BASILSTONE
CONSULTING PRIVATE LIMITED

atharv

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Basilstone Consulting is pleased to present to you the **June 2021** issue of athārv, covering regulatory insights as well as discussion papers. This issue covers the following areas:

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I. Regulatory updates & its expected impact

1.1. Securities & Exchange Board of India

1.1.1. Revised Framework for Regulatory Sandbox

SEBI has revised its eligibility criteria for the regulatory sandbox. Broadly, the revised criteria stands as under:

Stage-I

- SEBI Registration
- Genuine need to test
- Genuine need for relaxation
- Objective
- Benefits to Users
- Testing Readiness of the solution
- Safeguards to mitigate potential risks to the financial system

Stage-II

- Adequate Progress
- Objective
- Review of risks identified during Stage-I testing
- Users feedback
- Deployment post testing

1.1.2. 'Off-market' transfer of securities by FPI

SEBI has permitted FPI ('original fund' or its wholly owned special purpose vehicle) to approach its DDP for approval of a one-time 'off-market' transfer of its securities to the 'resultant fund', in line with Finance Act, 2021 provides tax incentives for relocating foreign funds to International Financial Services Centre (IFSC) in order to make the IFSC in GIFT City a global financial hub.

Impact: The circular further incentivises conduct of investment in Indian securities via IFSC, as opposed to via FPI route. The tax benefits combined with lower tax rates in the IFSC jurisdiction, and broad availability of derivatives of widely traded shares may result in the FPIs shifting its India investments via IFSC.

1.1.3. Enhancement of overseas exposure limit for mutual fund houses

SEBI in its recent circular enhanced the overseas investment limit for a mutual fund house to USD 1Bn as against the existing limit of USD 600 Million. The limit for mutual fund industry has been enhanced and raised to USD 7 Bn. Further, funds are also permitted to make investment in overseas Exchange Traded Funds subject to a maximum of USD 300 million against the previous limit of USD 200 million and the overall industry limit is capped at USD 1Bn.

Impact: The increase in the limit would allow mutual funds to allocate a larger share of their fund towards foreign securities. This move was much awaited by mutual fund houses which see a huge potential in increasing international diversification of investments by mutual fund houses.

1.1.4. Potential Risk Class Matrix for debt schemes based on Interest Rate Risk and Credit Risk

SEBI vide its circular bearing no. SEBI/HO/IMD/IMD-II DOF3/P/CIR/2021/573 dated June 7, 2021 advised that all debt schemes should also be classified in terms of a potential risk class matrix based on maximum interest rate risk and credit risk.

Additionally, SEBI has also prescribed the 9 cell matrix in which each scheme shall be classified and any upward movement of a debt scheme in the cell shall be considered as a fundamental attribute change of the scheme in terms of Regulation 18 (15A) of SEBI (Mutual Fund) Regulations, 1996.

Under this, interest rate risk will be categorized into three buckets. The lowest risk bucket Class I, will have a Macaulay Duration (**MD**) up to a maximum of 1 year, Class II--moderate risk bucket - will have MD of up to 3 years and the class III shall have MD above 3 years.

Class I schemes will have debt paper with a maximum residual maturity of 3 years and Class II schemes with a maximum residual maturity of seven years. However, maximum residual maturity has not been fixed for Class III.

This change will be required to be intimated to the unit holders about the classification in one of the 9 cells and subsequent changes, if any, through SMS and by providing a link on their website referring to the said change.

The dynamic aspect of the risk of each scheme would be separately reflected in the Risk-o-Meter of the scheme, which would be published on a monthly basis.

Impact: SEBI has placed greater emphasis on investor protection and released this circular. This classification of debt schemes will provide the investor an insight of the current risk being adopted by the debt scheme by analysing the credit and interest rate risk. The said classification will also help the investors to make an informed decision while undertaking investment in any scheme ranging from low risk to moderate risk to high risk.

1.1.5. Relaxation in minimum vesting period in case of death of employee(s) under SEBI (Share Based Employee Benefit) Regulations, 2014

SEBI vide its circular bearing no. SEBI/HO/CFD/DCR2/CIR/P/2021/576 dated June 16, 2021 has relaxed the requirement of minimum 1 year of vesting period of ESOPs or SARs in case of death of an employee under the SEBI (Share Based Employee Benefit) Regulations, 2014. Pursuant to

the relaxation the ESOPs or SARs granted to an employee and in the event of his death on or after April 1, 2020 the same shall vest in his legal heirs with effect from the date of death of the said employee.

