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Regulatory Challenges arising due to the emergence of Special Purpose Acquisition Companies (SPAC) in the Indian corporate environment

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ABSTRACT

For the past decade, Capital markets in India is growing at an exponential rate. During this the market came across some of the inevitable changes in both technical and regulatory regime. However, one of the most significant development in the capital markets around the world's resurgence of the special purpose acquisition company also known as SPAC. The SPAC made the impact in the capital markets all around the globe by raising a record of US$83 billion in the year 2020. This shows the emergence of SPACs around the world. Keeping this in mind, the main idea of the article is to analyse regulatory framework Globally with respect to SPAC and to analyse the importance of the SPAC in the capital market and how it helps in economic development of the country. The main objective of this paper is to determine the challenges faced by the regulatory bodies in India to come up with a Legal framework for the establishment of SPACs in India. In the end the article concludes by observing that the Indian statues needs to have necessary amendments for SPACs for it to be trusted by the investors and how those amendments will boost the markets and ultimately help in the country's economic recovery.

***Keywords** – SPAC, Companies Act, SEBI, Merger, Acquisition, Regulatory Challenges.*

I. INTRODUCTION

The birth of a new sort of organisation is certainly unusual, but that is exactly what has happened in recent years with Special Purpose Acquisition Companies, which are a type of private equity fund that is only available to the public. SPACs first appeared in the United States in the 1990s and quickly spread to Europe and Asia, igniting a thriving trend that, according to some, could outlast the present economic crisis, exacerbated by the Pandemic, to the point where shell companies may supplant traditional IPOs. The SPACs created a buzz by

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raising a record USD 83 billion in US alone.[3] In a word, these constitute shell companies that have previously got listed on the stock exchange but do not do business or day-to-day management, but these companies are sponsored by experience investors/banks.

SPACs are designed with the single purpose of acquiring or merging other target companies within a specified time limit. Through SPACs the companies do not follow traditional IPO route and are considered as can 'reverse-IPO' route. Usually, companies when they are listed for IPO they undergo through a extensive listing process mitigating it commercial scheme to the investors and market regulators like SEBI. But, through SPACs the effective corporation becomes merged with a SPAC that is previously listed in the market. It is for this reason that SPACs have earned the monikers of 'blank-cheque companies', 'blind shell companies', 'blind pools' or 'public shells'.[4]

As one of the largest developing economies, Indian businesses have not avoided the attention of veteran investors — notable instances of Indian companies that have listed overseas via SPACs comprise online travel agency Yatra in 2016 and Videocon DTH in 2017. Although these illustrations may appear to be limited also not very significant, the SPAC movement is slowly making its way towards Indian coastlines.

Special Purpose Acquisition Companies are the most recent development of shell companies, which people have been familiar with since the 1980s' Blank Check Companies. SPACs, on the other hand, provide an entirely new operational mechanism, which is also at the heart of their well-recognised attraction. A SPAC is formed when a team of founders, known as sponsors, form a shell company with no assets or operational history, then go public with the promise of acquiring a target firm in the future, utilising different bonding methods to guarantee investors that their money would not be misappropriated.[5]

The most important characteristic has been that the money should be escrowed in a trust account and disbursed only after the transaction is completed. As a result, the SPAC investors are basically "buying" a management structure and its credibility. SPAC shareholders can either vote against the purchase and recover the funds back, or they can invest their money and become owners in the newly acquired enterprise after the management have identified a target.[6]

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[3] Daniele D'Alvia, *The international financial regulation of SPACs between legal standardised regulation and standardisation of market practices*, 22 JBR, 2019.

[4] Suneeth Katarki, *India: SPAC: More Than Just a Blank-Check Company,* MONDAQ (July 5, 2021, 9:36am), https://www.mondaq.com/india/shareholders/1049778/spac-more-than-just-a-blank-check-company.

[5] TECHCRUNCH, https://techcrunch.com/2020/08/21/almost-everything-you-need-to-know-about-spacs/ (June 30, 2021, 9:36 pm).

[6] PWC, https://www.pwc.com/us/en/services/audit-assurance/accounting-advisory/spac-merger.html (June 30, 2021, 2:40 pm).

SPACs don't really expect to receive a strong legal basis from either the regulatory standpoint. Of sure, the company law of each country governs these shell companies, however there are significant differences that prevent them from being genuinely borderless financial vehicles. It is therefore important to understand various regulatory system which has been adopted by foreign countries specially the United States and the United Kingdom, reason being SPAC as a concept evolved from there.

