



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

DELISTING OF COMPANIES: A CRITICAL STUDY OF INDIAN REGULATIONS

AUTHORED BY - YASH KATARIA

ABSTRACT

Listing and delisting of securities are commercial calls, based on business considerations. The market conditions, structure and functioning of companies, among others, greatly influences the decision whether or not to trade (or continue to trade) in public. 'Delisting' implies permanent removal of securities from stock exchange(s). As a result of delisting, the public can no longer trade in the securities of the delisted company. In turn, the delisted company becomes a closely held company. The company may continue to remain a public limited company but it is no longer listed on any of the stock exchange(s).

The Securities and Exchange Board of India ('SEBI') recently announced its plan to revisit the SEBI (Delisting of Equity Shares) Regulations, 2021 ('Delisting Regulations') to simplify the procedure for determination of the exit of a listed company from stock exchanges. The Securities and Exchange Board of India ("SEBI") through a consultation paper ("Consultation Paper") proposed significant changes to enhance the delisting process. The Consultation Paper is based on policy suggestions from a Primary Market Advisory Committee ("PMAC") subgroup led by Mr. Keki Mistry to balance stakeholders. This paper will analyse the current delisting regulations as well as the recent policy recommendations and provide suggestions for a better suited regime according to the Indian economy and market.

REVIEW OF LITERATURE

In many nations, there is currently a dearth of research on the delisting phenomenon. Since operations targeted at the abandonment of the regulated market are receiving more attention, we thought it was appropriate to conduct a systematic review of the literature in order to determine the knowledge objective that the most authoritative doctrine in the various scientific papers is pursuing. Despite being more significant in the firm's life than the decision to become public, **Constant Djama, Isabelle Martinez, et al. (2012)** felt that the decision to delist has received less attention in the corporate finance literature. It is made clear what constitutes voluntary and

involuntary delisting. Strategies to prevent delisting and incentives for voluntary delisting are presented. **Karishma Khadiwala et.al,(2015)** in their project report, a Study on Trends in Delisting of Shares in India and its reasons, find that Delisting has become a phenomenon of paramount importance globally and due to dramatic market shifts in recent years, many public companies are facing delisting from NASDAQ and the NYSE.

Martinez and Serve (2011) state that the choice to delist is taken when the expenses of listing outweigh the advantages of remaining open to the public, which could happen in any of the following situations: Either (i) the benefits fall below the point where the advantages of being public outweigh the disadvantages, or (ii) the costs rise above the point where the disadvantages outweigh the advantages. According to Bharath and Dittmar (2010), theories about the advantages and disadvantages of being public may be applied to examine the reasons behind a company's decision to delist as they are trade-off-type theories.. Thus, according to these theories, the decision to go private will depend on the market timing. **Tiziano Onesti, Mauro Romano and et.al (2014)**, they studied the effects of delisting on the dynamics and value creation of delisted companies represents a very promising research opportunity for international research scholars. The authors find that traditional classification of delisting viz. voluntary delisting and involuntary delisting considered for research may result in to conceptual fallacy and therefore there is a need to relook this traditional classification for future research purpose.

Scholars tend to focus their attention on specific sorts of delisting, therefore the delisting of corporations is not a single topic of research in the international literature. The majority of the research that has been done thus far points to delisting as the outcome of a going-private event, or a set of transactions that transform a publicly traded company into a private one.

In the article, **Reverse Book Building Process under the New Delisting Regulations by Hemant Srivastava and Rashi Tolani**, the authors have traced the evolution and critically analyze the Reverse Book Building Mechanism as per the new Delisting Regulations of 2021 which is required to determine the discovered price of the purchase of shares to successfully delist the company. We have also looked at the article **Delisting Regulations in India and the Position of Minority Shareholders by Prof. Harpreet Kaur** in which the author has argued that the fixed price mechanism for the delisting process puts the minority shareholders at a disadvantage and it is important to understand the purpose of the Reverse book building process before making amendments to this process.

RESEARCH QUESTIONS

- Whether the current delisting mechanism for shares in India effective, and what are the identified gaps in their implementation and regulation?
- What are the recent trends and reasons for the failure of delisting of companies?