1.1.6. Settlement of running account of client's funds lying with Trading Member

SEBI pursuant to its circular bearing no. SEBI/HO/MIRSD/DOP/P/CIR/2021/577 dated June 16, 2021 issued instructions on settlement of running account of client's funds lying with the Trading Member. Some of the key instructions for retaining funds are:

- Settlement of funds running account shall be done after considering the EOD obligation of funds as on the date of settlement at least once within a gap of 30/90 days between two settlements of running accounts. The period of 30/90 days shall be per the preference of the client;
- Margin liability shall include the end of the day margin requirement excluding the MTM and pay-in obligation, therefore, TM may retain 225% of the total margin liability in all the segments across exchanges;
- Client's running account shall be considered settled only by making actual payment into client's bank account and not by making any journal entries; and
- Retention of any amount towards administrative/operational difficulties shall be discontinued.

Impact: Since stock exchanges are advised to set up online system for effectively monitoring the timely settlement of running account and verify that excess clients' funds are not retained by the Trading Member, this will to a great extent avoid Trading Members from retaining excess funds of client after settlement of running account and after considering all the client obligations across exchanges.

1.1.7. Framework for Administration & Supervision of Investment Advisers under SEBI (Investment Advisers) Regulations, 2013

Regulation 14 of the SEBI (Investment Advisers) Regulations, 2013 ('IA Regulations') prescribe that SEBI may inter-alia recognize any body or body corporate for the purpose of regulating Investment Advisers ("IA") and delegate administration and supervision of the IAs on such terms and conditions as may be specified.

Accordingly, an entity granted recognition under the aforesaid Regulation shall be designated as "Investment Adviser Administration and Supervisory Body" ("IAASB") and shall be entrusted with the administration and supervision of IAs.

In view of the same, BSE Administration & Supervision Limited (BASL), a wholly owned subsidiary of BSE Limited, has been granted recognition as IAASB for a period of three years from June 01, 2021.

Impact:

The IAASB shall have the following responsibilities:

- Supervision of IAs including both on-site and offsite.
- Grievance redressal of clients and IAs
- iii. Administrative action including issuing warning and referring to SEBI for enforcement action.
- Monitoring activities of IAs by obtaining periodical reports.
- Submission of periodical reports to SEBI
- Maintenance of database of IAs

Further SEBI registered IA's are required to ensure compliance of the following:

- To ensure compliance of IA regulations & keep their registration in force, existing IA's shall seek membership of IAASB in such manner as may be specified by the Board within 3 months of recognition of IAASB by SEBI.
- Existing IA's shall be required to pay membership fees to IAASB in a manner prescribed by IAASB, at the time of payment of fees to SEBI as per second schedule to IA regulations, to keep the registration in force. Any subsequent payment of membership fees shall be in the manner specified by IAASB.
- All SEBI registered IA's shall submit periodic reports to IAASB in such manner as may be specified by IAASB.

1.2. Reserve Bank of India

1.2.1. Investment in Entities from FATF Non-compliant Jurisdictions

RBI's notification has prohibited investment in Payment System Operators (PSO) by new investors from FATF non-compliant jurisdictions. Investors in existing PSOs holding their investments prior to the classification of the source or intermediate jurisdiction/s as FATF non-compliant, have been permitted to continue with the investments or bring in additional investments as per extant regulations so as to support continuity of business in India

1.2.2. Resolution of Covid-19 related stress of MSMEs – Revision in Threshold for Aggregate Exposure

MSME's with aggregate exposure, including non fund-based facilities, from all lending institutions to the MSME borrower not exceeding Rs 50 Crore (erstwhile ₹25 crore) as on March 31, 2021 shall be eligible to be considered for restructuring under the framework.

1.2.3. Resolution of Covid-19 related stress of Individuals & Small businesses – Revision in Threshold for Aggregate Exposure

Individuals who have availed of loans and advances for business purposes and small businesses, including those engaged in retail and wholesale trade, other than those classified as MSME on

31 March 2021 and to whom lending institutions have an aggregate exposure of Rs 50 Crores (erstwhile 25 Crores) shall be eligible borrowers for resolution under the framework.

1.2.4. Applicability of Risk Based Internal Audit (RBIA)

Applicability of Risk based Internal audit which was only applicable to All deposit taking NBFCs, irrespective of their size, All Non-deposit taking NBFCs (including Core Investment Companies) with asset size of ₹5,000 crore and above; and all UCBs having asset size of ₹500 crore and above has now been extended to the following Housing Finance Companies:

- All deposit taking HFCs, irrespective of their size.
- Non-deposit taking HFCs with asset size of Rs 5000 Crore and above

Such Housing Finance Companies as defined above are required to comply with the RBIA framework by 30 June 2022.

