

THE GAZETTE OF INDIA
EXTRAORDINARY
PART – III – SECTION 4
PUBLISHED BY AUTHORITY
NEW DELHI, MARCH 24, 2015
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
Mumbai, the 24th March, 2015
SECURITIES AND EXCHANGE BOARD OF INDIA
(DELISTING OF EQUITY SHARES)
(AMENDMENT) REGULATIONS, 2015

No. LAD-NRO/GN/2014-15/27/541.— In exercise of the powers conferred by section 31 read with section 21A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), section 30, sub-section (1) of section 11 and sub-section (2) of section 11A of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2015.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009,
 - (I) in regulation 2, in sub-regulation (1), after clause (iv), the following clause shall be inserted:-

"(iva) "promoter group" shall have the same meaning as assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;"

- (II) in regulation 2, in sub-regulation (2),
 - (i) after the words and symbols "'person acting in concert', 'promoter'" word and symbols ", 'acquirer'" shall be inserted;
 - (ii) the words, symbols and figures "Securities and Exchange board of India(Substantial Acquisition of Shares and takeovers) Regulations, 1997" shall be substituted with the words, symbols and figures "Securities and Exchange board of India(Substantial Acquisition of Shares and takeovers) Regulations, 2011".
- (III) in regulation 4,
 - (i) after sub-regulation (1), the following sub-regulation shall be inserted, namely:-

"(1A) No promoter or promoter group shall propose delisting of equity shares of a company, if any entity belonging to the promoter or promoter group has sold equity shares of the company during a period of six months prior to the date of the board meeting in which the delisting proposal was approved in terms of sub-regulation (1B) of regulation 8.";
 - (ii) in sub- regulation (5), the words ' promoter or other person' shall be substituted with the words ' acquirer or promoter or promoter group or their related entities'.
- (IV) in regulation 8,
 - (i) after sub-regulation (1), the following sub-regulations shall be inserted, namely:-

"(1A) Prior to granting approval under clause (a) of sub-regulation (1), the board of directors of the company shall,-

- (i) make a disclosure to the recognized stock exchanges on which the equity shares of the company are listed that the promoters/acquirers have proposed to delist the company;
 - (ii) appoint a merchant banker to carry out due-diligence and make a disclosure to this effect to the recognized stock exchanges on which the equity shares of the company are listed;
 - (iii) obtain details of trading in shares of the company for a period of two years prior to the date of board meeting by top twenty five shareholders as on the date of the board meeting convened to consider the proposal for delisting, from the stock exchanges and details of off-market transactions of such shareholders for a period of two years and furnish the information to the merchant banker for carrying out due-diligence;
 - (iv) obtain further details in terms of sub-regulation (1D) of regulation 8 and furnish the information to the merchant banker.
- (1B) The board of directors of the company while approving the proposal for delisting shall certify that :
- (i) the company is in compliance with the applicable provisions of securities laws;
 - (ii) the acquirer or promoter or promoter group or their related entities, are in compliance with sub-regulation (5) of regulation 4;
 - (iii) the delisting is in the interest of the shareholders.
- (1C) For certification in respect of matters referred to in sub-regulation (1B), the board of directors of the company shall take into account the report of the merchant banker as specified in sub-regulation (1E) of regulation 8.
- (1D) The merchant banker appointed by the board of directors of the company under clause (ii) of sub-regulation (1A) shall carry out due-diligence upon obtaining details from the board of directors of the company in terms of clause (iii) of sub-regulation (1A) of regulation 8:

Provided that if the merchant banker is of the opinion that details referred to in clause (iii) of sub-regulation (1A) of regulation 8 are not sufficient for certification in terms of sub-regulation (1E) of regulation 8, he shall obtain additional details from the board of directors of the company for such longer period as he may deem fit.

(1E) Upon carrying out due-diligence as specified in terms of sub-regulation (1D) of regulation 8, the merchant banker shall submit a report to the board of directors of the company certifying the following:

(a) the trading carried out by the entities belonging to acquirer or promoter or promoter group or their related entities was in compliance or not, with the applicable provisions of the securities laws; and

(b) entities belonging to acquirer or promoter or promoter group or their related entities have carried out or not, any transaction to facilitate the success of the delisting offer which is not in compliance with the provisions of sub-regulation (5) of regulation 4."

(ii) in sub-regulation (3), the word 'thirty' shall be substituted with the word 'five'.