RESEARCH OBJECTIVES

- To understand and analyse the current delisting law and regulations.
- To identify the reasons for delisting of companies
- To study the progression of delisted companies

CHAPTER I – History and Current Framework

Corporate India has been feeling robust and optimistic for a number of years, with ambitions to float companies on local stock exchanges. However, the recent recession in the economy and the COVID-19 pandemic have caused stock valuations to drop to all-time lows (with a significant discount to their historical highs). The optimism that characterised the past few months has subsided, and promoters of publicly traded companies are becoming more pragmatic and considering the possibility of delisting their stocks and going private. This covers foreign owners of businesses listed on Indian bourses as well as Indian promoters.¹

The permanent withdrawal of a listed company's equities from a stock exchange is referred to as "delisting" of shares. The company's stocks won't be traded on that stock market after they are delisted. This procedure is overseen by SEBI and is subject to numerous regulations that provide specific guidelines.²

Listing of the companies in the stock exchanges provides an opportunity for the companies to freely market and transfer their shares to the public. A company might want to get listed because of various reasons like greater shareholder's base, low cost of capital production, increase in prestige, high liquidity in shares trading, etc. There are more than 9000 companies that are listed in different stock exchanges in India, out of which a great portion of companies serves no purpose

¹ Isabelle Martinez, Stephanie Serve, et.al (2016), Reasons for delisting and consequences: A literature review and research agenda, Journal of Economic Surveys, 7 July 2016, <https://onlinelibrary.wiley.com/doi/abs/10.1111/joes.12170>

² Karishma Khadiwala et.al (2015), a Study on Trends in Delisting of Shares in India and its reasons, Research Project Report of R.A.Podar College of Commerce and Economics, October 2015, a initiative supported by the P.J.Foundation Bombay Stock Exchange Investors Protection Fund.

from being listed as there is a lack of active trading taking place in such companies. For such companies, the benefits derived from being listed in the stock exchange underweights the cost of listing, the heavy compliance requirements of SEBI as well as the disciplinary actions and penalties which are attracted in cases of non-compliance. Therefore, to meet the economic viability of the company as well as to provide an attractive and easy exit opportunity for the shareholders the delisting regulations streamline the appropriate process under the law.

Delisting of a Company is different from Delisting of shares. When a company delist shares from one stock exchange but continues trading in one or more other stock exchanges, then, it is termed as Delisting of shares. Delisting of a Company means Company gets delisted from all stock exchanges and shareholders forego their precious right of trading in secondary market. Delisting of a Company can be either voluntary or involuntary. Involuntary delisting of a Company happens on account of non payment of delisting fees and non compliance with stock exchange regulations. This is also called as forced exit from trading of shares of a company from stock exchanges. Voluntary delisting happens on account of reasons such as onerous cost of compliances for listing, low trade volume of shares, market value of shares not reflecting its true value.

TYPES OF DELISTING

There are essentially two types of delisting – voluntary and involuntary. In a financial context, both types of delisting will impact shareholders.

Involuntary delisting means the forced removal of a listed company's shares from the stock exchange. Involuntary delisting happens for several reasons such as when there is a violation of the regulations, late or wrongful reporting, the failure to meet the minimum financial expectations, etc. Monetary standards refer to the ability to maintain the share price, financial ratios, and sales volumes at a requisite minimum. When a company fails to meet the listing requirements, the respective exchange issues a warning of non-compliance to the company. If the issue remains unaddressed beyond specified timelines, the stock is delisted by the listing exchange.³

Companies not benefiting from being listed on the stock exchange and paying a significant amount to trade publicly choose voluntary delisting. This type of delisting also occurs when there is a change in the entire structure of the company. Another reason could be an amalgamation, merging

³ Down and Out in the Stock Market: The Law and Finance of the Delisting Process by Jonathan Macey and Maureen O'Hara.

with another company or avoiding hindrance in the company operations. It is achieved by permanently removing securities from the stock exchange and making them unavailable for trading. In such cases, the company is liable to pay all the shareholders in exchange for all their shares.

