15

DELISTING

15.1 Meaning

Delisting means getting the listing of listed securities permanently cancelled. Thus, the shares would no longer remain listed securities and the SEBI Guidelines and the Listing Agreement would not be applicable to the Company. Delisting has caught on in a big way in the Indian capital markets with several prominent Multinational Companies, such as, Reckitt Benkiser, Hughes Software, E-serve, Cadbury, etc., leading the way. A company could get its securities listed for a variety of reasons, such as, raising of capital, better perceived value, etc. However, if the company feels that it can easily raise capital from private sources or it wants to shield confidential data from competitors or public, or it wants to subjected to lesser regulatory compliance, etc., then it might go in for a delisting of its securities. Delisting is different from a buy-back of shares, since in a buy-back it is the company which is acquiring the shares and the shares are then extinguished. However, in the case of a delisting, the promoters of the listed company seek to buy out the non-promoter shareholding in the company and thereby sever the company's status of listing. The shares acquired by the promoter continue to exist as before and are not cancelled. Since delisting is the process of canceling the listing of the securities, it can only be done by listed companies.

15.2 SEBI Guidelines

15.2.1 SEBI has prescribed the SEBI(Delisting of Securities) Guidelines, 2003 in this respect. These Guidelines override and repeal the earlier SEBI Circular SMD/POLICY/CIR-14/98.

15.2.2 Types of Delisting

Under the SEBI Guidelines, delisting can be of the following types:

(i) Voluntary Delisting by the promoters of the company from all or some of the stock exchanges where the company's shares are listed.

(ii) Delisting consequent to an Open Offer by a Promoter/Acquirer or a scheme of arrangement, consequent to which the public shareholding falls below the specified limit

(iii) Consolidation of holdings by persons in control in such a manner that the public shareholding falls below the specified limit

(iv) Compulsory Delisting by Stock Exchanges Delisting as a result of buy-back of securities is not allowed.

15.2.3 Voluntary Delisting

This is the most popular type of delisting, where the promoters of the company voluntarily decide to delist the company's shares. The key conditions for adopting this mode are as follows:

(i) The company must be listed for at least 3 years

(ii) An exit opportunity must be provided to Shareholders

(iii) The Exit Price must be determined by way of Reverse Book Building

(iv) The above conditions are not applicable if shares continue to be listed on the BSE or the NSE i.e., delisting is only from regional stock exchanges.

15.2.4 Delisting consequent to an Open Offer by a Promoter/ Acquirer

(a) This type of delisting applies to any:

  (i) any acquisition of shares of the company (by a Promoter/ Acquirer);or

  (ii) a Scheme or Arrangement, e.g., Merger, Demerger consequent to which the public shareholding falls below the minimum limit specified in the listing conditions or listing agreement that may result in delisting of securities.

(b) The SEBI Takeover Regulations also provide that if an acquirer makes an Open Offer and the non-public holding as a result of such acquisition falls to 10% or less or if the acquisition is in respect of a company which only has a non-public holding of 10%, then:

  (i) the acquirer must either comply with the Delisting Guidelines in respect of the balance public shareholding; or

  (ii) he must undertake to disinvest through an offer for sale or by a fresh issue of capital to the public, which shall open within a period of 6 months from the date of closure of the public offer, such number of shares so as to satisfy the listing requirements.

(c) It is important to note that the recently amended Takeover Regulations also provide that if an acquirer, seeks to acquire any shares or voting rights whereby the public shareholding in the target company may be reduced to a level below the limit specified in Cl. 40A of the Listing Agreement (e.g., 10% or 25%), then he shall make such acquisition only in accordance with the SEBI Delisting Guidelines. However, these provisions do not apply to an acquisition by virtue of a global arrangement which may result in indirect acquisition of shares or voting rights or control of the target company.

15.2.5 Consolidation of Holdings by Persons in Control

If a person in control of the management wants to consolidate his holdings in a company, in a manner which would result in the public shareholding in the company falling below the limit specified in the listing conditions or in the listing agreement that may have the effect of company being delisted.

15.3 Delisting Procedure

15.3.1 The procedure applicable for delisting under para 2.3, 2.4 and 2.5 above is the same. It may be briefly stated as under:

(i) A special resolution of the shareholders must be passed approving the delisting

(ii) A Merchant Banker must be appointed

(iii) A Public Announcement is required in the specified format

(iv) An application for delisting must be made to the stock exchanges

(v) The Exit Price must be determined by Reverse Book Building. The Reverse book building method is the opposite of the book building method and this case the company would only specify a Floor Price (i.e., the minimum acquisition price). There is no ceiling price unlike in the case of a book building and the shareholders are free to place bids at any price as they deem appropriate. Shareholders can revise their bids prior to the closing date. The floor price is the average of 26 weeks traded price quoted on the stock exchange where the shares are most frequently traded. The relevant date for computing the 26 weeks would be the date of the public announcement. In case the share is infrequently traded (i.e., the annualised trading turnover in that share during the preceding 6 calendar months prior to the month in which the public announcement is made is less than 5% by number of shares of the listed shares) then the following factors may be considered by the Merchant Banker to arrive at the floor price:

- Return on networth
- Earnings Per Share
- Book Value of Shares
- Price Earning Multiple vis-à-vis the industry average.