1.2.5. Guidelines for Appointment of Statutory Central Auditors (SCAs), Statutory Auditors (SAs) of Commercial Banks (excluding RRBs), UCBs and NBFCs (including HFCs) – FAQs

These guidelines aim at streamlining the procedure for appointment of Statutory Auditors across all regulated entities and ensure appointments are made in a timely, transparent, and effective manner:

Objective of the Guidelines issued by RBI are as follows:

- To put in place ownership neutral regulations
- Ensuring independence of auditors
- Avoiding Conflict of Interest in Auditor's Appointments
- Improve quality and standards of audit in RBI regulated entities.

However, certain clarifications were sought and the same have been addresses through FAQs.

Impact:

- Audit Firms engaged with audit/non-audit work of the entities for group entities not regulated by RBI but classified as RBI regulated entities in the group for appointment of SCA's & SA's, it would be the responsibility of the Board/ACB/LMC of the RBI regulated entity to ensure that there is no conflict of interest and independence of auditors is ensured and the same is suitably recorded in the minutes.

- Any partner of a Chartered Accountant firm is a director in an RBI Regulated Entity in the Group, the said firm shall not be appointed as SCA/SA of any of the RBI Regulated Entities in the Group

- If an audit firm is being considered by any of the RBI Regulated Entities in the Group for appointment as SCAs/SAs, whose partner is a director in any of the Group Entities (which are not regulated by RBI), the said audit firm shall make appropriate disclosures to the ACB as well as Board /LMC.

- Time gap between any non-audit works by the SCAs/SAs for the Entities or any audit/non-audit works for its Group Entities should be at least one year after completion of the audit assignment as SCA/SA.

- The existing SCAs/SAs of the Entity can continue (including as Joint Auditors) only if they fulfil the eligibility criteria and have not completed the stipulated tenure of three years as SCAs/SAs of the Entity. Till the appointment of SCAs/SAs for FY 2021-22, as per the requirements of the Circular and applicable statutory provisions, the SCAs/SAs for FY 2020-21 can continue for the Limited Review for Q1, Q2, etc.

- No prohibition on an audit firm from doing audit of any Company/Entity with Large Exposure to the Entity from being appointed as SCA/SA of the Entity and stipulates this aspect to ensure independence of auditors.

- Limit of audit of four commercial banks, eight UCBs and eight NBFCs for an audit firm in a year is applicable to audit of all RBI regulated entities irrespective of asset size of Rs 1000 Crore or not.

1.2.6. Consultative Document on Regulation of Micro Finance

Intention of the consultative paper to apply the regulations to the micro finance loans provided by all entities regulated by the Reserve Bank and is aimed at protecting the microfinance borrowers from over-indebtedness as well as enabling competitive forces to bring down the interest rates by empowering the borrowers to make an informed decision.

Key Proposals of the document are as follows:

- A common definition of microfinance loans for all regulated entities.
- Capping the outflow on account of repayment of loan obligations of a household to a percentage of the household income.
- A Board approved policy for household income assessment.
- No pre-payment penalty; no requirement of collateral; and greater flexibility of repayment frequency for all microfinance loans.
- Alignment of pricing guidelines for NBFC-MFIs with guidelines for NBFCs.
- Introduction of a standard simplified fact sheet on pricing of microfinance loans for better transparency.
- Display of minimum, maximum and average interest rates charged on microfinance loans on the websites of regulated entities.

1.3. International Financial Services Authority

1.3.1. Report of the Expert Committee on feasibility of the Variable Capital Company in International Financial Services Centres

A Variable Capital Company (VCC) is a corporate entity structure under which several collective investment schemes (whether open-end or closed-end) may be gathered under the umbrella of a single corporate entity and yet remain ring-fenced from each other.

The IFSCA had setup an expert committee to analyse the feasibility of Variable Capital Company (VCC) to operate in IFSC. The Committee assessed the features of a VCC or its equivalent, in other jurisdictions such as the UK, Singapore, Ireland and Luxembourg. It recommended the adoption of a VCC-like legal structure for the purpose of conducting fund management activity in IFSCs, while fully recognizing that the adoption of a VCC-like structuring will not, by itself, stimulate a thriving global asset management business in IFSCs.

