Delisting Regulation 2.0 – A move in the right direction?

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In a market driven economy such as ours, exit from the securities market is as essential as the entry to it. The subject of exit from securities market through delisting of securities attains significance more than ever considering the fact that over 2500 companies have been delisted in the last five years on BSE Limited[1] alone. SEBI had first introduced the regulatory framework to govern the delisting of equity shares way back in the year 2003 by enforcing SEBI (Delisting of Securities) Guidelines, 2003 which were superseded by SEBI (Delisting of Equity Shares) Regulations, 2009 (**"2009 Regulations"**). While the 2009 Regulations have evolved from time to time, it was felt that the existing provisions were perhaps not adequate to address the changing needs and developments in the securities market. Accordingly, on 10th June 2021, the SEBI (Delisting of Equity Shares) Regulations, 2021 (**"New Regulations"**) were notified by SEBI thereby replacing the 2009 Regulations. The stated object of the New Regulations is to further strengthen and streamline the delisting process by enhancing disclosures, refining the process, rationalizing the timelines, plugging gaps and updating references to other laws. But question remains as to whether the new regulatory framework addresses the market's expectations and offers better investor protection?

Initial Public Announcement

The New Regulations mandate that an Initial Public Announcement (**"IPA"**) will have to be made by the acquirer to disclose his intention to voluntarily delist the company. Such IPA is required to be made on the same day when the acquirer decides to voluntarily delist the company's shares which is required to be followed by a Detailed Public Announcement (**"DPA")** after receipt of in-principle approval of the stock exchange to the proposed delisting. Prior to making the IPA, the acquirer shall appoint a merchant banker as the Manager to the Offer, through whom the acquirer shall undertake all subsequent activities as required under the New Regulations. With these changes, the Manger to the Offer is required to be appointed at the beginning of the delisting process as compared to the erstwhile regulatory regime where Manager to the Offer was appointed after receipt of in-principle approval of the stock exchange. Under the new regulatory regime, all subsequent activities of the acquirer shall also be undertaken through the Manager to the Offer. Another significant change is with regard to the due diligence which will be undertaken by a Peer Review Company Secretary instead of the merchant banker. Previously, such due diligence was undertaken by a merchant banker who could later on be appointed as a Manger to the Offer also. The new provisions will seek to strengthen the due-diligence process by eliminating potential conflict of interest arising out of two different roles of the merchant banker.

Timelines

In order to complete the delisting process expeditiously, the New Regulations have introduced stringent timelines. For instance, the 2009 Regulations did not prescribe any time for holding the board meeting to consider the delisting proposal received from the acquirer or for obtaining in-principle approval from the stock exchange(s). As against that, it is now mandated that the board meeting to consider the delisting proposal must be held within not later than 21 days from the date of the IPA and the application for seeking in-principle approval must be made within 15 working days from the date of obtaining shareholders' approval or receipt of any statutory or regulatory approval, whichever is later.

The acquirer is required to make DPS within one working day from the date of receipt of in-principle approval from the stock exchange. Similarly, under the 2009 Regulations, the Final application to the stock exchanges after successful delisting was required to be filed within one year of passing of the Special Resolution. This requirement has been substituted under the New Regulations whereunder the final application shall be required to be made within 5 working days from the date of making the payment to the public shareholders.

As against the rationalization of time lines for the aforementioned activities, the time period for examination of the application by the stock exchange and granting its in-principle approval has also been enhanced from five days to fifteen working days post receipt of complete application. This has been done with a view to provide adequate time to the stock exchanges for processing delisting application. Before granting the in-principle approval, the stock exchanges are required to satisfy themselves inter alia about certain regulatory compliances by the company, resolution of investor grievances, impact of any litigation or regulatory action pending against the company or any other matter having a material bearing on the interest of its equity shareholders. Further, the exchanges are also required to analyse the

surveillance alerts, if any, or any significant changes in the shareholding pattern prior to the delisting proposal being approved by the shareholders.

Pricing and Binding Obligations on the Acquirer

The New Regulations have introduced the concept of an Indicative Price which may be offered by an acquirer at his option. The Indicative Price would have to above the Floor Price in order to demonstrate the acquirer's intention to pay more. Further, the New Regulations provide that if the discovered price determined through the reverse book building process is equal to the floor price or the Indicative Price, if given, the acquirer will be bound to accept the equity shares tendered or offered in the delisting offer. Rationale being that the floor price is the benchmark and the acquirer cannot reject the discovered price when it is equal to the floor price or Indicative Price offered by him voluntarily.

Escrow Account

Under the New Regulations, an acquirer shall open an escrow account within seven days of obtaining shareholders' approval and deposit 25% of the total consideration (on the basis of floor price and shares outstanding with public) at the time of opening the escrow account and the remaining 75% before making the DPA. Earlier, the escrow account was required to be opened after receipt of in-principle approval of the stock exchange but before making the public announcement. Now, the escrow account would be opened in the early stage of the delisting process i.e. after the shareholders approval but before receipt of in-principle approval of the stock exchange. With a view to minimize the financial burden on the acquirer, the new regulatory regime also prescribes deposit of only 25% of the estimated offer size at the time of opening of escrow account as against 100% of the estimated amount of consideration which was required to be deposited under the erstwhile regulations.

Redefining the Role of the Company's Board

The New Regulations provide that the Board of Directors of the company shall constitute a committee of independent directors (**"IDC"**) to provide reasoned recommendations on the delisting offer and the IDC may also seek external professional advice for this purpose. The recommendations of IDC and details of the voting pattern of the meeting are required to be made public atleast 2 working days prior to the commencement of the bidding period. This new provision requiring IDC to consider the delisting proposal and to give its reasoned recommendations is broadly on the lines of the provisions contained in SEBI (SAST) Regulations, 2011 and seeks to better protect the interest of public shareholders.

Prima facie the New Regulations seem to be a move in the right direction which may not only expedite the completion of delisting process but may also protect the interest of public shareholders more effectively. However, the success of this endeavour will be finally determined in due course of time based on the actual experience gained from the working and implementation of the New Regulations.

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[1] Source: https://www.bseindia.com/corporates/Delist_Comp.aspx