Then, how does the investor get their money back after delisting? Once delisted, you can't sell those shares on NSE or BSE. Although, the ownership of the shares remains intact. And therefore, you are eligible to sell the share outside the exchange.

HISTORICAL PERSPECTIVE

With operations dating back to 1875, the Indian stock market is among the oldest in Asia, but until the late 1980s, it was mostly excluded from the process of global integration. International financial integration has grown in the nation as a result of globalisation, economic integration, and liberalisation. The stock markets have grown explosively in the last century due to the fast economic growth. Simultaneously, improving the stock market has contributed significantly to the expansion of the global economy. A well-run stock market plays a major role in the modern market economy. In a nation such as India, where countless individuals participate in main and secondary markets, safeguarding the interests of investors becomes an essential responsibility of regulators across all platforms.⁴

Previously, the Controller of Capital Issues (CCI) was in charge of share pricing and public offerings. The Securities and Exchange Board of India (SEBI) has been handling the matter since the CCI was abolished in 1992. Protecting the interests of securities investors, fostering the growth of the securities market, regulating it, and handling issues related or incidental to it were the main goals of SEBI and the SEBI Act, 1992. Since then, SEBI has made it a constant mission to create policies, procedures, and legislation. As part of one of these attempts, SEBI established a committee on share delisting in 2002. The committee's duties included reviewing and examining the requirements for delisting securities of businesses listed on recognised stock exchanges as well as proposing guidelines and protocols related to the process. The SEBI Board reviewed and approved the committee's report. In accordance with this, SEBI published the SEBI (Delisting of Securities) Guidelines, 2003 via Circular SMD/Policy/CIR-7/2003, dated February 17, 2003.⁵The

⁴ Karishma Khadiwala et.al (2015), a Study on Trends in Delisting of Shares in India and its reasons, Research Project Report of R.A.Podar College of Commerce and Economics, October 2015, a initiative supported by the P.J.Foundation Bombay Stock Exchange Investors Protection Fund.

⁵ SEBI | SEBI (Delisting of Equity Shares) Regulations, 2009 [Last amended on March 6, 2017], <https://www.sebi.gov.in/legal/regulations/jun-2009/sebi-delisting-of-equity-shares-regulations-2009-last-amended-on-march-6->

salient features of the said Guidelines were

- If the firm or its promoters decide to remove its securities from all stock exchanges where they were listed, the public shareholders will be granted the opportunity to withdraw from the company. On the other hand, if the company continued to be listed on stock exchanges with national trading terminals, no exit opportunity needed to be provided.
- The exit option, which will stay available for six months following the offer's closing.
- Price determination using the Reverse Book Building method.
- The promoters have the choice to accept or reject the price that the book building process determines.
- Only dematerialized stockholders were able to take part in the book building process.

However, the aforementioned Guidelines addressed the matters related to securities delisting to a large extent. Still, there were several issues that drew criticism from a variety of sources. The regulators received a variety of statements and opinions regarding the operational concerns and procedural complexities in the rules from intermediaries, stock exchanges, shareholders' groups, chambers of commerce, and other organisations. It was suggested to investigate and make recommendations for revisions to the guidelines in light of such representations. The first set of adjustments that suggested greater systemic clarity were made available for public feedback in April 2004. Opinions were received on important provisions and comments were received from a variety of sources. Based on this, SEBI requested public feedback on the proposed Regulations when it released the Concept Paper for the SEBI (Delisting of Securities) Regulations, 2006 in December of 2006. On the topic, SEBI received a variety of remarks, viewpoints, and recommendations. Finally, SEBI announced the much-awaited Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 by publishing them in the Official Gazette on June 10, 2009.

CURRENT FRAMEWORK

On June 11, 2021, the Securities and Exchange Board of India put forth the SEBI (Delisting of Equity Shares) Regulations, 2021. These regulations were enacted to supersede the erstwhile delisting regulation which was named SEBI (Delisting of Equity Shares) Regulation, 2009 for the reason of making the process of delisting more transparent, efficient, investor friendly, robust, and

time-bound in nature.