In India, SPACs can be said to be regulated by Company Laws and Securities Laws in general. Looking at the bigger picture, M&As are mainly regulated by Companies Act complemented with the Competition 2002, Foreign Exchange Management Act, 1999, Securities and Exchange Board of India (SEBI) Act, and rules created under these statutes. Since the primary objective of a SPAC is to acquire a business, these laws thus have an affect SPACs. Other than these laws which has a direct consequence to the existence there are other concerns such as tax related considerations, shareholders rights and risk for retail investors. Keeping this in mind, this article analyses the status quo of SPAC in India. This Article has been bifurcated into seven parts. The first part gives an introduction about the SPACs and its objective. In the second part the article sheds light on the understanding of SPAC structure with respect to Indian Perspective. The third part of the article lays down the regulatory framework of SPAC opted by different countries. In the fourth part the article talks about the regulatory framework in India with respect to SPAC. The article's fifth section discusses the regulatory barriers to SPACs in India, and it closes with some suggestions and recommendations that might help pave the way for India's forthcoming SPAC system.

II. UNDERSTANDING THE SPACS W.R.T INDIAN PERSPECTIVE

A special purpose acquisition company or SPACs are the companies which are built to raise capital in an initial public offering or also known as IPO. The sole purpose of raising the capital in an IPO is to acquire and more and more business identified after the IPO this type of company is commonly referred as referred to as ‘Blank Cheque Companies’, which are also a type of SPACs. These businesses exist solely to acquire another company, often known as the target company, and have no other commercial operations. The SPAC's group of expert institutional investors is expected to identify a target within two years and invest the IPO proceeds therein, but the investment in the IPO is subject to shareholder approval; if the approval is not obtained, the shareholder's SPAC IPO is returned to the investor with interest.

[7]

When the purchase process is accomplished, the SPACs disclose the identity of the acquired firm. As a result, the previously unlisted acquired business is instantly listed. Given that they allow a private business to become public and raise money at a faster rate than a typical IPO, these types of structures have arisen and are promoted as viable choices for start-ups in India that find it difficult to meet the requirements for listing the firm through an IPO.

While SPACs have been popular across the world for some time, their explosive progress rate has lately come to light as a result of the extraordinary epidemic. Whereas, most companies suspended their IPO being apprehensive that it will lead to a failure and but some companies have taken the alternative method of amalgamation with the SPACs.

(A) SPAC structures in India

SPACs cannot be incorporated in India. SPACs may be categorized as a financial service company. Registrar of companies can strike off a company if it does not start operations within one year of incorporation.[8] Further, listing norms in India mandate a track record of profits and net tangible assets.[9]

The International Financial Services Centres Authority has invited comments on draft regulations that would allow setting up SPACs within the GIFT City. The GIFT City SPAC can acquire or merge with an Indian target. Under the framework contemplated, the GIFT City SPAC may get some tax benefits for the acquisition or merger. But the acquisition or merger of the Indian target may be subject to regulatory approvals, including the RBI.

Under the current framework, a SPAC cannot merge with an Indian target. Ordinarily, the Indian target would first have to be re-domiciled outside India. Alternatively, dealmakers interested in an Indian target can merge their foreign SPAC with the Indian company's foreign holding company. Indirect purchase of shares or voting rights in the foreign target's direct or indirect subsidiaries in India ('Target's Indian Affiliates') will follow from the merger with the overseas target. This indirect acquisition of shares or voting rights in the Target's Indian Affiliates may necessitate antitrust clearance in India.[10]

(B) Indian Perspective

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[7] WINVESTA, https://www.winvesta.in/blog/spacs-all-you-need-to-know-if-you-are-investing-from-india/ (July 8, 2021, 9:36 pm).

[8] Companies Act, 2013, § 248(1), No. 18, Acts of Parliament, 2013 (India).

[9] Securities and Exchange Board of India Act, 1992, § 30, No. 15 , Acts of Parliament, 1992 (India).

[10] Kritika, *Going from SPAC to SPACtacular in India: Exploring Competition Law Exemptions & Relaxations Available to SPAC Structures*, 11 NLR 196, (2021).

Inbound mergers, outbound mergers, and share purchase (through cash and/or stock swap channels) are among the arrangements that an Indian company could consider if it wishes to go the SPAC route for indirect listing.

Inbound mergers (where a foreign business merges with an Indian company) and outbound mergers (when an Indian company merges with a foreign company) both require clearance from the National Company Law Tribunal (NCLT), as well as any other sector-specific approvals that might be essential. The Reserve Bank of India (RBI) is considered to have approved such direct mergers if the companies in question comply to appropriate foreign exchange regulations, which include pricing guidelines, the USD 250,000 per financial year limit for legal residents as mandated under Liberalised Remittance Scheme (LRS)[11], and adherence to overseas direct investment (ODI) laws. This approach is undesirable due to its reliance on the NCLT procedure, compliance with LRS limitations, ODI requirements, RBI branch office regulations, and the time needed in such a process.

