Private placement in India under Companies Act, 2013

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Introduction

1. The Private Placement is one of the well-recognized modes of raising finance all over the world. Earlier, this mode of raising finance was not sufficiently regulated under the old Companies Act, 1956. When the Private Placement used to be broadly regulated under the laws relating to Preferential Allotment of Securities as Private Placement is a form of Preferential Allotment. Even the legal definition of Private Placement was wanting in the statute book under the old regime. As a result, the Private Placement route was manipulated by the unscrupulous elements in the market. The infamous Sahara case exposed the huge regulatory gaps in our corporate law regime pertaining to Private Placement. The Sahara, through its two Companies, managed to raise funds to the tune of thousands of crore of rupees from millions of investors under the garb of Private Placement, which in reality and in substance was a Public Issue. However, as the new company law is based on transparency and accountability, the law makers have regulated the Private Placement regime through Section 42 of the Companies Act, 2013. In the light of the above background this article will focus on the current legal regime of Private Placement which mandates extensive disclosure requirements for the Company opting for Private Placement route. The article also will throw light on Sahara Judgment pertaining to the controversy around Private Placement.

Changes in the 2013 Act

2. Several important changes have taken place in legal regime of Private Placement under the Companies Act, 2013. It will be pertinent to look into these changes.

2.1 ***Defining Private Placement*** - One of the very first things that have been done in the Companies Act, 2013 is to define the term "Private Placement" which was not defined earlier under the Companies Act, 1956. The *Explanation I* to sub-section (3) of section 42 of 2013 Act defines private placement as "any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of Public Offer) through private placement offer-cum-application letter which satisfies the conditions specified in this section." In contrast, no specific provisions on private placement existed in the Companies Act, 1956. Under the old company law regime, unlisted companies were required to follow Unlisted Public Companies

(Preferential Allotment) Rules, 2003 while listed companies were required to follow SEBI Regulations. Preferential issue of share is a form of private placement. An important change that has taken place is that the law speaks of private placement of "securities" and not "shares". This is to signify that law relating to private placement under section 42 is applicable to all kinds of securities and not confined to shares.[1]

2.2 ***Only to Select Group of Persons*** - The new law also expressly provides in sub-section (2) of section 42 that a private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons") whose number shall not exceed fifty or such higher number as may be prescribed in a financial year subject to such conditions as may be prescribed. To prevent the possible misuse of Private Placement as was noticed in Sahara case (discussed in later part of this article), the sub-Rule (3) of the Rule 14 of the companies (Prospectus and Allotment of Securities) Rules, 2014 (hereinafter referred to as PAS Rules, 2014) provides that a private placement offer-cum-application letter shall be serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him within thirty days of recording the name of the person. Section 42(3) specifically says that company shall issue private placement offer and application letter only to identified persons whose name and address are recorded by the company. Proviso to sub-section (3) makes it amply clear that Private Placement offer-cum-application letter shall not carry any right of renunciation, which means that offer can either be accepted or rejected by the offeree but it cannot be passed on to any other person. Sub-Rule 6 of Rule 14 further provides that return of allotment of securities which company has to file to the Registrar within fifteen days of allotment must contain a complete list of allottees containing the full name, address, Permanent Account Number (PAN) and E-Mail ID of such allottees. This information about security holders will enable the Registrar or Inspector to effectively conduct inspection, enquiry and investigation against the company under certain circumstances.

2.3 ***Limit of 200 Persons*** - Regarding the limit of maximum number of persons to whom the offer shall be made through the private placement route, section 42 of the Companies Act, 2013 says that the maximum number of persons shall not exceed fifty or such higher number as may be prescribed. Sub-Rule 2 of Rule 14 of the Companies (PAS) Rules, 2014, as amended through the Companies (PAS) Second Amendment Rules, 2018, elaborating further on the maximum number of persons, says that an offer or invitation to subscribe to securities under private placement shall not be made to more than 200 persons in the aggregate in a financial year. However, *Explanation* to sub-Rule (2) of Rule 14 says that the restrictions aforesaid would be reckoned individually for each kind of security, that is, equity share, preference share or debenture. Thus, as per the current Rule, restriction of 200 Persons shall be reckoned individually for different kinds of securities issued in a financial year and not for all the securities issued in a financial year. Section 42 talks about "Persons" and not "Individuals". Thus, it includes separate legal personality. The law further says that limit of 200 Persons shall exclude the Qualified Institutional Buyers (QIBs) and employees of the company to whom securities have been offered under a scheme of Employees Stock Option in terms of section 62 of the Companies Act, 2013.