'Delisting' is defined under Regulation 2(j) of SEBI (Delisting of Equity Shares) Regulations, 2021, it means "permanent removal of equity shares of the company from the trading platform of a recognised stock exchange, either by way of voluntary or compulsory method" whereas Regulation 2 (bb) defines 'Voluntary Delisting' which means "the delisting of equity shares of a company voluntarily on an application made by it under Chapter III of these regulations."

The promoters of a company may decide to delist for a variety of reasons, including the cost of complying with disclosure and compliance standards, the expense of keeping the company's shares listed, or the fact that the benefits of being listed are no longer material. The acquirer/promoter is required under the SEBI (Delisting of Equity Shares) Regulations, 2021 ("Delisting Regulations") to give its public shareholders an exit offer. At the moment, this is decided through the RBB process. Following the acquirer/promoter's announcement of a floor price, the public shareholders then offer their shares for sale through the stock exchange mechanism during a bidding period, at the price at which they would be prepared to sell their shares. The delisting offer is unsuccessful if the promoter/acquirer's post-offer shareholding, together with shares tendered by public shareholders, does not equal 90% of the outstanding shares of the firm. But if it hits 90%, the discovered price is calculated, and the delisting is successful if the acquirer accepts it. The acquirer may make a counteroffer that is equal to or greater than the company's book value if the found price is rejected. The post-counter-offer shareholding must reach 90% of the total issued shares in order for the counter-offer to be successful.

CHAPTER II – CRITICAL ANALYSIS OF THE DELISTING REGIME: A NEED FOR AMENDMENT?

Following extensive consideration, the Securities and Exchange Board of India (SEBI) revised the 2009 SEBI Delisting Regulations with the SEBI Delisting Regulations in 2021. The present delisting process is primarily divided into two phases: (i) the existing promoters' voluntarily delisting under the SEBI Delisting Regulations, and (ii) non-promoters' or third-party acquirers' voluntary delisting under Regulation 5A of the SEBI Takeover Regulations.

It is noteworthy that the new rules have been warmly received because they have offered a number of beneficial measures to facilitate and expedite the delisting process. In the future, it will be very beneficial to make changes such as requiring a company to form an independent directors committee to rationalise recommendations for delisting proposals, setting deadlines for

completing various steps in the delisting process, offering an appropriate method of calculating book value when calculating the counter-offer, etc. to make the delisting process more effective and quick.

The Delisting Regulations provide for certain procedural safeguards to protect the interests of shareholders, especially the minority shareholders. These include the appointment of a peer review company secretary, who is required to certify that the proposed delisting is not the outcome of any fraudulent or deceptive scheme. Moreover, even the board of directors of the company is required to certify that the proposed delisting is in the best interest of the company, and that the delisting is in compliance with the applicable laws. Apart from this, the public shareholder votes required to approve the proposed delisting should be at least twice the number of votes cast against it by them. While this numerical threshold aims to prevent minority shareholders from being strong-armed into accepting the proposed delisting, the mandate of voting only through postal-ballots or e-voting, coupled with the limited participation of shareholders in such mechanisms of voting, hampers the communication of minority shareholders' interests in delisting resolutions.⁶

REVERSE BOOK BUILDING PROCESS

According to the SEBI Delisting Regulations, the reverse book building ("RBB") process—basically, a bidding process—is used to determine the price at which a business can stand delisted. In the reverse book bidding (RBB) procedure, the price at which shares tendered through qualifying offers bring the acquirer's total shareholding to 90% of the company's issued capital is known as the discovered delisting price. Delisting is accomplished if the acquirer pays all public shareholders whose bids are accepted in the RBB by accepting the discovered price.⁷

Since the inception of Delisting Regulations in 2003, SEBI has been clear about the benefits of the reverse book-building procedure over the fixed price method, as the former ensures transparency in price-determination and protects investors from losses arising due to market fluctuations. This transparency and protection were further strengthened with the introduction of a detailed price discovery mechanism based on three types of prices—the floor price (minimum price offered), the indicative price (minimum price with a premium offered by the

⁶ Harpreet Kaur, 'Delisting Regulations in India and the Position of Minority Shareholders' (Oxford Business Law Blog, 27 September) <<https://blogs.law.ox.ac.uk/oblb/blog-post/2023/09/delisting-regulations-india-and-position-minority-shareholders>> accessed 20 April 2024,

