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SPECIAL PROVISIONS FOR DELISTING A LISTED SUBSIDIARY COMPANY OF A LISTED HOLDING COMPANY THROUGH A SCHEME OF ARRANGEMENT

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The Securities and Exchange Board of India (SEBI) has on 11 June 2021, repealed the SEBI (Delisting of Equity Shares) Regulations, 2009 (Erstwhile Delisting Regulations) and notified the SEBI (Delisting of Equity Shares) Regulations, 2021 (Delisting Regulations 2021). As per Regulation 37 of the Delisting Regulations 2021, the equity shares of a listed subsidiary company (Listed Sub Co) of a listed holding company (Listed Hold Co) may be delisted from the stock exchanges, pursuant to a scheme of arrangement under Sections 230 to 232 of the Companies Act, 2013 (Act).

Background

On 16 March 2020, the SEBI had issued a consultation paper on "Amendment to Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 for Schemes of Arrangement". In terms of the consultation paper, SEBI was assessing a proposal relating to a scheme of arrangement between a Listed Hold Co and Listed Sub Co, wherein the Listed Sub Co, is desirous of getting delisted without following the provisions of the Erstwhile Delisting Regulations, which includes reverse book building process.

The SEBI observed that there are several listed companies which have listed subsidiaries, engaged in the same line of business, and equity shares of both are actively traded on stock exchanges. Both, the Listed Hold Co and the Listed Sub Co could attain significant synergies by working together and create significant incremental shareholder value.

While a full merger of the Listed Sub Co with the Listed Hold Co could help achieve the intended synergies, it may not be favourable for the following reasons:

- Industry specific constraints (example, license conditions);
- Value destroying transaction costs (example, transfer costs, stamp duties, state level constraints); and
- Cultural differences (example, where the Listed Sub Co was acquired by the Listed Hold Co, and not set up by it organically).

Further, on 29 September 2020, the SEBI at its board meeting decided to grant exemption from the reverse book building process for delisting of Listed Sub Co, if it becomes the wholly owned subsidiary of the Listed Hold Co pursuant to a scheme of arrangement.

The SEBI has now, notified the much awaited Delisting Regulations 2021 which, *inter alia*, provide for exemption from the reverse book building process for delisting of equity shares of a Listed Sub Co (of a Listed Hold Co), pursuant to a National Company Law Tribunal (NCLT) approved scheme of arrangement under Sections 230 to 232 of the Act (Scheme). Upon the Scheme becoming effective, the Listed Sub Co will become a wholly owned subsidiary of the Listed Hold Co (the said exemption shall hereinafter be referred to as "Delisting Exemption").

Eligibility criteria:

- both companies should be in the same line of business;
- the shares of both companies should be listed for at least three years and the trading thereof should not have been suspended immediately before approval of the Scheme by the board of directors of the companies;
- holding-subsidiary relationship should exist for at least preceding three years, amongst both the listed companies; and
- no adverse orders should have been passed by the SEBI in the preceding three years against either of the companies.

Conditions for effectiveness of such Scheme:

- both, Listed Hold Co and Listed Sub Co, shall be involved in the Scheme;
- equity shares of the Listed Sub Co should be frequently traded;
- the Listed Hold Co shall provide for the issue of its equity shares in lieu of cancellation of any equity shares in the delisting subsidiary company;
- both the companies should comply with Regulations 11, 37 and 94 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the circulars issued thereunder;
- the threshold for obtaining shareholders' approval:
    - votes cast by public shareholders of Listed Sub Co in favour of the Scheme should be at least two times the number of votes cast against it (akin to the threshold required for delisting a listed company); and
    - votes cast by public shareholders of Listed Hold Co in favour of the Scheme should be more than the number of votes cast against it.
- approval of the NCLT will be required for the Scheme; and
- per share valuation of shares of the Listed Sub Co shall not be less than its sixty days volume weighted average price, where relevant date means date of public

disclosure of the approval of the Scheme by the board of directors of the companies.

Conditions subsequent to the Scheme:

- no further restructuring shall be undertaken by the Listed Hold Co for a period of three years from the date of the order of the NCLT approving the Scheme; and

- the equity shares of the Listed Sub Co so delisted, shall not be allowed to seek relisting for a period of three years from the date of its delisting.

Comment

The Delisting Regulations 2021 is a welcome step by the SEBI and the same is in-line with its policy objective of regulating exit options for the minority shareholders of listed companies. The Delisting Exemption will help the Listed Hold Co to achieve the intended synergies arising from consolidation of value of businesses, without having to, undertake the rigors of reverse book building process, too many regulatory compliances and incurring significant costs. However, going further, it remains to be seen, whether the requirement of lock-in, on further restructuring by Listed Hold Co for a period of three years, acts as a deterrent from undertaking the benefit of this Delisting Exemption, as such restrictions should have been confined to the Listed Sub Co and not to the Listed Hold Co.

While the Delisting Exemption has been introduced to promote the interests of listed holding companies having listed subsidiaries, the SEBI has also reinstated the threshold for obtaining approval of public shareholders of Listed Sub Co *akin* to delisting provisions. Accordingly, it is clear that the SEBI intends to strike balance amongst the market participants *inter-se*, and further promote growth of capital markets.

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