14] The only asset that SPACs possess is the capital raised through their first public offering.

Where the acquisition or merger of the SPACs and target company is successful, it will result in the identification and recognition of the target company which has the effect of the unlisted target company getting listed. This merger or acquisition of the unidentified private target company by the SPAC which is a buying entity is regarded as a de-SPAC transaction. Further, the fact that the SPACs facilitate and enable an unidentified private target company to go public without the hassle of undergoing the process of traditional IPO, the concept of SPACs has emerged as a promising alternative. This is so especially in India since newly established

[11] 'Going From SPAC To Spactacular In India: Exploring Competition Law Exemptions &Amp; Relaxations Available To SPAC Structures' (*The National Law Review*, 2021).
[12] Ibid
[13] 'Conundrum In the Development Of Special Purpose Acquisition Companies (Spac) In The Indian Corporate Sector' (*Ijclp.com*, 2021).
[14] Supra note 12

companies including various start-ups consider fulfilling of the eligibility criteria for listing through traditional IPOs an arduous task. The SPACs are preferred since they enable unidentified private target companies to go public more expeditiously than the traditional IPOs. The advent of SPACs in India has been regarded to be preferrable owing to many reasons[15]. One of the foremost reasons is that in this process, unlike in the traditional IPO process, the target company aiming to get publicly listed, enters into negotiation only with one investor. Further, the price of initial public offering in a transaction involving SPAC is determined by the negotiation between the target company and the SPAC. However, in case of a traditional IPO, the issuing price is dependent on the demands advanced by the investors. In addition, in a traditional IPO, the companies are required to wait for an appropriate time depending on the conditions of the stock market and fluctuations in order to go public. However, this is not so in case of SPAC transactions since the funds are already raised by way of SPAC IPO. Additionally, the process of SPAC IPOs is relatively more expeditious than that of the traditional IPOs.[16]

Although the concept of SPACs is not new and it has been in existence in the global domain since a while, however, India has only recently seen an exponential growth owing to the volatility of the market in times of the pandemic.

<u>Functioning of SPACs</u>

Start-ups and newly constituted companies recognised for possessing and implementing innovative and creative ideas in their business operations usually have an edge while negotiating with the founders of SPACs. The functioning and operation of SPACs involves the stages of formation or constitution of the SPAC, issuing of shares through a SPAC IPO, identification of the target company, determination of the de-SPAC transaction price among others.

Formation of SPAC

A SPAC essentially comprises of a sponsor who may either be an individual or a team with substantial experience in business possessing innovative project ideas. The sponsor or founder of SPAC sponsors it at the pre-IPO stage. It is primarily constituted either by a private equity funds or financial institutions specialising in a select industry or business sector possessing adequate initial working capital for the purposes of investment and expenses for issuing

[15] Supra note 10
[16] Ibid

securities during the process of IPO. In return of which, the sponsor is entitled to a 20 to 25 percent of interest in the SPAC.[17]Further, public shareholders are entitled to the remaining interest in the form of units which is offered in the process of initial public offering by the SPAC. Each unit allotted to the public shareholders constitutes a share of common stock. In the USA, the formation of SPACs is primarily governed by the laws dealing with accounting, tax, and companies.[18]

Following the completion of IPO process, the raised funds are held in an escrow account post which sponsors are given a time frame of two years to search and identify a private target company for the purpose acquiring it or initiating a merger with such private company subject to the approval of the shareholder. However, if the sponsors fail to do so within the stipulated time-period, the SPAC shall dissolve, and the shareholders will be entitled to take their money back. For the SPAC to go ahead with either acquisition or merger, it is essential for the transaction to obtain a specific percentage of votes. In case the required majority is secured, the dissenting shareholders are entitled to get receive back their investment except a nominal subtraction. Subsequent to this, the acquisition of the target company is deemed to be complete thereby making it public as a consequence of the reverse merger. This acquisition or merger has the effect of the acquired target company getting vested with the funds raised by the SPAC through the IPO process.[19]However, in case where the stipulated majority is not secured, then the SPAC may search and identify any other target company.