Following elements are expected to be features of the proposed legal framework governing entities that undertake fund management: (i) the need for certainty and clarity for investors; (ii) effective segregation and ring fencing of different pools of asset; the ability to issue different classes of shares; (iii) the ability to distribute proceeds from the sale of investments; (iv) alterations to the funds' capital structure without regulatory approvals; (v) the freedom to choose the appropriate accounting standards applicable to funds with different characteristics; the ability to wind up quickly; (v) maintaining the confidentiality of investor information and keeping overall cost low. The Committee used these principles as the foundation for its recommendations on the legal framework governing VCCs in India.

1.3.2. Clarificatory Circular on Framework for enabling Ancillary Services

IFSCA has clarified on various aspects pertaining to Framework for enabling Ancillary services issued in February 2021.

Summarized clarifications issued are as under:

1. The entity may be set up in the IFSC in the form of a company or a limited liability partnership or a registered partnership firm, or their branch
2. Entity may provide ancillary services to both entities in IFSC, as well as those outside India.
3. Advisory and facilitation services pertaining to entities for Capital Raising, Mergers Acquisition and Capital Restructuring outside India
4. Trusteeship for AIFs, InvIT and REIT, Security Trustee and other related financial services such as escrow agent is permitted

Impact: The clarifications widen scope of activities of Ancillary services that may be provided within and from the IFSC Jurisdiction. It also provides Indian service providers a platform to go global.

1.3.3. Report of the Committee on positioning IFSC as a hub for offshore trading in INR

IFSCA had constituted a committee on positioning IFSC as a hub for offshore trading in INR. The committee has submitted various recommendations to the regulator, of which the significant are permitting all category of products at IFSC without any restriction as long as the underlying product is not liable to be used as a surrogate for money laundering and allowing derivatives to be undertaken for the purposes of risk management, risk transformation, yield enhancement or trading / speculation, including as part of a structured product.

1.3.4. Introduction of Negotiated Large Trade (NLT) facility on Stock Exchanges

IFSCA has permitted Negotiated Large Trade (NLT) facility for derivatives on the Stock Exchanges, with minimum order size being USD 1 Million. The orders placed shall be within +/- 1% of the applicable Reference price. The Reference price shall be the Volume-Weighted Average Price (VWAP) of trades executed in the 30 minutes preceding the NLT order execution.

2. Discussion Papers

2.1. Liabilities of an Independent Directors

In our previous articles we discussed about duties of directors including nominee directors, the safeguards to be adopted by directors to mitigate the risk of liabilities fastened to the duties of directors as well as the new provisions proposed by the Securities and Exchange Board of India for Independent Directors.

The coined term 'Independent Directors' gained relevance with the introduction of Companies Act, 2013 (the **Act**) and ever since the role and liability of Independent Directors have evolved. While, the regulatory authorities have been prescribing various measures to shape the role of Independent Directors it is at the same time also molding various measures to make the Independent Directors liable for their actions.

The extent of scope of liability attached to the role of Independent Directors is different under different regulations i.e. it is narrow under the Act where an Independent Director would be liable only for *"such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently."*

Accordingly, three important factors attributable to determine the liability of an Independent Director under the Act are:

a. Knowledge of the act through board processes;
b. Consent or connivance; and
c. Not acted diligently

If either of the above is established then an Independent Director shall be held liable for his acts of omission or commission under Section 149(12) of the Act.

The judgment laid down in the matter of alleged fraud that took place at Punjab Maharashtra Co-operative Bank (**PMC Bank**) clearly reflects what comprises *'knowledge of the act through board processes'* whereby holding important positions on committees and taking decisions would make the Independent Director liable for his acts.

In the said case, three of independent directors of PMC Bank were arrested on 12 December 2019. Though as independent directors they were considered to not have any active role in day-to-day running of the PMC Bank, however, since these independent directors occupied several positions on the committees of the PMC Bank they could have prevented the alleged fraud that took place.

The Economic Office Wings while not being satisfied with the responses of the Independent Directors submitted that:

a. One of the independent directors was on the audit committee of PMC from 2005 to 2010, another independent director was on the advances committee for two consecutive terms from 2011 till date. One other independent was member of the recovery committee from 2010 to 2015 which tenure corresponds to the time period during which the alleged fraud was committed; and

b. The posts they held put them in a position to know about the alleged fraud which they could have either prevented or reported to the authorities, however they remained mute and were mere spectator to the alleged fraud.