(V) in regulation 10,-

(i) in sub-regulation (1),

(a) After the word "The" and before the words "promoters of the company", the words "acquirers or", shall be inserted;

(b) the word "upon" shall be substituted with the words "within one working day from the date of";

(ii) in sub-regulation (4), after the word "the" and before the words "promoter shall appoint", the words "acquirer or", shall be inserted;

(iii) in sub-regulation (5), the word "promoter" shall be substituted with the words and symbol "acquirer/promoter";

- (iv) in sub-regulation (6), the word "promoter" wherever occurring shall be substituted with the words and symbol "acquirer/promoter";
- (v) after sub-regulation (6), the following sub-regulation shall be inserted, namely:-

"(7) No entity belonging to the acquirer, promoter and promoter group of the company shall sell shares of the company during the period from the date of the board meeting in which the delisting proposal was approved till the completion of the delisting process."
- (VI) in regulation 11,
 - (i) in sub-regulation(1), after the word "the" and before the words "promoter shall open", the words "acquirer or", shall be inserted;
 - (ii) in sub-regulation(2), after the word "the" and before the words "promoter shall forthwith", the words "acquirer or", shall be inserted.
- (VII) in regulation 12, in sub-regulation (1),-
 - (i) after the word "the" and before the words "promoter shall despatch", the words "acquirer or", shall be inserted;
 - (ii) the words 'forty five' shall be substituted with the word 'two';
 - (iii) the words and symbol", so as to reach them at least five working days before the opening of the bidding period" shall be omitted.
- (VIII) in regulation 13,
 - (i) in sub-regulation (1), the words "fifty five" shall be replaced with the word "seven";
 - (ii) after sub-regulation (1) of regulation 13, the following sub-regulation shall be inserted, namely,-

"(1A) The acquirer or promoter shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the Board.";
 - (iii) in sub-regulation (2), the words "minimum period of three working days and a maximum" shall be omitted.

- (IX) in regulation 14, in sub-regulation (2), the words "A promoter" shall be substituted with the words "An acquirer or promoter".
- (X) in regulation 15,-
- (i) sub-regulation (2) shall be substituted with the following, namely:-
- "The floor price shall be determined in terms of regulation 8 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, as may be applicable.";
- (ii) sub-regulation (3) shall be omitted.
- (XI) in regulation 16,-
- (i) in sub-regulation (1), after the word "the" and before the words "promoter shall not be", the words "acquirer or", shall be inserted;
- (ii) in sub-regulation (2),
- (a) after the word "the" and before the words "promoter decides not to accept", the words "acquirer or", shall be inserted;
- (b) in clause (a), after the word "the" and before the words "promoter shall not acquire", the words "acquirer or", shall be inserted;
- (c) in clause (c), after the word "the" and before the words "promoter may close", the words "acquirer or", shall be inserted;
- (d) clause (d) shall be omitted;
- (iii) sub-regulation (3) shall be omitted.
- (XII) Regulation 17 shall be substituted with the following, namely:-
- "17. An offer made under chapter III shall be deemed to be successful only if,-
- (a) the post offer promoter shareholding (along with the persons acting in concert with the promoter) taken together with the shares accepted through eligible bids at the final price determined as per Schedule II, reaches ninety per cent. of the total issued shares of that class excluding the shares which are held by a custodian and against which depository receipts have been issued overseas; and

(b) atleast twenty five per cent of the public shareholders holding shares in the demat mode as on date of the board meeting referred to in sub-regulation (1B) of regulation 8 had participated in the Book Building Process:

Provided that this requirement shall not be applicable to cases where the acquirer and the merchant banker demonstrate to the stock exchanges that they have delivered the letter of offer to all the public shareholders either through registered post or speed post or courier or hand delivery with proof of delivery or through email as a text or as an attachment to email or as a notification providing electronic link or Uniform Resource Locator including a read receipt.

Explanation.- In case the delisting offer has been made in terms of regulation 5A of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the threshold limit of ninety per cent. for successful delisting offer shall be calculated taking into account the post offer shareholding of the acquirer taken together with the existing shareholding, shares to be acquired which attracted the obligation to make an open offer and shares accepted through eligible bids at the final price determined as per Schedule II.

(XIII) In regulation 18,-

- (i) the word "promoter" shall be substituted with the words and symbol "promoter/acquirer";
- (ii) the word "eight" shall be substituted with the word "five".

(XIV) In clause (a) of sub-regulation (2) of regulation 19, the following proviso would be inserted, namely:-

"Provided that the acquirer shall not be required to return the shares if the offer is made pursuant to regulation 5A of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011."

(XV) After regulation 25, the following regulation shall be inserted, namely:-

"25A. Power to relax strict enforcement of the regulations.