Issue of Shares through SPAC IPO

In the USA, law governing the SPACs is significantly structured and lays down the procedure to be followed for initiating the process of IPO. At the outset, the SPAC files a statement of registration on Form S-1 before the Securities and Exchange Commission with the objective of registering the shares intended to be sold to the public during the IPO process[20]. This form entails a disclosure by the SPAC regarding the nature of security it intends to sell, including the number of such securities and price per security. It is essential for the SPACs to enter into underwriting agreements either with investment banks or any other financial institution. This agreement contains that the capital raised through the IPO shall be held in an escrow account till the end of the transaction. Unlike the traditional IPO, the statement of registration filed by the SPAC before the SEC becomes operative within eight to twelve weeks of the initial filing

[17] 'Rise Of Spacs: An Indian Perspective' (*PwC India*, 2021).
[18] 'SPAC Lifecycle And Considerations For Private Companies' (*Troutman.com*, 2021).
[19] '‘Spacs And Their Position In India’: An Analysis - The CBCL Blog' (*The CBCL Blog*, 2021).
[20] Supra note 18

of the statement whereas the former takes a minimum of four to six months to come into effect. Since the SPACs have neither a history nor any underlying business operations, the statement of registration filed by it primarily focuses on the composition of the management team and information regarding the securities intended to be sold as opposed to a comprehensive and detailed registration statement by companies having business operations.[21]The statement of registration shall also feature any specific industry, geography, or sector that the SPAC intends to operate its business in. Post the completion of the IPO process, the SPAC shall be required to place before the SEC, a current report on Form 8-K which also entails an audited balance sheet disclosing the receipt of proceeds of the IPO.

It is essential for the SPACs to fulfil the eligibility criteria for listing at the relevant stock exchange at the time of IPO as well as during the de-SPACing transaction. The SPACs usually list their securities either at the National Association of Securities Dealers Automated Quotations (NASDAQ) or at the New York Stock Exchange (NYSE).

Identification of Private Target Company

The post IPO stage marks the commencement of the de-SPAC transactions. At this stage, the SPACs are directed to identify opportunities for identification of the target companies and initiating the negotiation for de-SPACing transactions.[22] In addition, the service providers are directed by the SPAC to ensure due diligence on the prospective target companies. The due diligence process encompasses procedures such as reviewing the consequences of the acquisition and merger of the SPAC and the target company.[23] The due diligence process also mandates conducting of tax, legal, financial, HR and other diligences prerequisite to an effective de-SPAC transaction.

Post de-SPAC Transaction

The de-SPAC transaction is deemed to be complete after the implementation of the agreement and when the SPAC undertakes to either acquire or merge with the unidentified private target company. The de-SPAC transaction may be regarded as involving, in case of the acquisition or merger of the SPAC and the target company, amalgamation or purchase of assets or stock. Upon the conclusion of the de-SPAC transaction, the integrated company assumes the character of a publicly traded company bound by the relevant provisions of the applicable securities law.

[21] Ibid
[22] Ibid
[23] Ibid

III. POSITION OF SPACs IN INDIA

The emergence of SPACs in the recent times has been seen as a promising alternative to the listing of companies through the process of traditional IPO[24]. With the concept of SPACs attaining popularity and impetus in the USA, there has been an increasing demand for regulated SPACs in India with the objective of encouraging and enabling a smooth listing of start-ups and newly established private companies. Although the concept of SPAC has existed in the global arena since the 1990s however, in India, SPACs became a point of discussion with the country's leading renewable energy company, ReNew Power taking the SPAC route for successfully getting listed on the NASDAQ.[25] In India too, the regulatory framework of securities law is such However, it cannot be denied that the concept of SPACs in India is still at a very incipient stage.

SPACs and Start-ups in India

In India, a need for bringing in regulated SPACs has been felt owing to the fact that the country's start-up culture has seen an exponential rise since the past fifteen years. India has been acknowledged as being home to world's largest start-up ecosystems with the third global ranking in tech start-up ecosystems.[26] In addition, India is also recognised for having approximately 40,000 start-ups, forty tech unicorns, and a colossal addition of ten more in 2021 thereby making India an integral part of the global start-up arena.