Indian courts have from time to time upheld that failure to attend board meetings, not raising the right questions or concerns and ignoring developments within the company are some such matters that will be considered while determining whether directors have complied with the requirement to act diligently. The Supreme Court in ***Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602*** stated that a director cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially. In the matter of Jaiprakash Associates Limited and Gitanjali Gems Limited, the respective courts have restrained the independent directors from transferring any personal assets and even freezed their personal assets.

In an another matter of ***Union of India, Ministry of Corporate Affairs vs Infrastructure Leasing and Financial Services Limited***, the Ministry of Corporate Affairs expanding its scope of investigation filed application before the National Company Law Tribunal to implead inter alia the Independent Directors for operational mismanagement.

In consonance with the report of the Serious Fraud Investigation Office, the MCA exercised its right and filed application to implead the Independent Directors but the question arises that to what extent would an Independent Director be expected to exercise his independence or be involved in the day to day management of the Company to raise concerns of operational mismanagement. This kind of broadened investigation also leads to the question whether the liability and risks faced by Independent Directors are commensurate with their duties.

Conceptually, the standard of skill and care expected of executive directors in relation to a company should not be the same as that for Independent Directors as the latter acts as the gatekeeper and the former are more directly involved with the day to day management of the company.

While there are safe harbor provisions enshrined in the Act for limiting the liability of Independent Director the regime of judgments upheld by various Indian Courts have broadened the role and responsibility of Independent Director and reforms are required to align the role, responsibility and liability attached to the role and responsibility of an Independent Director.

2.2. Promoter Director

Introduction to Promoter Director

It is not an unusual practice for the promoters of the company to also be a part of the board of directors and such directors are classified as promoter directors.

Companies Act, 2013 (**Act**) or the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 do not specifically set out any provisions with respect to promoter directors. Therefore, in order to determine whether a director is a promoter director or not one should review the FORM DIR-12 *(Particulars of appointment of directors and the key managerial personnel and the changes among them)* filed by the company with the Ministry of Corporate Affairs at the time of appointment of such director.

Additionally, to determine a promoter director it is important to analyze and understand the term promoter as defined under Section 2(69) of the Act which was not a defined term under the Companies Act, 1956.

In terms of Section 2(69) of the Act:

"Promoter" means a person:
Who has been named as such in a prospectus or is identified by the company in the annual return referred to in Section 92; or

Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) will apply to a person who is acting merely in a professional capacity.

A person advising in professional capacity will not fall under this definition. Therefore, if a company secretary or a legal counsel tenders advice to the company in professional capacity, he and, or she will not be termed as promoter.

Duties of Promoter Director

The promoters of the company are considered to be the agents of the company before the incorporation of the company. The relationship between a promoter and a newly formed company attracts a fiduciary relationship.

This has been settled and correctly stated by House of Lords in the matter of *Erlanger vs. New Sombrero Phosphate Co (1878) 3 App Cas 1218* the court held that: "*The promoters of a company stand undoubtedly in a fiduciary position. They have in their hands the creation and moulding of the company. They have the power of defining how and when and in what shape and under what supervision, it shall start into existence and begin to act as a trading corporation.*"
The promoter directors in their fiduciary capacity have the following two essential duties towards a company:

a. Not to make any secret profits; and

b. To disclose his or her interest in transactions.

A Promoter Director can be a Chairman, Managing Director and, or an Executive Director of the company and his duties may accordingly vary. However, as a director of the company one must act within the powers and exercise reasonable, care and diligence while performing his and, or her duties.

Liabilities of Promoter Director:

Civil and Criminal Liability for Misstatement:

Promoter Directors can be fastened with civil as well as criminal liability for authorising the issue, circulation, or distribution of a prospectus which includes any untrue or misleading statements or where any inclusion or omission of any matter is likely to mislead. Such promoter director is also held liable for fraud under Section 447 of the Indian Penal Code, 1860.

Further, Section 35(1) of the Act, levies compensation on every person who authorised the issue of the prospectus containing untrue statements. This is inter alia applicable to promoters too and make them personally responsible without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of the prospectus.

For a promoter director to defend this liability imposed under Section 35(1) of the Act, it has to prove either that having consented to become a director of the company, the person withdrew consent before filing of a copy of the prospectus with the Registrar of Companies containing misstatements, and that such prospectus was issued without his knowledge, authority or consent or that such untrue statement or omission or inclusion was immaterial or that he had reasonable grounds to believe that the statement was true and the inclusion or omission was necessary.