A popular and widely pursued strategy is the acquisition of 100 percent of the Indian target businesses by the SPAC, for which the consideration may be a combination of cash and stock swap. The fact that this technique avoids the lengthy NCLT procedure is a significant advantage. However, an examination of the applicable RBI regulations pertaining to pricing guidelines, LRS constraints for portfolio investors (RBI approval will be considered necessary if the disbursement for foreign shares exceeds the USD 250,000 limit), the requirement of RBI approval for a resident to consummate a share swap, and limitations under the foreign exchange regulations on deferring payments is recommended.[12]

In view of such government regulations, such as the mandate to obtain RBI authorization for a swap of shares by resident shareholders, entities may take into account many such alternative structures that satisfy the business need of providing an upside to India-based shareholders while avoiding the complexity of obtaining government permission for the de-SPACing event

When evaluating if SPAC is the best approach for an Indian business to permit departures to its shareholders (who include venture capital, private equity, and India-resident citizens), taxes, as well as regulatory issues, must be properly examined. For example, at the time of the exchange, when the de-SPACing event takes place, and at the time of the final sale of listed shares on a recognised stock market in the United States, the direct and indirect tax

[11] RESERVE BANK OF INDIA, https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=10192 (July 5, 2021, 9:36 pm).
[12] RESERVE BANK OF INDIA, https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10192&Mode=0 (July 10, 2021, 11:29 am).

ramifications for each of the Indian entity's shareholders must all be considered. In addition, while structuring a SPAC merger, evaluation and implications about the existence of treaty advantages to specific shareholders, particularly in regards to grandfathering rules under the applicable tax treaties, become critical.

Although Indian legislators are focusing on making direct listing of Indian companies on foreign stock markets simpler from the standpoint of complying with Indian reporting and disclosure requirements, a robust legal structure for listing Indian companies overseas nevertheless exists.[13] A structure for listing of shares by a SPAC in the International Financial Service Centre (now existent in Gujarat)[14] has been considered in a forthcoming SEBI consultation paper on Proposed International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021.[15] Various requirements must be met, such as a bid price size of USD 50 million, a three-year acquisition period for SPACs that can be stretched by one year, and so on. It needs to be seen whether policy that is eventually adopted would entice SPACs to list in India's IFSC rather than elsewhere.

Over the years, the regulations governing SPAC have developed. SPACs have a more shareholder-friendly structure and more fail-safe measures to avoid fraud. Lock-in periods guarantee that founders have some "skin in the game" while also reducing agency expenses. The successful listing of SPAC has lowered risk perception throughout the years, and as a result, the related upfront costs, such as the underwriter's fee, have also decreased. Recently, SPACs have made a number of acquisitions in India:

- “Yatra was acquired by Terrapin 3 Acquisition Corp (TRTL), a NASDAQ-listed SPAC. TRTL was listed on NASDAQ in 2014 and Deutsche Bank was their underwriter.
- Videocon DTH was listed on the NASDAQ through a reverse merger with Silver Eagle Acquisition Corp, a SPAC. Silver Eagle was listed in 2014 and Deutsche Bank was their underwriter.

[13] MINISTRY OF CORPORATE AFFAIRS, http://www.mca.gov.in/Ministry/pdf/CompaniesSpecification2ndAmndtRules_22022021.pdf (July 6, 2021, 9:36 pm).

[14] Karan Upadhyayat, *SPAC Regulations in India: Identifying regulatory challenges and the way forward*, THE SCC ONLINE BLOG (July 6, 2021, 10:36 am), https://www.scconline.com/blog/post/2021/06/08/spac-regulations-in-india/.

[15] INTERNATIONAL FINANCIAL SERVICES CENTRES AUTHORITY, https://ifsca.gov.in/Viewer/ReportandPublication/9 (July 6, 2021, 11:36 am).

- Constellation Alpha Capital Corp., a SPAC, was listed on the NASDAQ in 2017. It is focussed on acquiring a target in healthcare services and manufacturing industry in India. Cowen acted as the underwriter for the offering."[16]

In addition to the above, there have been multiple SPAC acquisitions in India in the past, including:

- "Trans-India Acquisition Corp.'s acquisition of Solar Semiconductor in 2008; however, the position was liquidated in 2009. Trans-India was an AMEX-listed SPAC whose offering was underwritten by Joseph Gunner and Co."[17]
- "Presently delisted, Phoenix India Acquisition Corp. was listed as a SPAC on the NASDAQ in an offering underwritten by Gersten Savage. They acquired Citius Power in 2008."[18]

The given data may be used to derive two primary conclusions. Recent SPACs have been aggressively financed by major investors and investment banks which were engaged in the stock or IPO markets. This goes up the notion that as competition has risen, underwriter costs have decreased, and as a corollary, just the major typical investment banks can afford to endorse SPAC listings. Alternatively, it is important to keep in mind is that current India-focused SPACs have been further profitable and have been placed on more prestigious markets like the NASDAQ. All of this indicates that SPACs are becoming more widely accepted as a means of raising finance in India.to the increasing acceptance of SPACs as an additional avenue to raise capital in India.