The establishment of a structured and regulated SPAC mechanism in India will facilitate the start-ups looking to go public more smoothly:

a. Since traditional IPOs involve a long drawn and an arduous procedure of listing, this route can be avoided by the newly established companies and start-ups by opting for a merger with a SPAC which will enable them to get listed and seek investments from stock market.[27]
b. A very limited management expertise in case of a traditional IPO can be overcome by access to the SPAC sponsor's expertise.
c. Start-ups can successfully achieve their goals, objectives, and potential by way of global listing through SPAC IPOs.

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[24] Supra note 10
[25] 'Regulatory Challenges For Spacs In India' (*@businessline*, 2021).
[26] 'Indian Tech Start-Up Ecosystem – On The March To A Trillion Dollar Digital Economy' (*NASSCOM*, 2020).
[27] 'Indian Start-Ups All Set To Tap The SPAC Space For Horizontal Growth' (*The New Indian Express*, 2021).

Current Position of SPACs in India

IFSCA (Issuance and Listing of Securities) Regulations, 2021

India, having been recognised as one of the leading consumers of financial services, it has been aiming to establish itself as a centre for such services. For this purpose, the Government of India brought into effect in 2015, its first International Financial Services Centre (IFSC) established at GIFT Multi Services Special Economic Zone in Gujarat.[28] In extension to this, in 2019, International Financial Services Centres Authority Act (IFSCA) was passed and implemented to provide for a unified regulator called the International Finances Services Centres Authority which launched its operation in 2020. IFSCA was enacted with the objective of encompassing the powers and functions primarily of four regulators which are Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI), Pension Fund Regulatory and Development Authority, Insurance Regulatory and Development Authority of India (IRDAI). The IFSCA published a consultative paper seeking comments from the public on its proposed International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021 (also called IFSCA Listing Regulations)[29]. The IFSCA Listing Regulations are the first set of provisions extending formal recognition to SPACs in India. Among other things, IFSCA Listing Regulations also provide for IPOs, Issuance of securities through SPAC IPOs, listing by new age companies or start-up, etc. The enactment of IFSCA Listing Regulations have opened the doors of opportunities for listing of SPACs by domestic or international sponsors or investors.[30]

The regulations lay down eligibility criteria for listing of securities by companies in IFSC. The regulations extend to issuers that are companies incorporated in foreign territories, incorporated, and constituted in India and provide that such companies are competent to list their securities on the stock exchange subject to the recognition of such stock exchange by the IFSCA (also known as the Recognised Stock Exchange or RSE).[31] The IFSCA Listing Regulations clarify that an issuer company is eligible only if the following conditions are fulfilled:

a. The issuer is incorporated and constituted in conformity with the laws of the jurisdiction of such incorporation or establishment,

[28] 'Role Of IFSC In The Indian SPAC Dream: An Overview – Part 1' (*India Corporate Law*, 2021).
[29] 'International Financial Services Centres Authority' (*Ifsca.gov.in*, 2021).
[30] Supra note 28
[31] 'Gateway For Spacs In India: New Framework Notified In Gift City' (2021) accessed 7 December 2021.

b. The issuer is functioning in accordance with its constitution,
c. The listing of securities in IFSC does not violate the laws in force at the place of incorporation.