⁷ Manal Shah, Reverse Book Building Process in the Delisting Regulations - A Critique, THE SECURITIES BLAWG (2020), <https://www.thesecuritiesblawg.in/post/reverse-book-building-process-in-the-delisting-regulations-a-critique>

promoter/acquirer), and the discovered price (the price determined through bids). The discovered price can be higher or lower than, or equal to the indicative price. If the discovered price is higher than the indicative price, then the acquirer/promoter has the option to reject the same and propose a counteroffer, which shall not be less than the book value of the company, as certified by the manager to the offer. Such a detailed system based on the inter-relationships of three different prices is unique to India.⁸

Moreover, for a delisting to be successful, the acquirer/promoter is required to receive a cumulative of 90% of the total issued shares of the company. Minority shareholders usually use the detailed price mechanism and the 90% threshold to block the delisting proposal. They acquire a sufficient number of shares to ensure that the 90% benchmark is not achieved and, by making an egregiously high bid than the indicative price or by not accepting the counteroffer (if received), they restrict the proposed delisting.⁹ This strategy was successfully employed in 2020 in the case of the delisting proposal of Vedanta Resources Ltd.

THE OTHER SIDE OF THE ARGUMENT

The interests of a larger group of minority/public shareholders are impacted by the disproportionate power exercised by the minority/public shareholders holding significant stakes in establishing the exit price. The delisting offers bidding data of certain corporations reveal that certain investors have impacted the offer's result by placing greater bids (about 106% over the floor price). In these kinds of deals, promoters have declined the price even after reaching the 90% criterion, impacting the interests of a greater group of minority and public shareholders.

Certain bids are made at a price significantly greater than the floor price established in accordance with the aforementioned Regulations. These bids are typically made by certain investors who bought the company just before it was delisted in an attempt to profit excessively from the transaction. Such bids negatively impact the interests of other minority and public shareholders who have taken on the risk of investing with a longer time horizon and are denied a fair exit, hence destabilising the delisting process.¹⁰

⁸ Harpreet Kaur, 'Delisting Regulations in India and the Position of Minority Shareholders' (Oxford Business Law Blog, 27 September) <<https://blogs.law.ox.ac.uk/oblb/blog-post/2023/09/delisting-regulations-india-and-position-minority-shareholders>> accessed 20 April 2024,

⁹ Manal Shah, Reverse Book Building Process in the Delisting Regulations - A Critique, THE SECURITIES BLAWG (2020), <https://www.thesecuritiesblawg.in/post/reverse-book-building-process-in-the-delisting-regulations-a-critique>

¹⁰ Hemant Srivastava and Rashi Tolani, Reverse Book Building Process under the New Delisting Regulations, 2021, 4 (4) IJLMH Page 362 - 369 (2021), DOI: <https://doi.org/10.1000/IJLMH.111300>

Because they have trouble understanding the RBB process, regular investors don't participate as much. They typically bid at large premiums since they are unaware of the price sensitivity of the bidding and end up making the price unfeasible for the acquirer. Additionally, shareholders who tender their shares during the delisting process are not eligible for a reduction in capital gains tax because their activities are regarded similarly to off-market transactions. These elements lead to non-participation in the delisting procedure.¹¹

There have been numerous instances of delistings that fail because of high premium pricing. In the Brady and Morris Engineering Company case, for example, the price ascertained by the RBB procedure showed a significant 1128.70% premium above the floor price. Comparably, Linde India saw demand for a 517% premium in 2019 while Vedanta saw demand for a 267% premium in 2020. 53% of firms who voluntarily delisted under the RBB procedure were delisted at premiums, with a median value of 125%, according to a report by SEBI that analyses data from 2015 to 2018.

OTHER ASPECTS

Since the floor price usually doesn't reflect the true value of the company and is often much lower than the price at which the shareholders are willing to sell their shares, the Indicative Value also fails to serve any substantive purpose. In reality, the discovered price computed after the RBB is always much higher than the indicative price of the offer.