III. REGULATORY FRAMEWORK IN INDIA

The current legal scenario in India was not designed with the structure of SPAC in mind. For example, the Indian Businesses Act of 2013 allows the ROC of the firms to remove the name of companies that do not begin activities within the first year of creation. Given the ROC's strength, it poses a barrier for SPACs, which generally require two years to find a target Company and do due diligence. If they are to be operational in India, the relevant provisions must be incorporated into the Companies Act of 2013.

Furthermore, there are no enabling provisions in the Securities and Exchange Board of India Act for SPACs. The act requires a company to have net tangible assets of at least 3 crores in

[16] M&A CRITIQUE, https://mnacritique.mergersindia.com/regulatory-challenges-special-purpose-acquisition-company-india/ (July 6, 2021, 8:36 pm).
[17] *Ibid.*
[18] *Ibid.*

the previous three years, average consolidated pre-tax operating profits of at least 15 crore in any three of the last five years, and net worth of at least 1 crore in each of the last three years to be eligible for an IPO or public listing.

In the absence of the aforementioned operating earnings and net tangible assets, SPACs would be unable to go public in India. SPACs are becoming increasingly popular in the United States. All SPAC transactions are supervised by the US Securities and Exchange Commission (SEC).[19]

To maintain transparency and credibility, the SEC has mandated exhaustive filing, reporting and disclosure requirements to execute a transaction involving SPACs. Given to the "well-regulated" feature of SPACs in the USA, various sponsors and investors have started recommending SPACs as a better substitute to traditional IPOs.

Moreover, each country's stock exchange has its own SPAC-related regulations. For example, the London Stock Exchange requires a listed entity to delist and reapply in the event of a reverse merger with another listed entity, whereas the Australian Securities Exchange allows reverse merger on a case-by-case basis. Canada, too, has regulatory standards for SPACs and is excited about them.

For the time being, the Securities and Exchange Board of India (SEBI), also known as India's Market Regulator, has formed a committee of experts to investigate the feasibility of introducing laws and regulations pertaining to SPACs in India, which could potentially enhance the prospects of domestic listing of start-ups. The Indian legislature, however, has not established any extensive regulatory criteria for SPACs.

SPACs have the potential to thrive in the Indian environment since India's IPO market is large and established. If India contemplates listing SPACs in India, flexible laws covering incorporation, compliance, and governance must be developed.

The Lack Of Focused Regulations Governing Spacs In India Is A Serious Regulatory Flaw. The Following Is A Summary Of The Applicable Regulations:

(A) Company's Act

SPAC's can essentially be defined as a shell company given their basic characteristics and nature of business. At present there is no specific mention or any attempt to define shell companies in Companies Act, 2013 or Companies Act, 1956 or any other act applicable in India. Moreover, existence of complex corporate structure in India has also made it difficult to

[19] SPAC ALPHA, https://spacalpha.com/n/regulatory-hurdles-spacs-on-indian-bourses-m7wzr (July 7, 2021, 12:36 pm).

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identify and accept the shell companies in India legal system. The necessity of defining shell companies was also urged by a parliamentary panel in the year 2018 to the Ministry of corporate Affairs.[20] This was proposed in order to remove legal ambiguity, encourage ease of business and avoid litigations on baseless grounds.

In order to define shell companies one such definition given by the Organisation for Economic Co-operation and Development (OECD) can be considered. OECD describes shell companies as "a firm that is formally registered, incorporated, or otherwise legally organised in an economy but which does not conduct any operations in that economy other than in a pass-through capacity"[21] As a result, a shell company is the kind that primarily exists on paper. It does not have any ongoing commercial operations or a substantial amount of assets. These organisations are not involved in any economic operations, although they might have legal personality.

The Securities and Exchange Board of India has identified some characteristics for the identification of shell firms, notwithstanding the fact that there is no statutory requirement in this respect. "These are:

- No significant operation activities;
- No significant operational assets;
- Acting only in a pass-through capacity (like a channel for some other purpose)."[22]

After considering and identifying the nature of shell companies it would not be wrong to say that SPAC is also a type of shell company and any statutory provisions passed with regards to the shell companies will have an effect on SPACs s well.