The Regulations debar those issuers, including the promoters, directors or controlling shareholders who are either prohibited from accessing the capital market, or have been discovered to have wilfully defaulted in repaying the loan, or have escaped the country after committing an economic offence. Similar to the position of SPACs in the USA, it is essential for listing of securities in IFSC that the target business entity has not been identified prior to the stage of IPO process. It is also essential that the rules of the SPAC regarding redemption and liquidation should be in conformity with the Regulations.[32]

The enactment of the IFSCA Listing Regulations have paved the way for a regulated SPAC mechanism in India. The Regulations have conferred certain advantages upon the position of SPACs in India such as:

a. Being a unified regulator, the companies are not compelled to approach multiple regulators for obtaining clearance or approvals thereby reducing surveillance by other domestic regulators on entities established in IFSC.

b. The IFSC may act as a bridge between offshore companies and Indian markets.

c. Considering that the companies set up in IFSC would involve transactions in foreign currency, this will significantly minimise hedging risks for offshore companies engaging with SPACs.

d. The domestic jurisdiction of a SPAC listed in IFSC facilitates at the stage of de-SPACing process, merger of an unidentified Indian target company with such SPAC rather than opting for a cross border merger with a SPAC listed in an international jurisdiction.

e. The emergence of IFSC has paved the way for Indian companies that are unlisted to get listed on an international exchange while providing the Indian and international investors to use IFSC as a medium to constitute their SPACs and thereby to acquire unlisted company and its business operations in not just India but also in foreign jurisdictions.[33]

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[32] Ibid
[33] 'Role Of IFSC In The Indian SPAC Dream: An Overview – Part 2' (*India Corporate Law*, 2021).

Like the law governing SPACs in the USA requires the setting up of a trust account, IFSCA Listing Regulations too provide for the establishment of an escrow account to hold the proceeds of the IPO which shall be managed by a custodian until the completion of the de-SPAC process.[34] Further, the revenue derived from the proceeds of the IPO held in the escrow account can be utilized by the SPAC issuer only for the purposes of either the payment of taxes or for the expenses towards general functioning. However, the utilization of revenue for the aforementioned purposes shall be subject to the approval of the shareholders apart from the sponsors through the means of a special resolution.

Position of SPACs Listing

Although India is not alien to the concept of SPACs as it was in 2016 that the travel agency Yatra Online Inc. marked its debut on NASDAQ through a reverse merger with Terrapin 3 Acquisition Corp.[35] The latter was a special purpose acquisition company constituted for the sole purpose of initiating this business combination and it would cease to exist after the completion of the reverse merger. A reverse merger is essentially an acquisition by an unlisted company of a listed one with the objective of getting listed by circumventing the hassles of a traditional IPO.

Similarly, over 30 percent of Videocon d2h Limited's stakes were acquired by Silver Eagle Acquisition Corp., an American based SPAC. This acquisition resulted in Videocon d2h Limited becoming the first NASDAQ listed Indian Television operating company.[36] This business combination was in pursuance of the statement of Ministry of Finance which permitted unlisted companies in India to list depository receipts in foreign jurisdictions even in absence of a domestic listing. Thus, seeing this this as an opportunity, Silver Eagle recognised Videocon as a profitable target for acquisition. Silver Eagle after distributing the American Depository Shares and warrants to the shareholders who approved the de-SPAC transaction and reimbursing the cash to the non-approving ones ceased to exist by dissolving itself.

Similarly, in the past Indian private companies have explored the SPAC route however they achieved average success and relatively lower valuations, such as sixty five percent of Citius Power Limited's stake was acquired by Phoenix India Acquisition Group and more recently ReNew Power Private Limited merged with RMG Acquisition Corp. II also called RMG II and marked its debut on NASDAQ. The business combination, post the merger is known as ReNew

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[34] Ibid
[35] 'Yatra To Trade On Nasdaq After $218 Million Reverse Merger' (*mint*, 2021).
[36] 'REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933' (2015).

Energy Global. The successful listing of ReNew Power has set a precedent for the new-age companies and budding start-ups in India.

It is essential to note that the traditional IPO process in India does not permit the companies in India to sell their securities in an offshore exchange and the only alternative to the traditional IPOs is to get listed through SPAC deals which are hassle free. The executives of ReNew Power stated that they preferred to go ahead with listing through SPAC since it would have guaranteed them a greater valuation as compared to that in a domestic listing through IPOs. This also brings us to the point of the position of SPACs listing in India. As can be seen from the aforementioned instances, the Indian private companies were acquired by overseas SPACs and no SPAC listing of Indian origin has taken place yet.