The right of the counter-offer of the promotor is also restrictive and hence, cannot be made on a price that is lower than the present book value of the concerned listed company. It is a known fact that the price at Book Value is not always consistent and accurate in reflecting the actual representation of the valuation of the company because of which it might not prove to be profitable for both the parties and eventually result in the failure of the delisting offer.

KEKI MISTRY COMMITTEE SUGGESTIONS

The Securities and Exchange Board of India ('SEBI') recently announced its plan to revisit the SEBI (Delisting of Equity Shares) Regulations, 2021 ('Delisting Regulations') to simplify the procedure for determination of the exit of a listed company from stock exchanges. SEBI has established a committee under Keki Mistry to assess the possibility of replacing the existing

¹¹ SEBI | Discussion Paper on Delisting of Equity Shares Review of "Reverse Book Building Process," , https://www.sebi.gov.in/reports/reports/jul-2018/discussion-paper-on-delisting-of-equity-shares-review-ofreverse-book-building-process-_39712.html (last visited Jul 1, 2021).

system of reverse book building with the fixed price method. The idea behind this change is to curb the malpractice of hoarding shares of the company, prior to the delisting announcement, which is then used to manipulate the exit price. SEBI intends to remedy this situation by mandating a fixed price method of price determination which, if it fails, can be replaced with the reverse book-building procedure by the promoter/acquirer.¹²

ANALYSIS OF THE PROPOSAL

In light of the use of the reverse book building process, as a defence strategy, I believe that a shift to the fixed price method may leave the minority shareholders completely defenceless, at the mercy of the price decided by the company's board. Be it a promoter-initiated delisting or an acquisition-driven one, the board led by the majority shareholders of the company (considering the controlled-shareholding pattern of India) possibly in collusion with the promoter/acquirer, would single-handedly decide the exit price of the shares without any inputs from the minority shareholders. In such a situation, minority shareholders would be left with the meagre protection accorded by the general directorial obligations of reasonable care and good faith in their dealings, and SEBI's mandate for the boards to treat the varied interests of all groups of shareholders fairly. Due to the absence of a specific duty of loyalty to the minority shareholders in cases of delisting, the efficacy of these general principles in protecting the interests of minority shareholders would remain uncertain.

Under the existing delisting framework, minority shareholders neither have any veto rights to oppose the proposed delisting, nor do they have the option to approach SEBI to challenge the delisting. In such a situation, the existing framework created by the reverse book building procedure in conjunction with other provisions of the Delisting Regulations, serve as an effective tool for minority shareholders to protect their interests. While I commend SEBI's focus on enhancing the ease of business, it should not come at the cost of protection of minority shareholders' interests. Hence, it is imperative that SEBI reassess its proposal of introducing the fixed price method, as it may have ramifications for effective corporate governance.

¹² SEBI | Consultation Paper on "Review Voluntary Delisting norms under SEBI (Delisting of Equity Shares) Regulations, 2021", https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-review-of-voluntary-delisting-norms-under-sebi-delisting-of-equity-shares-regulations-2021_75335.html

SUGGESTION

India is the only nation who seems to be following the same as a price determination mechanism in delisting. Before the introduction of these guidelines, the system of the fixed price determined by the promoter was followed. If we look at some of the major countries of the world we find that, for instance, in the US, companies may delist by presenting fixed-price exit offers to shareholders, subject to the approval of the board of directors and the majority of minority shareholders. Similarly, voluntary delisting through a fixed-price exit offer upon securing the consent of 90% of the shares is allowed by Hong Kong and Singapore.¹³

To guarantee precise price determination, for example, fixed-price delisting ought to be restricted to shares that are actively traded and have a sizable public float. To further protect the interests of minority shareholders, the open market price ought to be included in the suggested counter-offer pricing formula.¹⁴

Given the proposed changes to the Delisting Regulations, these conditions should now be dropped from the Takeover Code, so that acquirors making a Combined Offer can also benefit from the more rationalised approach mooted in the Consultation Paper. More generally, a clear and efficient mechanism is required to enable the acquiror to buy-out the residual minority shareholding (of up to 10%), which may remain even after the conclusion of a successful delisting. While the Companies Act, 2013 provides some options to implement such a squeeze-out (such as through a selective reduction of share capital with the approval of the National Company Law Tribunal), these options currently come with their own set of challenges, including the risk of protracted litigation. An efficient legal framework for squeezing-out the minority would enhance certainty for investors in control buy-outs