In several instances it has been identified that the "Objects" clause in the Companies Act 2013 acts as a key deterrent in the legal administration and enforcement of SPACs. The provision stipulates the organization to describe and specify business goals and objectives. To the contrary, SPACs have no such business objectives as their final aim is to acquire a target. As per the Companies Act, 1956 "the Object Clause of a company shall be divided into three categories:

1. Main Objects;
2. Objects incidental or ancillary to the attainment of the main objects; and

[20] HINDUSTAN TIMES, https://www.hindustantimes.com (July 7, 2021, 12:36 pm).
[21] LAW STREET INDIA, http://www.lawstreetindia.com/experts/column?sid=297 (July 7, 2021, 2:36 pm).
[22] THE ECONMIC TIMES, https://economictimes.indiatimes.com/news/economy/policy/govt-regulators-mull-challenge-proof-definition-for-shell-companies/articleshow/64145993.cms?from=mdr (July 3, 2021, 12:36 pm).

3. Other objects."[23]

As per the black law dictionary "incidental" means "*Depending on something, i.e. something, which is likely to happen, or is happening in addition to another event."*[24] As a consequence of the foregoing analysis, it may be concluded that by using the term incidental, the legislature intended to include actions that may occur/occur as a result of the Company's primary objectives.

Furthermore, a company's memorandum of association was also obliged to indicate the other goals that it intended to carry out in the near future under the 1956 Act. Such secondary aims may or may not be related to the company's primary tasks as specified in its memorandum of association. They were, in fact, business activities that were not included in the principal objects. The corporation must comply with the requirements of Section 149(2A) & (B) of the Memorandum of Association of the Company in order to pursue any activity included in the section of "Other Objects" of the Memorandum of Association of the Company (2B).

However, unfortunately the "Other Objects" clause in the Company Act of 2013 has been eliminated, removing any flexibility in determining the Objects. Parliament in 2017 had introduced the Companies (Amendment) Ordinance which propounded to eliminate the "Objects" clause entirely. Despite that this suggestion was scrapped before signing the Act.

The major roadblock in India for SPACs undoubtedly is the Companies Act, 2013. The Registrar is empowered to eliminate the title of the company from register of Companies where there is a reasonable basis to believe and suspect that a company within one year of its formation/ incorporation fails to begin its business operations[25] or "a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 or he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice."[26]

As per observation and statistics in the past, a SPAC's average acquisition time is 18 to 24 months. In order to maximise shareholder wealth, the sponsors require this time and opportunity to figure the ideal objective. As a result, this clause represents a significant

[23] Companies Act, 2013, § 13(1)(d), No. 18, Acts of Parliament, 2013 (India).
[24] *Incidental*, Black's law Dictionary (2nd ed. 2010).
[25] Companies Act, 2013, § 248(a), No. 18, Acts of Parliament, 2013 (India).
[26] Companies Act, 2013, § 248(c), No. 18, Acts of Parliament, 2013 (India).

roadblock to SPAC implementation.

While the 2013 Act does not expressly prohibit a SPAC from being listed, the fact that the SPAC is an inactive (shell) corporation necessitates protection against government action against shell companies. In essence, a SPAC corporation has no principal (actual) business object. The sole goal of forming a SPAC is to raise capital for the target firm. If the SPAC entity's name is struck off the register because it is dormant, or the directors/promoters are penalised for violation, it will cause unnecessary difficulties. The difficulty can be readily solved by granting an exception to such a SPAC company.

(B) SEBI Regulations

In 2017, the Security and Exchange Board of India (SEBI) stopped trade in 331 shell companies that were suspected[27]; nevertheless, the majority of them were eventually cleared[28]. In 2018, SEBI released its definition of shell corporations on the basis of SEC laws in the United States, as part of its advising role to the government.

Section 26 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 sets minimum eligibility conditions for an IPO. "These entail the issuer company to have –

- Net tangible asset of at least INR 3 crore in each of the preceding three years (earlier requirement of maximum of 50% to be held in monetary assets has been done away with in case the entire public offer is through sale).
- Minimum average consolidated pre-tax operating profit of INR 15 crore during any three of the last five years.
- Net worth of at least INR 1 crore in each of the last three years."[29]

Hence, it can be seen that SPAC don't meet any of these above-mentioned regulations/guidelines laid down by SEBI. They do not have any profits or tangible assets that are non-monetary nature. Even though, if the sponsors of the SPACs infuse tangible monetary assets most of the SPACs cannot wait the time period of three years before getting listed.