IV. REGULATORY CHALLENGES OF SPACS IN INDIA

In the wake of ReNew Power Private Limited attracting attention for marking its debut on an overseas exchange through an American origin SPAC, the mechanism of listing through SPACs has created a significant buzz. Many new age companies and start-ups in India that are a part of the race to go public and raise capital do not possess requisite operational record or adequate funds to get listed in domestic exchanges.[37]

It must be noted that the existing regulatory framework in India is not very conducive to facilitate listing through SPACs. It is evident from the provision of Companies Act which directs the Registrar of Companies (ROC) to remove the name of a particular company from registration if the company to commence its business operations within a period of 12 months from the date of its incorporation.[38] This poses a hurdle for SPACs in India since it requires 2 years to identify a target company, complete due diligence and commence its business operations. To enable successful working of SPACs in India, there is an imminent need to either enact legislations specifically regulating and governing SPACs in India or to amend the existing laws on companies and securities to include listing through SPACs. Moreover, there is an absence of provisions in the Securities and Exchange Board of India Regulations, 2009 sanctioning SPACs in India. Following are enumerated the regulatory challenges faced by SPACs in India:

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[37] Vantage Editor, 'Panacea Or Problem?' (*Law.asia*, 2021).

[38] Companies Act S. 248 2013.

Companies Act, 2013

The Companies Act, 2013 nowhere defines SPACs or a shell company in any of its provisions.[39] However, there is no mention or definition of shell companies in any of the legislations governing companies and listing of securities in India. A major hindrance in the recognition of SPACs in India is Companies Act, 2013. Section 4 of Companies Act, 2013 mandates the memorandum of association of company to entail the for which the company was constituted[40]. The Objects clause provided for by the Act acts as a key impediment in the establishment and enforcement of SPACs. In accordance with the clause as per Companies Act, 1956 the objects of a company could be classified into three main categories: a. Main object b. Objects that are essential for attaining the main objects and, c. Other objects. However, the 2013 amendment to the Companies Act removed "Other objects" thereby restricting the flexibility in interpreting the term to include the constitution of SPACs. Here, it must be noted that SPACs do not possess any specific business objective which disqualifies it for failing to fulfil the criterion laid down by the Companies Act of 2013.

Securities and Exchange Board of India (Issue of Capital and Disclosure) Regulations, 2018

The SEBI Regulations of 2018 (also known as ICDR Regulations) which were promulgated to regulate and govern the listing of securities by companies in India through traditional IPOs are structured in accordance with those companies that have a significant track record of their business operations and are substantially profitable.[41] However, SPACs being blank cheque or a shell company with no previous record of business operations do not conform to the ICDR Regulations. The Regulations lay down eligibility criteria required to be fulfilled by an issuer for the purpose of raising capital through the traditional IPOs. Thus, the issuer company must have:

a. Net tangible assets of a minimum of three INR 3 crore in each of the company's preceding years,
b. The issuer company must also ensure that it possess, during the three years preceding the listing, a minimum average of INR 15 crore profit from its operation,

[39] 'SHELL COMPANIES AFTER DEMONETISATION' (*Mca.gov.in*, 2018).
[40] Companies Act S.4 2013
[41] 'Listing Spacs In India - Securities Law Challenges' (*Lexology*, 2021).

c. It should have held a net worth of a minimum of INR 1crore in each of the preceding 3 years.[42]

Hence, it is clearly evident that the SPACs do not meet any of the conditions put forth by the ICDR Regulations since they do not have any business operations prior to the listing, thereby disqualifying them from recognition under the SEBI Regulations.

Requirements of Disclosure

The ICDR Regulations also require the issuer company to make certain disclosures in the offer document at the stage of the IPO process.[43] The issuer company is directed to give a comprehensive description of its business and the industry or sector in which it operates. The issuer must also specify its finances and profits of the here years preceding the listing in addition to the objects and the risks involved in the business. However, these conditions pose an impediment for SPACs as:

a. The business operation and the industry in which the SPAC will operate after its listing cannot be precisely defined,
b. SPACs are generally listed immediately after incorporation, thereby failing to fulfil the 3-year track record or the condition of possessing requisite capital prior to the listing,
c. The objects of the issue of securities may be ambiguous unless the requisite documents for a de-SPAC transaction have been executed prior to the listing.

