

Delisting Regulations: An Analysis of The Amendments and Its Implications

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Abstract- *Delisting means permanent removal of securities of a listed company from a stock exchange. For facilitating delisting of shares of listed entities, while protecting the interest of investors / public shareholders by providing such public shareholders exit with fair compensation, the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 the Delisting Regulations were notified by SEBI on 10 June 2009. One of the key criticisms of the Delisting Regulations was that the price discovered through reverse book building price typically was at significant premium to prevailing market. The Securities and Exchange Board of India has, vide notification dated November 14, 2018, introduced the Securities and Exchange Board of India (Delisting of Equity Shares) (Second Amendment) Regulations, 2018. The changes aim to plug the loopholes in the delisting process considering the interests of the promoters, acquirers and public shareholders.*

Index Terms- Counter Offer, Delisting Regulations, Offer Price, Equity Shares

I. INTRODUCTION

The Securities and Exchange Board of India has, vide notification dated November 14, 2018, introduced the Securities and Exchange Board of India (Delisting of Equity Shares) (Second Amendment) Regulations, 2018 (“Amendment Regulations”), thereby amending the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (“Principal Regulations”). The aim of the amendment is to plug loopholes in the delisting process considering the interests of the promoters, acquirers and public shareholders. The article analyses the amendment and discusses its implications.

II. BACKGROUND

Listing means admission of a Company’s securities to the trading platform of a Stock Exchange, to provide

marketability and liquidity to the security holders. On the contrary, Delisting means permanent removal of securities of a listed company from a stock exchange. As a consequence of delisting, the securities of that company would no longer be tradable at that stock exchange. For facilitating delisting of shares of listed entities, while protecting the interest of investors / public shareholders by providing such public shareholders exit with fair compensation, the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 the Delisting Regulations were notified by SEBI on 10 June 2009. It should be noted that, delisting of securities may be of two types viz. voluntary and compulsory. Voluntary delisting is the delisting of securities of a company undertaken voluntarily by a promoter or an acquirer i.e. a listed Company opts delisting of securities on its own motion. While so, compulsory delisting, happens when a listed Company is compelled by the Stock Exchange to delist its securities. One of the key criticisms of the Delisting Regulations was that the price discovered through reverse book building price typically was at significant premium to prevailing market. The Securities and Exchange Board of India (Delisting of Equity Shares) (Second Amendment) Regulations, 2018 addresses this issue.

III. ANALYSIS AND DISCUSSION

In the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, in regulation 3, after sub-regulation (2), the following sub-regulation is inserted, namely, "(3) Nothing in these regulations is applicable to any delisting of equity shares of a listed entity made pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016, if such plan, (a) lays down any specific procedure to complete the delisting of such share; or (b) provides an exit option to the existing public shareholders at a price

specified in the resolution plan. Provided that, exit to the shareholders should be at a price which shall not be less than the liquidation value as determined under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 after paying off dues in the order of priority as defined under section 53 of the Insolvency and Bankruptcy Code, 2016. Provided further that, if the existing promoters or any other shareholders are proposed to be provided an opportunity to exit under the resolution plan at a price higher than the price determined in terms of the above proviso, the existing public shareholders shall also be provided an exit opportunity at a price which shall not be less than the price, by whatever name called, at which such promoters or other shareholders, directly or indirectly, are provided exit. Provided also that, the details of delisting of such shares along with the justification for exit price in respect of delisting proposed shall be disclosed to the recognized stock exchanges within one day of resolution plan being approved under section 31 of the Insolvency and Bankruptcy Code, 2016." In regulation 15, in sub-regulation (2), the following explanation is inserted, namely "The reference date for computing the floor price would be the date on which the recognized stock exchange/s were required to be notified of the board meeting in which the delisting proposal would be considered." In regulation 16, the title "Right of the promoter not to accept the offer price" shall be substituted with the title "Right of the promoter to either make a counter offer or reject the offer"

The crucial aspect of the amendments is the right of counter offer. Earlier, if the 'offer price', which was arrived at through reverse book building was not acceptable, the Acquirer could only reject the offer price and, thereupon, decline to acquire the equity shares from the public shareholders. As per the Amendment Regulations, the Acquirer now has a right to make a counter offer to the public shareholders within two days of the discovery of the 'offer price'; provided, however, that the price in the counter offer is not less than the book value of the target company as certified by a merchant banker.

Prior to the amendment, the Delisting Regulations provided that the offer price shall be determined through the book building process after fixing the floor price which shall be determined as per the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Under the takeover code, the period for computing the floor price commences from the date of the public announcement. The current amendment attempts to ensure that the floor price is not inflated by market speculations. As soon as information of delisting is received in the market, the price shoots up unreasonably. Consequently, a longer time gap between the date of intimation to the stock exchange and the date of the public announcement increases the floor price computation, thereby affecting the price discovery. The current change to decide floor price based on a reference date that is prior to the date when the stock exchange is intimated of the proposed delisting ensures that the floor price is based on the prevailing stock prices and not market speculations. Another notable feature is that, the cash component of the escrow account in the delisting offer process can be maintained in an interest-bearing account; provided, however, that the merchant banker is required to ensure that the funds are readily available at the time of making payments to the public shareholders.

IV. MERITS

The Securities and Exchange Board of India (Delisting of Equity Shares) (Second Amendment) Regulations, 2018 ("Amendment Regulations"), attempts to ensure that the floor price is not inflated by market speculations. The offers for delisting can no longer be defeated by small groups of shareholders with vested interests by quoting exorbitant prices in the reverse book building process. Consequently, so long as ninety percent of shareholders are agreeable to a fair price provided by the acquirer, the delisting can still be successful.

V. ISSUES

Securities and Exchange Board of India in the past has held that 'acquirers' acting in concert with the existing

‘promoters’ under the Delisting Regulations will also be considered as persons acting in concert with the promoters under the Takeover Regulations. Another issue is counter offer mechanism is yet to be clearly laid out.

VI. CONCLUSION

The delisting reforms are undoubtedly a step in the correct direction, because changes plug the loopholes in the delisting process considering the interests of the promoters, acquirers and public shareholders.

REFERENCES

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