(C) Listing Requirements

Shell firms have a reputation in India for being untrustworthy, and with good reason. It isn't, however, a uniquely Indian phenomenon. An American SPACs, which originated as blank check companies, gained reputation as vehicles of fraud in their early days, but their genuine

[27] *Id.* at 22.
[28] THE WIRE, https://thewire.in/economy/sebi-shell-companies-demonetisation (July 5, 2021, 12:36 am).
[29] SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, § 26, No. 32, Securities And Exchange Board Of India, 2009 (India).

establishment and repute were quickly established. While the American SEC definition allows for the registration of a 'company with no operations,' SEBI requires a company to have some sort of operative business, history, and a 3-crore corpus of tangible assets in the former 3 years, a least average consolidated pre-tax operational profit of 15 crores in the preceding 3 years, and a minimum average consolidated pre-tax operating profit of 15 crores in the preceding three years.[30] As required by Section 4(1)(c) of the CA 2013, the objects provision in the Memorandum of Understanding requires a corporation to state its principal business objectives. Furthermore, there are special restrictions, such as those imposed by the NSE, which require a prospective listee to have positive operational cash accruals for the previous two years.

However, all shell businesses, such as SPACs, would only have ideas, potential activities, and self-proclaimed "know-how," falling short of the pre-emptive requirements of having a running and established firm, actual assets, and a clearly defined corporate objective. The 'other objects' clause, which could have been used to define SPAC's objects more flexibly, has simply been removed from CA 2013. And, while there are long-standing precedents permitting firms to acquire any business that is comparable to their own[31], promote other enterprises, or assist them financially[32] or purchase shares in other firms with similar objectives[33]; these are incidental objects that are predicated on a corporate body with an already established and existing object and business. Section 248 of the Companies Act of 2013 requires a company to be deregistered if it fails to "commence its operations within one year of its incorporation." For SPACs, the typical timeline for starting its "business" (finding and acquiring a target) is 18 to 24 months, which may result in additional challenges.

(D) Disclosure Requirements

Another issue could be the disclosure requirements for a conflict of interest, the valuation of a private company (because, unlike an IPO, the company seeking to go public through the SPAC route does not have market-based price discovery and the sponsors and directors must set their own prices), economic interests, controlling stake, and so on. Previously, overseas listings had to be done via limited ADR, GDR, and similar foreign currency convertible/exchange bonds. However, Sections 23(3) and 23(4) of the CA 2013 now permit unlisted Indian firms to go through the process of overseas direct listing. However, the positive operational procedures and rules for these remaining is pending by SEBI and RBI, and it is also not clear if regulations

[30] Securities and Exchange Board of India Act, 1992, § 6(1), No. 15 , Acts of Parliament, 1992 (India).
[31] Ernest v Nicholls (United Kingdom), (1857) 6 HL Cas 401.
[32] V brown, (1869) LR 8 EQ 381.
[33] Re William Thomas & Co. Ltd., 1915 1 Ch 325 4.

will be reasonably enough to fit in SPAC modes.

Despite these contradictions, Indian markets could operationalize SPACs through cross-border mergers in which an Indian business becomes a subsidiary of an overseas SPAC, which would then be subject to the relevant FDI and ODI Regulations. Reverse mergers are also an option, but Indian authorities and the judiciary are too intent on seeing them in just two narrow contexts – first, as tax-saving measures, and second, to revive 'sick enterprises,' with the conditions given down in Bihari Mills Ltd., In re, Maneklal Harilal Spg. & Mfg. Co. Ltd.,1985[34].

In conclusion, SPACs clearly offer an advantage over traditional ways of funding. However, due to inactive and cryptic regions of SPAC regulation, transparency, taxation, and liability, their import from Wall Street to Dalal Street remains stalled. Before any feasible import, SPAC mechanisms would have to be internalized by a single sector shift and a holistic restructure by SEBI, RBI, and related ministries.

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (amended Mar 2017) and Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 (FEMR) were identified as having significant impact on SPAC mergers in India, in addition to the Acts and laws mentioned above.[35] The Takeover Code only applies if the target company is publicly listed, in which case it restricts the amount of control that may be purchased and lengthens the transaction time. FEMR applies if one of the SPACs or the target is listed outside of India, or if an Indian SPAC gets funds from foreign investors. Under the FEMR regulations, the Reserve Bank of India must accept the request for foreign investment (RBI). Inbound and outbound mergers are permitted under the FEMR Cross Border Regulation 2018, subject to all applicable laws and regulations.

IV. SPACS AND ITS REGULATORY CHALLENGES

De-SPAC businesses are SPAC mergers in which SPAC is merged with an Indian target firm. This deal must adhere to the outbound merger restrictions established by the Foreign Exchange Management (Cross-Border Merger) Regulations, 2018. According to the regulations, if the NCLT approves the scheme of the cross-border merger, the target company's office in India is regarded to be the merged entity's branch office. The shareholders of the Indian target business will get shares of the combined entity as part of the merger consideration or as a share swap. The RBI must authorize such a transaction if the fair market value of the shares is less than

[34] In Re: Bihari Mills Ltd. vs Unknown, 1985 58 CompCas 6 Guj.