2.4 ***Deemed Public Offer*** **-** The law of private placement as provided in section 42 (*Explanation III* to sub-section (3)) makes it expressly clear that if the company, whether listed or unlisted, makes an offer to allot or invite subscription, or allots or enters into an agreement to allot securities to more than prescribed number of persons (more than 200 persons), whether the payment for the securities has been received or not or whether the company intends to

list its securities or not on any recognized stock exchange in or outside India, the same shall be deemed to be offer to the public and shall accordingly be governed by Part 1 of Chapter III of the Companies Act, 2013. Part 1 of Chapter III provides for Public Offer. One inevitable consequence of public offer is that the company has to get its securities listed on any recognized stock exchange in India before making such offer as per section 40 of the Companies Act, 2013. The importance of *Explanation III* lies in the fact that it makes the intention to get listed immaterial once the company offers securities to more than prescribed number of persons. In that case, the listing becomes obligatory and will no longer remain a matter of choice or discretion. This provision is in consonance of the Supreme Court's judgment in Sahara case. This shift, in law, is due to the fact that in Sahara case, it was contended before the Supreme Court on behalf of Sahara that it had made clear in the offer letter that it did not intend to get its securities listed on any recognized stock exchange. Hence, it was argued that there was no intention to get listed. Taking the argument further, the Sahara contended that if at all there was any irregularity in offering Optionally Fully Convertible Debenture (OFCDs) through Private Placement mode by crossing the limit of more than fifty persons, the jurisdiction to take suitable action against Sahara lay with Ministry of Corporate Affairs (MCA) and not with SEBI as the jurisdiction of latter was restricted to listed companies only. To make things clear, the new Law under section 42 of the Companies Act, 2013 provides that intention to get listed is immaterial and the company shall be liable under deeming provision, once it makes offer to more than 200 persons.

2.5 ***Transparency in Source of Financing For Private Placement*** **-** As mentioned in the introductory part, the law relating to Private Placement was not sufficiently regulated under the old Companies Act, 1956. As a result, source of financing for purchasing securities during private placement was also doubtful. To prevent unaccounted and laundered money to route through private placement and integrate into the financial system of the country, section 42 makes it amply clear in sub-section 4 that every identified person willing to subscribe to the issue through private placement shall pay the subscription money either through cheque or demand draft or other banking channels and not by cash. Elaborating further, sub-Rule 5 of Rule 14 of the Companies (PAS) Rule, 2014 says that the payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the complete record of the bank account from where such subscription has been received. Thus, the law of private placement aims to ensure that Private Placement platform is not misused to infuse unaccounted wealth. The requirement of using banking channel will enable India to fulfil its international commitment to fight against Money Laundering.

2.6 ***Transparency in Valuation of Securities to be offered through Private Placement*** **-** The Law of Private Placement also mandates that proper valuation of the securities proposed to be offered through Private Placement should be done. Form PAS-4 which provides for Private Placement Offer-Cum-Application Letter provides that such application letter must contain the name and address of the valuer who performed valuation of the securities to be offered and the basis on which the price has been arrived at alongwith the report of the registered valuer. The Provisions relating to Registered Valuer are contained in section 247 of the Companies Act, 2013. The intention behind report from Registered Valuer to be provided in application-cum-offer letter appears to be to ensure that private placement mode is not manipulated or misused by the company by undervaluing the price of securities to be offered to the promoters/directors of the company through the Private Placement route.

The importance of this factor lies in the fact that the securities offered through private placement have the capacity to change the control of the company pursuant to private placement. The intention behind valuation also appears to be that no exorbitant price is charged for securities offered through Private Placement mode as the prospective offeree has the right to know the basis on which the price was arrived at so that he can make informed choice as to whether to accept offer or not. The report by valuer will be one of the safeguards as the valuer will apply the recognized valuation techniques to arrive at the valuation of securities proposed to be offered through private placement to the prospective allottees.