Risks to Retail Investors

The absence of a legislative framework specifically regulating and governing the SPACs mechanism including the de-SPAC transactions in India poses multiple risks for the retail investors.[44] Although SPACs are regarded as descendants of blank cheque or shell companies, guaranteeing protection to the investors and a promise to safeguard their interests. In the USA, investors are conferred with the opportunity to get back their shares and are guaranteed a repayment of their investment until the acquisition of a target company. However, this may not be the case in India especially when there are no legislative provisions conferring such opportunity to safeguard the investors. This may lead to a fluctuation in the value of the securities traded thereby exposing investors to great risk.

[42] 'SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUEOF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018' (2018).
[43] SEBI ICDR Regulations Schedule VI (2018)
[44] 'SPAC Regulations In India: Identifying Regulatory Challenges And The Way Forward | SCC Blog' (*SCC Blog*, 2021).

Taxation

The legislative framework for taxation is not conducive to SPACs in India.

Capital Gains

There have been SPAC transactions that have culminated by way of a reverse merger of a target company in India by a SPAC located in foreign jurisdiction, for instance Yatra Online Inc. merged with Terrapin 3 Acquisition Inc., an American origin SPAC. When a domestic target company merges with a foreign SPAC, the nature of such merger can be regarded as cross border outbound merger. Pursuant to the Income Tax Act, the regular mergers and amalgamations are essentially tax neural, however this is not so in case of outbound mergers.[45] The Income Tax Act of 1961 enlists those transactions that do not fall within the ambit of transfer for the purpose of levying capital gains.[46] S.47(vi) of the Act makes an exception by exempting the transfer of capital assets by an amalgamating company to the company that is amalgamated subject to the condition that the latter is an Indian company. However, the position in de-SPAC transaction is different since the amalgamated company is generally a foreign entity thereby precluding it from the advantage conferred by Section 47(vi). Moreover, the transfer of a capital asset lesser in value to that of the stamp duty attracts the provision of Section 50C of the Income Tax Act. Therefore, it is essential that capital assets should be transferred at a fair value which would in turn be greater in value than that of the acquisition cost thereby attracting tax on capital gains.[47]

Stamp Duty

Another major impediment in the way of a successful SPAC listing in India is the levying of stamp duty on mergers. The legislative framework governing stamp duty is not uniform across all jurisdictions and differs from one place to another within the country. It was in Hindustan Lever and Another vs State of Maharashtra[48] in which the Supreme Court established that the scheme that gives effect to a merger is an instrument. It also reiterated that the order of a court or tribunal authorizing a merger is liable to be subjected to levy of stamp duty. Furthermore, it is not essential that there should be an actual transfer of property. This makes it evident that a merger can be effected only by sanction of the court thereby making levy of stamp duty

[45] 'Tax Implications On Mergers And Acquisitions Process' (2014) 03 Journal of Business Management & Social Sciences Research (JBM&SSR).
[46] Income Tax Act Section 47 1961.
[47] Income Tax Act Section 50C 1961
[48] (2004) 9 SCC 438

inevitable. Although a de-SPAC transaction does not involve an actual transfer of assets, it is still subject to levy of stamp duty.

V. CONCLUSION AND SUGGESTIONS

In the end, it can be said that the concept of SPACs is an efficient alternative to the traditional IPOs especially for the new-age firms and start-ups that are looking to go public. However, the regulatory framework governing companies in India is not conducive to the concept of companies having no underlying business operations and subsequent listing through them. There is an urgent need to either enact a law governing specifically the constitution and the process of listing through the SPAC mechanism or to amend the existing laws to accommodate such companies. In making such amendments, the security of the investors should be given importance to maintain the sanctity of the process.

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