[35] TAX GURU, https://taxguru.in/company-law/procedure-change-object-clause-company-companies-act-2013.html (July 5, 2021, 12:36 am).

USD 250,000 per fiscal year and the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 are followed.[36] Furthermore, any assurances or existing borrowings of the Indian target that is converted into liabilities of the combined business must be repaid to the investors, along with a no-objection certificate.

Furthermore, in terms of taxation, the acquisition of the firm will include the shares of the merged corporation and would be a taxable business in a cross-border merger, with no particular respite obtainable for De-SPAC dealings in India. If an Indian shareholder purchases shares in the merged business because the SPAC paid for them, the shareholders will be subject to a high capital gains tax as well as pricing restrictions. A new provision offering exemptions would be necessary to make this transaction tax-neutral and to ensure that Indian owners face no tax consequences. Furthermore, in order to avoid tax under the anti-abuse provision of the Income Tax Act of 1961, the value of the Indian target shares that the shareholders would exchange for the shares of the merged business must be equivalent to or greater than the fair market value of SPAC shares.

Besides the aforementioned regulations, the Indian target should also plan for the SPAC's accounting and reporting difficulties. The target company should aim to go public in a few months, which is a smaller period than a typical IPO, but with nearly identical preparation, due diligence, and auditing, as well as SEC filings and scrutiny in the case of American SPACs.

(A) Risk for retail investors

SPAC structures in India might allow start-ups to get listed on the domestic stock exchange without having to go through the time-consuming, demanding, and costly listing procedure. Because start-ups choose the SPAC path to get a speedier, simpler listing, retail investors must be wary of the risks that such a listing may entail.

Apparently, in the United States, investors have the opportunity to redeem their shares and receive a return of their investment up until the purchase of a target. However, in the absence of particular legislative restrictions, redemption of shares of a listed business may be prohibited in India. As a result, the SPAC's shares must be exchange traded, and their value may fall or rise significantly, exposing ordinary investors to risk.

Post-merger, the combined entity's shares must be exchange traded, and the pattern has shown that firms purchased by SPACs underperform the overall market in the United States. As a

[36] INDIAN CORP LAW, https://indiacorplaw.in/2021/03/the-spac-tacular-rise-of-blank-check-companies-in-india.html (July 8, 2021, 12:36 am).

result, authorities must design the legal framework with investor interests in mind.

(B) Taxation

Foreign SPACs are currently purchasing Indian firms for offshore listing. Do the Indian tax authorities let foreign-listed SPACs to purchase Indian start-ups without paying capital gains tax? That is not the case; according to the Income Tax Act, any gain generated by a person through the transfer of a capital asset (being a share in an Indian corporation) is taxed in India. Foreign SPACs buy the target company's full share capital for cash or in return for its own shares. In both situations, capital gains will go to the owners.

If SPACs are made operational in India, the resulting entity would be a merger of two Indian businesses, one of which would be the target and the other the Indian SPAC. As a result, a merger under an amalgamation system would be tax-neutral. In addition, the Indian target's investors would not face any tax repercussions.

However, there should be different guidelines under the Tax act, and it is necessary to avoid litigation and offer more elucidation in this area. The SPAC context might lift their morale by opening up new avenues for financial input. Start-ups add value to the Indian economy. In the past, India's market regulators have supported innovation and change; nevertheless, it must step carefully and consider crucial issues such as investor protection and revenue leakage.

(C) Criticism and Viability of SPACs

The revenue generated by SPACs during the pandemic was nearly equivalent to the amount raised over the previous decade. However, analysts believe that the SPAC bubble will collapse since people do not recognize the true economics underlying behind it. Mergers involving SPACs, in their perspective, are problematic because of the inherent dilution in the SPAC structure. Following any IPO, it is certain that a significant amount of SPAC shares will be used, resulting in a loss, and to compensate for this loss, the SPAC will issue the redeemed shares to third parties or investors via PIPE. As a consequence, the shareholdings of the SPAC sponsors, public shareholders, private investors, and target business would all be replaced on a regular basis. As a result, for retail investors who engage in a firm with no proven commercial activities, the average return from a post-SPAC merger is projected to be lower than post-market returns in an IPO.

SPAC has numerous advantages and disadvantages, but given the present circumstances, it is a fantastic opportunity for Indian businesses with a foreign holding company, i.e. enterprises that have externalised in a jurisdiction that enables cross-border mergers. Allowing the company to have less legal complications with cross-border merger nonetheless still attracts with substantial tax ramifications. Many Indian-based firms, such as Flipkart, Zomato, Delhivery, and Grofers, have not declared earnings in the fiscal year 2020-21 and are hoping to go public this year. The costs and advantages of a direct IPO listing in India should be weighed against the indirect foreign listing via SPACs to decide whether route is supported by a less stringent regulatory system but at the expense of a riskier valuation. Upon cautious configuration and probable innovation in a conventional SPAC operation, such that it is customized to fulfil the criteria under the Indian legal scenario, SPACs might be an enticing alternative to IPOs for Indian firms.