2.7 ***Extensive Disclosure to the Shareholders in General Meeting For Passing Special Resolution*** **-** The law under section 42 requires that before a company goes in for private placement, the proposal has to be previously approved by the shareholders of the company by passing a special resolution for each of the offers or invitation to subscribe to the securities through private placement. Elaborating further, sub-Rule (1) of Rule 14 of the Companies (PAS) Rule, 2014 requires that explanatory statement annexed to the notice for shareholder's approval must contain the following disclosures: Particulars of the offer including date of passing of the Board's Resolution; kind of securities offered and the price at which securities are being offered; basis or justification for the price (including premium, if any) at which the offer or invitation is being made; name and address of the valuer who performed valuation; amount which the company intends to raise by way of such securities; material terms of raising such securities; proposed time schedule; purpose or object of the offer; contribution being made by the promoters or directors either as a part of the offer or separately in furtherance of objects; principle term of assets charged as securities. Thus, the Rule under Section 42 mandates that extensive disclosures to be made to the shareholders of the company so that they can make informed decisions as to whether company should go in for private placement or not. Thus, the decision as to whether the company should go in for private placement or not is not the prerogative of promoters or directors of the company but is a collective decision of the shareholders which must be reflected by passing a special resolution. This extensive disclosure requirement is primarily due to the fact that issue of shares through private placement can materially alter the shareholding pattern of the company.

If the company is going for raising funds by way of debenture through private placement route, requirement of Section 179(3)(c) and Section 180(1)(c) of the Companies Act, 2013 needs to be complied with. Under Section 179(3)(c), Board can pass resolution to borrow money. There is no need for passing of special resolution in shareholder's meeting. However, if the borrowing amounts exceed certain threshold, then Section 180 will become applicable and special resolution needs to be passed in general meeting of the shareholders. Another important feature regarding issuing of debentures through private placement route is that only one resolution needs to be passed in a financial year for all the offers for debentures and not separate resolution for each of the offers which is generally the case for other securities.

2.8 ***Extensive Disclosure Requirements in Offer-Cum-Application Letter*** **-** The law relating to Private Placement, under the new Companies Act, 2013, requires not only extensive disclosure in the explanatory statement at the time of shareholder meeting but it also requires extensive disclosure in the contents of Placement offer-cum-Application letter which is to be offered to the identified persons. The Placement offer-cum-application letter is required to contain, apart from General Information regarding the company and its management, the financial position of the Company for the last three financial

years; whether there will be any change in control of the company consequent to the private placement; the details (if any) of the significant and material orders passed by the Regulators, Courts, and Tribunals impacting the going concern status of the company and its future operations; the pre-issue and post-issue shareholding pattern of the company in the prescribed format. The application form is also required to disclose any financial or other material interests of the directors, promoters, key managerial personnel in the private placement offer and also the effect, if any, of such interest, in so far as it is different from the interests of other persons. Under the disclosure requirement, disclosure is also required to be made regarding the details, if any, of any litigation or legal action pending or taken by any Ministry or Department of the Government or a statutory authority against any promoter of the company during the last three years immediately preceding the years of the issue of private placement offer letter. Certain other things which are required to be disclosed are: Related Party Transactions entered during the last three financial years immediately preceding the year of the issue of offer letter, summary of reservations or qualifications or adverse remarks of auditors in the last five financial years immediately preceding the year of issue of private placement-cum-offer letter and their impact on the financial statements and financial positions of the company and corrective steps taken and proposed to be taken by the company for each of the said reservations or qualifications or adverse remarks. Going further, it is also required to be disclosed regarding any inquiry, inspection or investigation initiated or conducted under the Companies Act in the last three years immediately preceding the year of issue of private placement in the case of company as well as of its subsidiaries and if there were any prosecutions filed (whether pending or not), fine imposed, compounding of offences in the last three financial years immediately preceding the year of the private placement offer-cum-application letter. The application-cum-offer letter must also disclose the financial position of the company. Apart from disclosing the capital structure, the company is also required to disclose the number and price at which each of the allotments were made in the last one year preceding the date of private placement-cum-offer letter. The Company must also disclose profits of the company, before and after making provision for tax, for the three financial years immediately preceding the date of issue of private placement offer letter. Some other things which are required to be disclosed are: Dividends declared by the company in respect of the said three financial years; a summary of the financial position of the company in the three audited balance sheets immediately preceding the date of issue of offer letter; audited cash flow statement for the same period; any change in accounting policies for the same period and their effects on the profits and reserves of the company.