The Supreme Court of India in the matter of ***Ritesh Agarwal vs. Securities and Exchange Board of India [2008] 144 CompCas 12 (SC)*** upheld the order of the Adjudicating Authority as well as Securities Appellate Tribunal in penalising Ritesh Exports Limited, Surendra Kumar Agarwal, Rooprekha Agarwal, and their two sons Ritesh Agarwal and Deepak Agarwal (minors at the relevant time of issuance of prospectus).

The appellants argued that since they were not mentioned as promoters in the prospectus they should not be held liable for misstatement in the prospectus of public issue of Ritesh Polysters Limited (**RPL**). Not agreeing with the contentions of the appellant SEBI observed that since Rooprekha Agarwal, Ritesh Agarwal and Deepak Agarwal who are wife and sons of Surender Kumar Agarwal made contributions to the company as promoters they fall within the purview of the said term and hence, should be held liable.

RPL and its promoters, viz., Ritesh Exports Limited, Surendra Kumar Agarwal, Rooprekha Agarwal, Ritesh Agarwal and Deepak Agarwal were charged to disassociate themselves in every respect from the capital market related activities and not to access the capital market for a period of 10 years;

Promoters of RPL were asked to buy back the shares from the allottees and, or, shareholders offering an amount at which the shares were issued i.e. INR 15 *per* share if the shares are fully paid or @ INR 7.50 *per* share if the shares are partly paid and delist RPL from the stock exchanges.

Position at Indian Law:

1. Personal liability of Promoter Director:

Indian Courts have from time to time and in several cases made the promoter directors personally liable in respect of frauds committed under the guise of companies and extended full liability to such directors. In one such matter of *E. Bapanaiah vs K.S. Raju (2015)1. SCC 451*, the Company Law Board has held the promoter director liable to repay the deposits taken from the depositors on account of fraudulent activities done by him in the name of the company

K.S. Raju, was Promoter Director of M/s. Nagarjuna Finance Limited, Hyderabad. The said company, through its Directors, issued advertisement inviting deposits promising good returns on the deposits and collected huge sum from the public assuring that the same would multiply to double within 45 months as projected.

When no such payment was made, complaint was filed with the CLB per Section 58-A of the Companies Act, 1956 for framing the scheme of repayment of deposits in instalments within a period of 48 months. The CLB allowed the time to NFL on the request of its directors to approve the scheme of repayment and ordered its directors to file affidavits and undertakings with the CLB in this regard.

After the approval of the scheme of repayment K.S. Raju, Promoter Director of NFL, pleaded that there was change in the management of NFL, and he should be relieved from his liability as the Promoter Director of NFL, its group companies and from the undertaking given by him to the CLB.

The CLB declined to relieve the Promoter Director K.S. Raju from the undertaking given by him and it was directed that he should make the repayment as per the repayment scheme. CLB observed that that a company functions through its directors, in its operations. Company is not such person which can be sent to jail. It is the director controlling the affairs of company through whom it has committed the disobedience, if any, and as such, such director has to suffer the consequences of disobedience if it is wilful.

2. Status of Promoter Director to impact the Company:

The Whole time member of Securities and Exchange Board of India cancelled the certificate of registration of the Sahara Mutual Fund and Sahara Asset Management Company on the ground that the Promoter Director of the sponsor was not a fit and proper person. The order stated that Sahara India Financial Corporation Limited is not a "fit and proper person" because its promoter director is not a fit and proper person and hence the Sahara MF and Sahara Asset Management Company Private Limited are no longer fit and proper to carry on the business of mutual fund.

The legal question in the appeal filed before the Securities Appellate Tribunal was that if the Promoter-Director of the sponsor of a mutual fund is found to be not a fit and proper person whether the sponsor itself becomes not fit and proper and if so whether it would impact the fit and proper status of the mutual fund and the AMC under the Mutual Fund Regulations. The SAT upheld the order of SEBI and disallowed the appeal.

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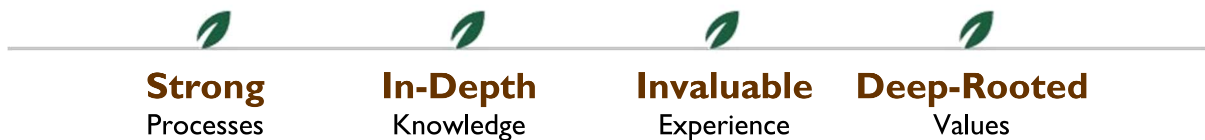

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Basilstone is the quintessential blend of traditional values and modern thoughts which are echoed in the experience, enthusiasm and energy of its people and translated in the services rendered to its clients.

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