V. Suggestions & recommendations

- **Too many regulators lead to a complicated process** - From the above discussion, it is clear that some of these present laws and regulation are unfavourable for the development of SPACs in India. Some of those laws and regulations are outdated and it needs to be amended with respect to the state of the Indian economy. With too many laws in place the ease of doing business is greatly affected which dampens the growth of a start-up.
- **Differentiating Shell companies and SPACs** - The definition of the shell companies needs to be refined and the presumption that shell companies are primarily a means of money laundering needs to be changed. Change of all kinds is inevitable for growth. Similarly, the evolution of shell companies and blank check companies which had previously been looked as an illegal entity now needs recognition in the form of SPAC. Keeping in mind the consequences, a step should be taken to regulate SPAC in such a way that it is easy to differentiate between what is legal and not.
- **Considering, adopting and applying SPAC regulations in other countries** - Having analysed the regulations regarding SPACs in the USA and the UK, a special committee needs to be constituted in India to study the impact of SPACs in other countries, especially towards invigorating their start-up industry. This can be a starting point in an attempt to regulate SPACs.
- **Providing Clarity and resolving ambiguities** - The Indian companies act, 2013 needs to be amended so that the act can have a separate chapter covering the rules and regulation regarding SPAC which will help in governing the aspects related to its management, shareholders, board etc. Once the SPACs is done with the acquisition it is suggested that it should be governed under the normal laws or provisions prevailing in India. SPACs do not take traditional route for an IPO. Hence, there are different from the companies that undergo normal IPOs and thus, we need targeted laws made specifically for them.

Similarly, all applicable legislation and listing requirements require distinct provisions/chapters. SPACs may be eligible for the same tax exemptions and deductions as start-ups, venture capitalists, and angel investors.

VI. CONCLUSION

To present India as an ideal destination for SPACs the regulatory framework has to undergo a substantial amount of change. The companies act of 2013 definitely requires amendments to include provisions related to SPACs. Also, to define the SPAC under the act and give them the legal recognition, thus fulfilling the need of the hour. Addition to the company's act, the direct tax laws may also require certain amendments to make SPACs attractive to the investors. In the past year SPACs have grown to be very popular among businesses who are planning to go public and Investors. The concept of SPC was introduced in the early 1990s. However, the unprecedented pandemic has created a panic environment among investors and businesses are suffering loses. As SPACs, have less regulatory scrutiny involved and have earned the reputation as a low-risk investment, and also gives investors an option to their shares for liquidity while keeping the warrant of the said shares in the event the company is successful in the IPO.

Many Countries like the USA, United Kingdom, Canada, and Australia have already recognised the SPAC listing and have been witnessing successful IPO listing till date. On the other side of the world, the Asian market example Singapore and Hong Kong are expecting SPAC listing on their respective stock exchanges as soon as possible. It is clear from the discussion in this article that Indian regulatory body has to amend their respective laws to enable SPAC listing. While the existing regulatory framework does not totally rule out the prospect of SPAC listing in India, the SEBI regulations related to SPAC listing, along with required modifications to the RBI Guidelines, Stamp Act, and Takeover Code, would make such transactions financially and legally feasible. It is past time for Indian authorities to harness the enormous wealth generating potential of SPAC listings in India.

SPACs are considered as an important investment done and the same cannot be ignored anymore their flexible nature can help us in nurturing the economy by helping business to merge and save business and the employment. In today's scenario private equity operations are much similar to its SPAC operations as it has been put-forward by the experts that SPACs can lead us to a new era of mergers and acquisition. Therefore, instead of being cynical in regard to this vehicle of investment, the lawmakers should opt for 'SPAC friendly' approach. Putting a friendly approach it would lead to efficient capital markets, which is what happened in the USA, ultimately leading to be economic growth of the country. Moreover, throughout this unprecedented pandemic the capital markets have been unstable and thus, SPACs can open the door for them to go public. SPACs have earned their importance in the modern scenario, and if the administrative and legislative bodies intervene through the means of an elaborated regulations or guidelines, the SPAC route would be highly desirable. The said intervention will not only help in establish and trustworthiness of the SPAC but also will boost the efficiency of the markets but will also help in economic recovery of the country. Taking everything into account, the SPAC phenomena merits further investigation and clarification from both administrative technical agencies and the academic community in order to provide the conditions for safe investments and efficient capital markets.

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