2.9 ***Time Bound Completion of the Process Of Private Placement*** **-** Section 42(6) of the Companies Act, 2013 mandates that a company making an offer or invitation for private placement shall allot its securities within sixty days from the date of receipt of application money for such securities. This requirement was inserted in new Companies Act, 2013 because it was noticed under old company law regime that taking advantage of unregulated nature of private placement, many companies had raised as well as utilized the funds through private placement without allotment of securities to the allottees and in many cases there was undue delay in allotment of securities. To curb these delaying tendencies on the part of the Companies, the new law mandates that company must allot securities within sixty days and in case there is failure on the part of the company in allotment, it shall repay the entire application money to the subscribers within fifteen days from the date of expiry of sixty days. The law also provides that if the company fails to repay

the application money within the aforesaid period of sixty days, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day. Proviso to sub-section (6) further says that money received on application shall be kept in a separate bank account in a scheduled bank and shall not be utilized for any purpose other than (*a*) for adjustment against allotment of securities; and (*b*) for the repayment of monies where the company is unable to allot securities. As far as utilization of money raised through private placement is concerned, Proviso to sub-section (4) of Section 42 mandates that a company shall not utilize monies raised through private placement unless allotment of the securities is made to all the allottees and the Return of Allotment is filed with the Registrar of Companies.

2.10 ***Filing Of Return of Allotment of Securities to Registrar Within Specified Time -*** For the purpose of better transparency in private placement process, the law under Section 42(8) mandates that a company making an allotment of securities under the private placement shall file Return of Allotment with the Registrar of Companies within fifteen days from the allotment and such return shall include a complete list of all allottees, with their full name, addresses, number of securities allotted and such other relevant information as may be prescribed. The consequences of non-compliance with the mandate is serious and is laid down in sub-section (9) which says that if the default is made in filing the Return of Allotment within the prescribed time, the company, its promoters and directors shall be liable to a penalty of one thousand rupees for each day's default during which such default continues but not exceeding twenty five lakh rupees. The law attaches great sanctity to the filing of Return of Allotment to Registrar which can be gauged by the fact that the company is barred from utilizing monies raised through private placement unless the return of allotment is filed with the Registrar of Companies. Hence, filing of Return of Allotment is an important requirement in the entire Private Placement process.

2.11 ***Consequences of Non-Compliance With The Law Of Private Placement*** - Section 42 of the Companies Act, 2013 provides that if a company makes an offer or accepts monies in contravention of law laid down therein, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower. Sub-Section (10) further mandates that the company shall refund all monies with interest at the rate of twelve per cent per annum to the subscribers within a period of thirty days of imposing the order. Section 42 also provides that any issue of private placement made not in compliance with the law laid down therein, shall be deemed to be a public offer and all the provisions of the Companies Act, 2013, Securities Contract Regulation Act, 1956 and Securities and Exchange Board of India Act, 1992 relating to Public Offer shall be applicable.

3. In a Nutshell - a Company Must Ensure Following before Going in for Private Placement

- A Company must pass Special Resolution before going in for Private Placement. If the company is going for Private placement of debenture, law laid down under Section 179(3)(*c*) and Section 180 has to be complied with. A special resolution must be passed for each of the offer made except in case of debenture.
- Offer Letter must be addressed specifically only to those identified group of persons who have been identified earlier by the Board.
- The limit of person to whom offer can be made is 200. If the Company breaches this requirement, the offer

or invitation to offer will be treated as Public Offer and will be governed by Part 1 of Chapter III which deals with Public Offer.

- Return of Allotment of Securities is to be intimated to the Registrar of Companies within fifteen days of allotment.
- Proper Valuation of Securities is to be done by the Registered Valuer.
- Extensive Disclosure Requirement, as mentioned in Form PAS 4, is to be complied with.
- No cash is to be taken in consideration for sale of securities. All transactions must take place through Banking Channels. Money raised is to be kept in a separate bank account.
- Securities must be allotted within sixty days of offer, otherwise allotment money is to be returned within fifteen days after the expiry of sixty days with an interest rate of 12% per annum from the expiry of sixtieth day.

Impact of Sahara India Real Estate Corpn. Ltd. v. SEBI [2012] 25 taxmann.com 18 (SC) on The Current Law of Private Placement in India

4. Although the Sahara Judgment has multiple dimensions, the researcher will confine to issues raised and answered pertaining to the Private Placement which is the scope of the present article.

