
SPACS AN INDIAN PERSPECTIVE

Aayushi Shah, Svkm's Pravin Gandhi College of Law, Mumbai University

ABSTRACT

Special-Purpose Acquisition Company (SPAC) has been a widely discussed topic since 2021 and the trend continues. The Union Budget for the year 2022-2023 is progressive and revolutionary as it focuses on the digitalization of the Indian Economy. However, it fails to address several other critical issues, such as rules on the offshore listing for Indian companies or creating a regulatory regime conducive for Special Purpose Acquisition Companies. The Budget failed to create a regulatory environment that is amicable to Special Purpose Acquisition Companies. This article provides a comprehensive overview of SPACs and the current regulatory roadblocks faced by India.

SPACs– AN INDIAN PERSPECTIVE

A Special Purpose Acquisition Company (“**SPAC/s**”) is a ‘blank-cheque’ shell corporation, newly formed and set up primarily to raise capital through a public offering. SPACs are formed for the object of being listed on stock exchanges, but they do not own any assets or businesses because their prime goal is to execute a merger, amalgamation, or acquisition of shares or assets of a legal corporation.

SPACs are undetermined business acquisition businesses that generate money through an Initial Public Offering (“**IPO**”) and then buy another unspecified business through a business combination (“**Target**”). The listed entity functions as an ordinary listed company once this business combination is completed (referred to as a de-SPAC transaction). SPACs are currently regulated and recognized in the United States, the United Kingdom, Canada, Singapore, and Malaysia.

A SPAC will go through the typical IPO process of filing a registration statement with the respective Regulator and undertake a roadshow followed by a firm commitment underwriting. The proceeds from the IPO will be retained in a trust account until they are released to fund the business combination or utilized to redeem IPO shares. The corporation or management team that establishes the SPAC (“**Sponsor**”) will finance offering expenditures, including the upfront component of the underwriting discount, as well as a small amount of working capital. Following the IPO, the SPAC will look for an acquisition opportunity and negotiate a merger or purchase agreement to buy a company or assets (“**Business Combination**”). The sponsor may lend more funds to the SPAC if the SPAC requires additional capital to pursue the business combination or pay its other expenses. Before signing an acquisition agreement, the SPAC will frequently secure committed debt or equity financing, such as private investment in public equity (“**PIPE**”) commitment, to fund a portion of the purchase price for the business combination, and then publicly announce both the acquisition agreement and the committed financing. Following the announcement of the signing, the SPAC will conduct a mandated shareholder vote or tender offer, in which public investors will be given the option to return their public shares to the SPAC in exchange for cash roughly equal to the IPO price paid. The business combination will be completed (referred to as the “**De-SPAC Transaction**”) if the shareholders (if required) approve it and the financing and other conditions specified in the acquisition agreement are met. The SPAC and the target business will merge into a publicly-traded operating company.

Typical SPAC Lifestyle



Why does a company prefer SPAC over an IPO:-

In an IPO a company is looking to raise capital, whereas capital is chasing a target company in a SPAC. Going public through an IPO is an extensive process that involves multifaceted regulatory filings and months of discussions with underwriters and regulators. This can stymie a company's plans to go public, especially during periods of increasing uncertainty (such as the situation in the COVID- 19 period in 2020- 2021), when the risk of an IPO being rejected by investors is much higher.

In contrast, if a company merges or is bought by a SPAC which is an entity that exists solely to complete such an acquisition, it can become public within months. In comparison to another buyer, such as a private equity firm, who may drive a hard bargain, the owners of a target company may be in a better position to negotiate a fair price from a SPAC that has a limited period for executing an acquisition.

Developments and Legal Impediments in the SPAC regime in India:-

The Principal Market Advisory Committee of the Security Exchange Board of India (“SEBI”) was formed to evaluate the feasibility and associated risks of SPACs in the Indian market. As

a result, the International Financial Services Centre Authority ("**IFSCA**") issued a consultation paper on the subject of the International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021¹ which was consequently codified into law on July 19, 2021.

The International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021 ("**IFSCA Regulations**") have provided much-needed regulatory lucidity on SPAC. The IFSCA Regulations apply to SPAC transactions, business combinations, fund management, and merchant banking activities, as well as the sponsor of the SPAC. It is possible that the public offering will be underwritten, which will be stated in the offer document. The IFSCA Regulations also specify the initial disclosures that must be included in the offer document, such as risk considerations, capital structure, redemption rights, liquidation, issue objects, use of proceeds, interim use of funds, related party activities, and so on. Additionally, at least 50% of the underwriting commission shall be deferred until successful completion of the business combination and shall be deposited in the escrow account.