The final offer price would be that price at which maximum number of shares are offered and not the price at which maximum number of shareholders place bids. For instance, if 2,000 shareholders holding 20 lakhs shares place bids at Rs. 700 per share but 5 shareholders holding 30 lakhs shares place bids at Rs. 725 per share, then Rs. 725 would be selected as the offer price.

(vi) The promoter must deposit 100% of estimated consideration (calculated on the basis on Floor Price) in escrow with the Merchant Banker
(vii) The offer must remain open for a minimum of 3 days
(viii) At least 30 bidding centres must be designated
(ix) The Final Offer Price must be announced in newspapers
(x) The promoters must offer the same price to those shareholders who have not tendered their shares for a period of 6 months from close of the offer
(xi) The Shares must not to be extinguished
(xii) The consideration must be paid in cash only.

15.4 Option to Accept/ Reject

The Promoter has the option to accept or reject the bids at the maximum offer price. If he rejects the offer, then:

(a) the delisting would Fail
(b) the Promoter shall ensure that the public shareholding is brought up to the minimum limits specified within 6 months by way of :
    (i) a Public Issue
    (ii) an Offer for Sale
    (iii) a sale by him on the stock market by him in a transparent manner.

15.5 When is delisting complete?

The offer must result in the public shareholding falling below the level specified for continuous listing either in the listing agreement or the listing conditions at the time of the initial public offer of the company. Public shareholding is defined to mean the shareholding of persons other than the promoter. As a result the public holding would fall below the minimum level required under Clause 40A of the Listing Agreement for Continuing Listing. What should be the minimum public shareholding in a company as per Clause 40A has been a matter of great debate, i.e., would it be 10% or 25%? Recently, SEBI has clarified the matter (see Para 21.3).

It may be noted that Securities once delisted can be relisted after a cooling period of 2 years.

15.6 Compulsory Delisting

15.6.1 Under compulsory delisting, the stock exchanges may delist those companies which have been suspended for a minimum period of 6 months for non-compliance with the Listing Agreement.

15. 6.2 The stock exchanges can also delist a company after taking a decision based on several specified considerations such as:

(a) Percentage of floating stock in the hands of the public
(b) Minimum trading level of shares of a company on the stock exchanges.

(c) Financial/ business aspects of the company, e.g., some tangible assets, reasonable revenue/ profits, etc
(d) Listing Agreement compliance track record for the past 3 years
(e) Promoters'/ Directors' track record with respect to insider trading, etc
(f) If whereabouts of company, directors, promoters, etc., are not known
(g) Whether the company has become sick or unable to meet its debt obligations.

15.6.3 The exchange must give an opportunity of being heard to the aggrieved persons. After considering their representations, it may delist the securities.

15.6.4 Once the shares are compulsorily delisted, the promoters must compensate the shareholders by paying them the fair value of the shares. The fair value would be determined by persons appointed by the stock exchange having regard to the factors laid down under the SEBI Takeover Regulations.

15.7 Delisting by Rights Issue

(a) Delisting can also take place if the promoters subscribe to unsubscribed portion of a rights issue which results in the public shareholding falling below the specified minimum public shareholding. However, adequate disclosures to such effect must be made in the offer document of the rights issue.
(b) The promoters must agree to buy out the remaining shareholders at the price of the rights issue or they must make an Offer for Sale to shore up the public shareholding.
(c) If a Rights issue is not fully subscribed due to which the public shareholding falls below the minimum public shareholding limits, then the Promoters must buy out the public or make an Offer for Sale within 3 months.

15.8 FEMA

Since delisting involves a transfer of shares between the shareholder and the promoter, if one or both the parties are non-residents, then the prior permission of the FIPB and/ or the RBI may be needed depending upon the facts of the case. The RBI has put a lot of secondary market transfers on the automatic route subject to compliance with certain terms and conditions. Hence, the FEMA Guidelines should be checked on a case-to-case basis.

15.9 Delisting Examples

(a) The delisting of E-serve International Ltd. by Citibank has been one of the most high-profile instances of delisting. The floor price fixed by Citibank (the acquirer/ promoter which owned 44% of the company prior to the offer) in this case of voluntary delisting was Rs. 735 per share. However, the response to the offer was nowhere in the range of the floor price. Ultimately, the offer price as per the reverse book building mechanism was pegged at Rs. 975 per share, i.e., at a premium of nearly 33% over the floor price. Thus, the public shareholders in this case were able to strongly influence the pricing of the delisting.

A similar high premium over the floor price was commanded in the case of India Gypsum a construction subsidiary of BPB Plc.

(b) Some other famous instances of delisting include the bids for Astra Zeneca. In this case the offer price determined as per the book building, against a floor price of Rs. 825 per share was Rs. 3,000. Ultimately, the acquirer rejected all the bids.

(c) An example of a failed delisting was that of Vedanta Resources' bid for Madras Aluminium Company or MALCO. In this case the number of bids received by the acquirer did not lead to the public shareholding dipping below 10% and the promoter acquiring over 90%. The offer lapsed as it did not get the required level of acceptance of 90%.

15.10 SEBI and the Ministry of Finance are proposing to completely overhaul the Delisting Guidelines. The new Guidelines have not yet been notified.