4.1 ***Brief Facts*** - In Sahara's Case, Sahara India Real Estate Corporation Limited (SIRECL) and Sahara Housing Investment Corporation Limited (SHICL) (Both belonging to Sahara Group of Companies) had issued unsecured Optionally Fully Convertible Debentures (OFCDs). SIRECL had passed Special Resolution and resolved to raise funds through OFCDs by way of private placement to friends, associates, group companies and workers/employees and other individuals connected with the Sahara Group of Companies. The aim was to raise funds without advertisement to general public as it was conceived to be a privately placed offer. SIRECL had specifically indicated in its Red Herring Prospectus (hereinafter referred to as RHP) that they did not intend to get their securities listed on any recognized stock exchange. Further, it was also stated that only those persons to whom the Information Memorandum (hereinafter referred to as IM) was circulated and approached privately and who were connected with Sahara Group would be eligible to apply for OFCDs. The IM contained a stipulation that it was private and confidential and not meant for public circulation as the funds sought to be raised were through private placement. Through this process, SIRCEL managed to collect around ₹ 19,000 Crores from 2.21 Crores Investors from all over India. The same *modus operandi* was adopted by SHICL. Both the companies managed to raise funds to the tune of ₹ 40,000 Crore from millions of investors.

On coming to know of such large scale collection of funds from the Public, SEBI initiated investigation against both the Sahara Group of Companies. Apart from many contentious issues raised by Sahara, one was that it was a Private Placement as evidenced through IM and RHP. The Sahara argued that whether an offer is meant for the public at large or whether it is by way of private placement what is relevant is the intention of the offer and not the numbers. It is only the intention to offer to a select group or identified group which will make the offer a private placement and not the number of people actually subscribed to it. The Supreme Court, while refuting the argument of Sahara, held that once the number of subscribers reaches fifty it will be treated as an issue to the public and listing becomes mandatory under the law.

The Supreme Court analyzed entire conduct of Sahara and countered the Sahara arguments by following points:

4.2 ***Why Information Memorandum was issued?*** - The Supreme Court observed that Information Memorandum (IM) is generally issued for the purpose of eliciting the public demand for the proposed securities to be issued to the public. The IM generally enables the company to assess the price and the terms of the proposed securities. The Supreme Court wondered if OFCD was a private placement, there was no need for issue of Information Memorandum (IM). The Court concurred with the argument of SEBI that if the offers of OFCDs were private in nature, as claimed by the Sahara Group of Companies, then Section 60B of the Companies Act, 1956 was not the correct route to follow because Section 60B deals with the issue of Information Memorandum to the public alone. Therefore, Section 60B route cannot be used for raising capital through private placement. The Sahara Companies cannot, in one breath, claim that their issues were private in nature and at the same time they proceeded to use a path which is exclusively designed for public issues of securities.

4.3 ***No Close Association with Investors to qualify for Private Placement*** - The Supreme Court further observed that there was no relationship between the Sahara Group with the investors to qualify it as privately placed offer. The Court said that Sahara failed to prove that the investors were their friends, associated group companies, workers/employees and other individuals connected with Sahara. The Supreme Court observed that Sahara in the OFCDs Bonds had sought declaration from the prospective investors that that they had been associated with the Sahara group. No detail was provided to show what types of association the investors had with Sahara group. Supposing that Sahara had some kind of relationship with these investors, there was no necessity of an introducer as was demanded in the Application form. The Burden of Proof was on Sahara that the investors were its friends/employees/ workers or associated with Sahara in any other capacity. Sahara had failed to discharge the burden, the Court said. The Court also said that it was very difficult to imagine that OFCDs issued by both the Companies to the millions of investors could be treated to be domestic concern (Private Affairs) of the Companies.

4.4 ***Millions of Subscribers*** - The SIRECL admitted to have total of 6.6 million subscribers. The Court observed that 6.6 million subscribers was too big a number to be labelled it as "Private" particularly in the absence of any definition of what such an association or relationship was. The Court further noted that Sahara Companies were obtaining subscription of OFCDs through mass subscription solicitation with the help of Service Centres and agents spanned all across the country. In such a situation, the Court observed that it was very difficult to accept the Sahara's contention that it was a private placement of OFCDs. The Court also raised the question that unless there was a database of investors already available with an issuer, the offer letters under a Private Placement could not be mailed out. The very absence of ready-made "Database" was the best indicator that by no means it could be treated as Private Placements. The Court accepted the argument of SEBI that OFCDs in question were offered to the Public at large as they had been made to more than fifty persons. Hence, Sahara must have gone for mandatory listing in the recognized Stock Exchange and filed necessary documents with the SEBI.