- (1) The Board may for reasons recorded in writing, grant relaxation from strict enforcement of any of the requirements of these regulations, if the Board is satisfied that the relaxation is in the interests of investors in securities and the securities market.
- (2) For seeking exemption under sub-regulation (1), the promoter or the acquirer or the company shall file an application with the Board, supported by a duly sworn affidavit, giving details for seeking such exemption and the grounds on which the exemption has been sought.
- (3) The promoter or the acquirer or the company, as the case may be, shall along with the application referred to under sub-regulation (3) pay a non-refundable fee of rupees fifty thousand, by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.
- (4) The Board may after affording reasonable opportunity of being heard to the applicant and after considering all the relevant facts and circumstances, pass a reasoned order either granting or rejecting the exemption or relaxation sought as expeditiously as possible."

(XVI) In regulation 27,-

(i) sub-regulation (1) shall be substituted with following, namely:-

"(1) Equity shares of a company may be delisted from all the recognised stock exchanges where they are listed, without following the procedure in Chapter IV, if,-

- a) the company has a paid up capital not exceeding ten crore rupees and net worth not exceeding twenty five crore rupees as on the last date of preceding financial year;

- b) the equity shares of the company were not traded in any recognised stock exchange for a period of one year immediately preceding the date of board meeting referred to in sub-regulation (1B) of regulation 8; and
 - c) the company has not been suspended by any of the recognised stock exchanges having nation-wide trading terminals for any non-compliance in the preceding one year;"
- (ii) sub-regulation (2) shall be omitted;
 - (iii) in sub-regulation (3). the words, symbols and figure "or sub-regulation (2)", shall be omitted.
- (XVII) In regulation 31, sub-regulation (2) shall be substituted with following, namely:-
"Any proposal for delisting made by company or any promoter or acquirer who wanted to delist securities of the company, prior to commencement of these regulations and where the offer price has not been determined in terms of sub-regulation (1) of regulation 15 as on the date of such commencement, shall be proceeded with under the Securities and Exchange Board of India (Delisting of Equity) Regulations, 2009 as amended by the Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2015."
- (XVIII) In schedule I, after para 16, the following shall be inserted, namely:-
"16A: A statement by the board of directors of the company certifying that:-
- (a) the company is in compliance with the applicable provisions of securities laws;
 - (b) the acquirer or promoter or promoter group or their related entities have not carried out any transaction during the aforesaid period to facilitate the success of the delisting offer which is not in compliance with the provisions of sub-regulation (5) of regulation 4;
 - (c) the delisting is in the interest of the shareholders."

(XIX) In Schedule II,

(i) after para 11, the following para shall be inserted, namely,-

"11A. Para 1 to 11 shall not be applicable in respect of the book building process where settlement is carried out through stock exchange mechanism as specified in sub-regulation (1A) of regulation 13 of these regulations."

(ii) para 12 shall be substituted with the following, namely:-

"12. The final offer price shall be determined as the price at which shares accepted through eligible bids, that takes the shareholding of the promoter or the acquirer (along with the persons acting in concert) to ninety per cent. of the total issued shares of that class excluding the shares which are held by a custodian and against which depository receipts have been issued. If the final price is accepted, then, the promoter shall accept all shares tendered where the corresponding bids placed are at the final price or at a price which is lesser than the final price. The promoter may, if he deems fit, fix a higher final price.

An illustration for arriving at the final offer price is given in the table below:

<i>Bid price (Rs.)</i>	<i>Number of investors</i>	<i>Demand (Number of shares)</i>	<i>Cumulative demand (Number of shares)</i>
550	5	2,50,000	2,50,000
565	8	4,00,000	6,50,000
575	10	2,00,000	8,50,000
585	4	4,00,000	12,50,000
595	6	1,20,000	13,70,000
600	5	1,30,000	15,00,000
605	3	2,10,000	17,10,000
610	3	1,40,000	18,50,000
615	3	1,50,000	20,00,000
620	1	5,00,000	25,00,000
	48	25,00,000	

→ Final Offer Price

Assuming floor price of Rs.550/- per share, promoter/ acquirer shareholding at 75% and number of shares required for successful delisting as 15,00,000, the final price would be the price at which the promoter reaches the threshold of 90%, i.e., it would be Rs.600/- per share."

U. K. SINHA
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA

Footnotes:

1. The SEBI (Delisting of Equity Shares) Regulations, 2009, were published in the Gazette of India on 10 June, 2009 vide No. LAD-NRO/GN/2009-2010/09/165992.