REFERENCE DATE

The Delisting Regulations provide for a minimum acquisition price in the delisting offer i.e., the “floor price”. The floor price is calculated as of a reference date. Currently, in terms of the Delisting Regulations, the reference date to calculate the floor price is the “date on which the stock exchanges are required to be notified of the board meeting in which the delisting proposal was

¹³ P. Kalyani, T. Suchitra Rani. The Delisting of Vedanta – What Went Wrong?. Asian Journal of Management. 2022;13(1):101-4. doi: 10.52711/2321-5763.2022.00018

¹⁴ Sahsransh Pandey, 'SEBI Consults on Overhauling Delisting Framework: Key Issues and Analysis' (Indian Review of Corporate and Commercial Laws (IRCCL), 9th october) <<https://www.ircl.in/post/sebi-consults-on-overhauling-delisting-framework-key-issues-and-analysis>> accessed 20 April 2024

considered and approved.”¹⁵

The acquirer must notify all stock exchanges on which the company's shares are listed of their initial public announcement, as per Regulation 8(1) of the Delisting Regulations. The board of directors of the firm must then accept the acquirer's delisting proposal in accordance with Regulation 10(1) of the Delisting Regulations no later than 21 days from the date of the original public announcement. Furthermore, as per Regulation 20(3) of the Delisting Regulations, the date on which the recognised stock exchange(s) was required to be notified of the board meeting where the delisting request was examined and agreed is the reference date for calculating the floor price. Further, for a delisting offer in accordance with Regulation 37 of the Delisting Regulations, the board of directors are “required to provide a prior intimation to the stock exchanges of the board meeting in which the delisting proposal will be considered”, in accordance with Regulation 29 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended (“SEBI Listing Regulations”). Note that between the date of the initial public announcement or the date of the prior notification to the stock exchanges of the board meeting where the delisting proposal will be considered, whichever applies, and the date on which the stock exchanges are required to be notified of the board meeting where the delisting proposal was considered and approved, there may be a risk of significant and abnormal trading activity in the company's shares.

DELISTING & M&A TRANSACTIONS

The acquirer must pay the public shareholders the difference in price if an M&A transaction is completed following a successful delisting at a price greater than the delisting price. This obligation comes from the Essar Oil-Rosneft precedent and is not included in the current regulations. Even if the sale of Essar Oil ended 1.5 years after a successful delisting, the promoters of the company were still obligated to pay the difference to the public shareholders. This was due to the fact that the price at which the sale to Rosneft was finalised exceeded the amount paid to the public shareholders as a result of the delisting. For parties considering M&A transactions involving delisted companies, it causes uncertainty in the market in the lack of any particular restrictions or time limit.

The obligation to pay the difference amount should arise within six months of the successful delisting, if an M&A transaction is announced and the price proposed to be paid to the sellers is

¹⁵ SEBI | Consultation Paper on “Review Voluntary Delisting norms under SEBI (Delisting of Equity Shares) Regulations, 2021”, https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-review-of-voluntary-delisting-norms-under-sebi-delisting-of-equity-shares-regulations-2021_75335.html

higher than the price paid to the public shareholders in the delisting. This is permissible according to SEBI's guidelines. "M&A transactions" in this context refers to agreements where the buyer acquires ownership. This timeframe would align with the present open offer method of the SEBI Takeover Regulations. Currently, Regulation 5A prohibits current promoters from joining the promoter group after the offer or even being officially categorised as co-promoters. Consequently, it is imperative to de-promote the current promoters. The lack of flexibility among the transacting parties prevents them from structuring the deal to meet specific commercial goals, which could be crucial for the transaction's success as well as the company's ability to continue operating. For instance, the new acquirer can demand that one of the current promoters have a crucial managerial role in the target business for a predetermined amount of time. A typical transaction structure utilised globally is a transition or handover period, wherein the sellers/existing promoters assist the acquirer in better understanding the workings of the firm, guarantee a seamless transition of management, and minimise business disruption. Additionally, the company and all of its stakeholders—including employees and public investors—benefit from this. Reg 31A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, in conjunction with Regulation 5A of the Takeover Regulations, however, prohibits the current promoters from being reclassified and from holding important managerial positions going forward.