4.5 ***On the Question of Intention*** - Sahara contended that in order to determine whether an offer made is for the public at large or by way of private placement what is relevant is the intention of the offeror. The contention was that it was only the intention to offer share to select or identified groups that matters which will make the offer a private placement and not the number of persons.

Countering Sahara argument, SEBI said that Sahara should be judged by what they did, and not by what they claimed to be intended.

Regarding the question of "Intention to get listed", as SEBI jurisdiction applies either to the company already listed or to companies which intend to get its securities listed as was contended by Sahara, the Supreme Court held that once the offer is made to fifty or more than fifty persons, it becomes obligatory to get listed on the stock exchange. The Sahara was arguing with the point that it had no intention to get listed as it had made it clear through recitals in IM and in RHP. Answering this, the Supreme Court held that getting listed on stock exchange is not a matter of choice or discretion but it is a matter of obligation once the offer becomes public offer by offering it to fifty or more than fifty persons (as per the old law under Companies Act, 1956). The Supreme Court also made it clear that SEBI jurisdiction applies not only to the companies which are listed or which intend to get listed but even to unlisted companies as SEBI has wide mandate under SEBI Act, 1992 to protect the interest of investors.

On the same issue of intention, the Securities Appellate Tribunal (SAT), on appeal by Sahara against SEBI order, had held that Sahara Companies having gone to the public by circulating an Information Memorandum (meant only for the public issue) could not be heard to say that they did not intend to get their securities listed.

Impact of Sahara on the Law of Private Placement in India

5. As mentioned in the article, the Sahara *modus operandi* of raising finance from the public in the garb of Private Placement exposed the inadequacies and loopholes of the then existing laws in India. The current law aims to get rid of those loopholes. Some of the important changes in the current law post-Sahara controversy are:

5.1 ***Intention is Irrelevant*** - The new law under private placement has made it clear that if a company makes an offer to allot or invites subscription or allots or enters into an agreement to allot, securities to more than prescribed number of persons, *i.e.*, more than 200 persons, whether the company intends to list its securities or not on any recognized stock exchange in or outside India, the same shall be deemed to be an offer to the Public. Thus, once the company crosses the figure of 200 persons, it shall be deemed to be public offer irrespective of the intention of the offeror. This change, in law, was necessitated because Sahara was contending before the Supreme Court that it had no intention to raise funds from the public as it had made it clear through its offer letter and IM that it had no intention to list its securities. Hence, to bring clarity and also to avoid future manipulation by corporates, the new law provides that intention is irrelevant.

5.2 ***Dispatch of Private Placement Offer Letter only to Select Group of Persons to be known as "Identified Persons"*** - The prospective allottees must be identified beforehand by the Board of the Company and the Private Placement offer letter is to be addressed specifically to those identified persons only and not to any other.

5.3 ***No Right of Renunciation*** - The prospective allottees to whom offer letter has been sent shall either accept the offer or reject it but it cannot pass offer letter to any third person. Thus, the offeree will have no right to renunciation, *i.e.*, to pass it on to any third person. The legislative intention behind it seems to be that if the right to renunciation is provided in case of private placement, it could again be manipulated by the companies to raise funds from the public under the garb of Private Placement, thus evading the extensive disclosure required under the Public Offer.

Concluding Remarks

6. The law of Private Placement, as discussed in this article, has undergone extensive changes under new Companies Act, 2013. It is evident that the current legal regime of Private Placement is based on extensive disclosure requirements which have been necessitated due to the possible misuse of private placement in the past. The new regime, as we saw in this article, aims to bring about greater transparency in the entire private placement process. These transparent mechanisms will serve as inbuilt safeguards against possible misuse of private placement by unscrupulous elements in the market. This will further help boost the confidence of the investors in the Private Placement process. Finally, with these extensive disclosure requirements, it is hoped that Private Placement will emerge as one of the most viable modes of raising finance in India.

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1. The term "Securities" is defined in Section 2(h) of Securities Regulation Act, 1956.