Moving ahead, the IFSCA Regulations can put India on the map for redefining the route of investment not just in the Indian market but also for international listing, which is now prohibited under existing Indian regulations. SPACs may be able to offer Indian firms access to international financing. Nonetheless, notwithstanding the establishment of IFSCA Regulations, there are still legal impediments to that aim.

Listing Restrictions:-

Section 23 of the Companies Act of 2013 was amended in 2020 to permit companies to be listed in foreign jurisdictions; nevertheless, SEBI only allows equity listing of existing companies with disclosed and appropriate financials. Notably, Regulation 6 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 defines the framework for listing on equity markets. The clause requires an issuer to have net tangible assets of at least INR 30 million in each of the previous three (3) years, as well as distributable earnings in at least three of the previous five (5) years and a net worth of at least INR 10 million. Regulation 6 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 will continue to pose a significant threat to the general permissibility of SPACs in India until it is amended.

¹ <https://ifsc.gov.in/Viewer/Index/202> [Accessed 02 March, 2022]

Operational Restrictions:-

Section 248 of the Companies Act 2013 states that any company that does not begin commercial activities within one year of its establishment date will be struck from the register of companies by the Registrar of Companies, SPACs do not control any form of business before a De-SPAC transaction (which involves the acquisition of an existing firm), the Companies Act 2013 has yet to incorporate a company of this type.

Additionally, as per Section 4 of the Companies Act, for incorporation, the Memorandum of Association (MoA) shall enumerate the object for which the company is incorporated. Since SPAC doesn't have an outlined business purpose it's impossible to satisfy this provision.

SPAC route adopted by Indian entities:-

Even though there are these regulatory roadblocks for the formation of SPACs, foreign SPACs can still acquire Indian companies and get them listed on foreign stock exchanges like the London Stock Exchange, NASDAQ, and New York Stock Exchange.

This mandates the execution of an outbound merger in consonance with the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, and Section 234 of the Companies Act, 2013, by a National Company Law Tribunal's approved scheme of merger. Some Indian Companies adopted the SPAC route in the following ways:-

1. Acquisition of Target (or a portion of its shares) by a SPAC followed by registration of that Target's equity shares with the securities market regulator and subsequent listing of Target's American Depositary Shares on a stock market. This was the route through which shares of Videocon d2h Limited were listed on NASDAQ².
2. Merger of a Target with a SPAC where the combined entity is listed on the stock exchange. This was implemented in the case of Yatra Online Inc, the holding company of Yatra.com.³
3. Transfer of the shares of Target to a holding company owned by Target's shareholders followed by a merger of the holding company into the SPAC (thus facilitating the

² Press Release of Eagle Investment Partners dated , April 2015
<http://eagleinvestmentpartners.com/videocon-d2h-limited-indias-fastest-growing-direct-to-home-pay-tv-provider-completes-initial-listing-on-nasdaq/> [Accessed 01 March, 2022]

³ Press Release by Yatra.com
<https://www.yatra.com/online/terrapin-yatra> [Accessed 02 March, 2022]

indirect listing of Target's shares). ReNew Power Private Limited ("**ReNew**") has implemented a definitive business combination agreement with RMG Acquisition Corporation II (RMG), a SPAC listed on NASDAQ to list ReNew's shares on NASDAQ through this structure.⁴

4. According to a 2021 article, Flipkart, Swiggy, Delhivery, Grofers, and other companies are likely to pursue the SPAC route to achieve listing in overseas markets.⁵

A Regulatory Framework- *The need of the hour:-*

In the era of tech-savvy startups, SPACs as a structure is intriguing and caters to the interests of both private equity and retail investors to grab a piece of the cake of quick wealth creation that many venture capitalists have witnessed. The regulatory framework for SPACs in different regions of the world is loaded with both parallels and differences. However, from an Indian viewpoint, significant efforts would be necessary on the part of regulators, as it will necessitate amending several key aspects of major corporate sector legislations to promote India as a favorable destination for SPAC IPOs and listings.

⁴ Press Release of Renew Power dated 24 February, 2021
<https://renewpower.in/wpcontent/uploads/2021/02/RMG-II-ReNew-Power-Transaction-Announcement-Press-Release-Feb-2021.pdf> [Accessed 01 March, 2022]

⁵ <https://www.livemint.com/market/stock-market-news/spacs-the-new-buzzword-in-stock-exchanges-11616519873153.html> [Accessed 02 March, 2022]