With the clarification that (i) the departing promoters should have 10% or less equity stake in the company and (ii) operational and sole control should be with the incoming/new promoter solely, the rule should allow the current promoters to be formally designated as "co-promoters."

CONCLUSION

The delisting of companies in India has undergone several modifications as a result of the SEBI (Delisting of Equity Shares) Regulations, 2021, which will ultimately make the delisting process more efficient and time-bound. However, in accordance with this article's point of view, the new regulations have not addressed the remedies for the main problem of the impasse that arises when calculating the discovered price between the acquirers and the shareholders. The Reverse Book Building Process has resulted in a win-win situation for the shareholders as the acquirer will buy the shares at a higher price if the company wants to delist, and in cases where the delisting proposal fails, it has been observed that the share price of such companies rises inorganically, which ultimately benefits the shareholders. In the past, there have been multiple instances where the shareholders were found to form cartels to manipulate the biddings during the process.

A number of modifications, such as the addition of a thorough plan for quickly purchasing the remaining shares from stockholders after a successful delisting, can be made to the suggested framework. In order to safeguard shareholders and provide them certainty about their shares, this framework should enable a variety of buy-out alternatives, including squeeze-outs.

Additionally, if the firm does an M&A transaction, it should include a deadline for the delisted company to pay the difference in share price. In the event that the firm engages in an M&A transaction at a price greater than the delisted price, it is now required under the Essar-Oil Rosneft case to pay the shareholders the differential price. Regulators, however, do not specify a specific cooling-off time; without one, the corporation faces uncertainty and confusion when engaging in these kinds of transactions.

BIBLIOGRAPHY

- Hemant Srivastava and Rashi Tolani , Reverse Book Building Process under the New Delisting Regulations, 2021, 4 (4) IJLMH Page 362 - 369 (2021), DOI: <https://doi.org/10.10000/IJLMH.111300>
- Delisting And Corporate Governance: A Review And Research Agenda Byserve Stéphanie, Martinez Isabelle And Djama Constant.
- Karishma Khadiwala et.al (2015), a Study on Trends in Delisting of Shares in India and its reasons, Research Project Report of R.A.Podar College of Commerce and Economics, October 2015, a initiative supported by the P.J.Foundation Bombay Stock Exchange Investors Protection Fund.
- Constant Djama, Isabelle Martinez, et.al (2012), what do we know about delisting? A survey of the literature. *Commutabilities et innovation*, May 2012, Grenoble, France pp.cd-rom. hal – 00937899.
- Manal Shah, Reverse Book Building Process in the Delisting Regulations - A Critique, THE SECURITIES BLAWG (2020), <https://www.thesecuritiesblawg.in/post/reverse-book-building-process-in-the-delisting-regulations-a-critique>
- SEBI | Consultation Paper on “Review Voluntary Delisting norms under SEBI (Delisting of Equity Shares) Regulations, 2021”, https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-review-of-voluntary-delisting-norms-under-sebi-delisting-of-equity-shares-regulations-2021_75335.html
- P. Kalyani, T. Suchitra Rani. The Delisting of Vedanta – What Went Wrong?. *Asian Journal of Management*. 2022;13(1):101-4. doi: 10.52711/2321-5763.2022.00018

- Sahsransh Pandey, 'SEBI Consults on Overhauling Delisting Framework: Key Issues and Analysis' (Indian Review of Corporate and Commercial Laws (IRCCL), 9th october) <<https://www.irccl.in/post/sebi-consults-on-overhauling-delisting-framework-key-issues-and-analysis>> accessed 20 April 2024
- Harpreet Kaur, 'Delisting Regulations in India and the Position of Minority Shareholders' (Oxford Business Law Blog, 27 September) <<https://blogs.law.ox.ac.uk/oblb/blog-post/2023/09/delisting-regulations-india-and-position-minority-shareholders>> accessed 20 April 2024,

