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**SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION
Mumbai, the 14th November, 2018**

**SECURITIES AND EXCHANGE BOARD OF INDIA (DELISTING OF EQUITY
SHARES) (SECOND AMENDMENT) REGULATIONS, 2018**

No. SEBI/LAD-NRO/GN/2018/46 - 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) (Second Amendment) Regulations, 2018.
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, -
 - (a) in regulation 2, -
 - i. in sub-regulation (1), -
 1. after clause (i), the following clause shall be inserted, namely, -

“(ia) ‘acquirer’ shall have the same meaning as assigned to it in the Securities and Exchange Board of India (Substantial

Acquisition of Shares and Takeovers) Regulations, 2011 and who has chosen to make an offer for delisting the company in accordance with regulation 5A of the said Regulations.

Explanation. - Any reference made to the promoter in relation to a delisting offer under these regulations shall apply mutatis mutandis to an acquirer making a delisting offer.”

2. clause (iii) shall be substituted with the following clause, namely, -

“(iii) ‘company’ means a company within the meaning of section 2 of the Companies Act, 2013 and includes a body corporate or corporation established under a Central Act, State Act or Provincial Act for the time being in force, whose equity shares are listed on a recognised stock exchange;”

3. clause (iva) shall be omitted.

4. clause (v) shall be substituted by the following clause, namely, -

“(v) ‘public shareholders’ mean the holders of equity shares, other than the following:

- (a) promoters, promoter group and persons acting in concert with them;
- (b) acquirer(s) and persons acting in concert with such acquirer(s); and
- (c) holders of depository receipts issued overseas against equity shares held with a custodian and such custodian holding the equity shares.”

- ii. in sub-regulation (2), -

1. the words “promoter group” shall be inserted after the word “promoter”; and
2. the words “acquirer” and “public shareholding” shall be omitted.

- iii. in sub-regulation (3), the words and figures “1956 (1 of 1956)” shall be substituted by the words and figures “2013 (18 of 2013)”.
- (b) in regulation 4, in sub-regulation (5), after the words “promoter group” and before the words “or their”, the words “or persons acting in concert” shall be inserted.
- (c) in regulation 6, in clause (b), the word “would” shall be substituted with the word “do”.
- (d) in regulation 8, -
 - i. in sub-regulation (1), in clause (b), in the proviso, the words “if and” shall be omitted.
 - ii. in sub-regulation (1E), -
 - a. in clause (a), the words “the entities belonging to acquirer or promoter or promoter group” shall be substituted with the words “any of the acquirer or promoter or promoter group entity”.
 - b. clause (b) shall be substituted with the following new clause, namely, -

“any of the acquirer or promoter or promoter group entity or persons acting in concert or their related entities have carried out or not any transaction to facilitate the success of the delisting offer which is in contravention of the provisions of sub-regulation (5) of regulation 4.”
 - iii. in sub-regulation (4), in clause (d), the words “listing agreement” shall be substituted with the words, symbols and numbers “Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015”.

- (e) in regulation 10, -
- i. in sub-regulation (3), the words ‘thirty working days’ shall be substituted by the words “one working day”;
 - ii. in sub-regulation (4), the following explanation shall be inserted after the said provision, namely:-

“Explanation. - The merchant banker conducting due diligence on behalf of the company may also act as the manager to the delisting offer.”

- (f) in regulation 11, in sub-regulation (3), the following explanation shall be inserted after the said provision, namely -

“Explanation. - The cash component of the escrow account may be maintained in an interest bearing account, provided that the merchant banker ensures that the funds are available at the time of making payment to shareholders.”

- (g) in regulation 12, in sub-regulation (4), the following explanation shall be inserted after the said provision, namely -

“Explanation. - An eligible public shareholder may participate in the delisting offer and make bids even if he does not receive the bidding form or the tender offer /offer form and such shareholder may tender shares in the manner specified by the Board in this regard.”

- (h) in regulation 14, -

- i. in sub-regulation (3), the following proviso shall be inserted, -
"Provided that any holder of depository receipts shall be allowed to participate in the book building process under sub-regulation (1) after exchanging such depository receipts with the shares of the class that are proposed to be delisted.”

- ii. sub-regulation (4) shall be omitted.
- (i) in regulation 15, in sub-regulation (2), the following explanation shall be inserted, namely -
- “Explanation: The reference date for computing the floor price would be the date on which the recognized stock exchange/s were required to be notified of the board meeting in which the delisting proposal would be considered.”
- (j) in regulation 16, the title “Right of the promoter not to accept the offer price” shall be substituted with the title “Right of the promoter to either make a counter offer or reject the offer”.
- (k) in regulation 16, -
- i. after the existing sub-regulation (1), the following new sub-regulation shall be inserted, namely -
- “(1A) If the price discovered in terms of regulation 15 is not acceptable to the acquirer or the promoter, the acquirer or the promoter may make a counter offer to the public shareholders within two working days of the price discovered under regulation 15, in the manner specified by the Board from time to time:
- Provided that the counter offer price shall not be less than the book value of the company as certified by the merchant banker.”
- ii. in sub-regulation (2), in clause (a), the word “paragraphs” shall be substituted with the word “clauses”.
- (l) in regulation 17, -
- i. the existing regulation shall be numbered as sub-regulation (1);

- ii. the word “An” shall be omitted and in its place, the words “If a counter offer has not been made by the acquirer or promoter in accordance with regulation 16 (1A), an” shall be inserted;
- iii. in the proviso, the words “this requirement” shall be substituted with the words “the requirement under clause (b) of sub-regulation (1)”;
- iv. after the proviso, the following explanation shall be inserted, -

“Explanation I. -

- a. If the acquirer or the merchant banker send the letters of offer to all the shareholders by registered post or speed post through India Post and is able to provide a detailed account regarding the status of delivery of the letters of offer (whether delivered or not) sent through India Post, the same would be considered as a deemed compliance with the proviso.
 - b. If the acquirer or the merchant banker is unable to deliver the letter of offer to certain shareholders by modes other than speed post or registered post of India Post, efforts should be made to deliver the letters of offer to them by speed post or registered post through India Post. In that case, a detailed account regarding the status of delivery of letter of offer (whether delivered or not) provided from India Post would also be considered as deemed compliance with the proviso.
- v. the existing Explanation shall be numbered as Explanation II.
 - vi. after the numbered sub-regulation (1), the following new sub-regulation (2) shall be inserted, -

“(2) If a counter offer has been made by the acquirer or promoter in accordance with regulation 16(1A), an offer made under chapter III shall be deemed to be successful only if the post offer promoter shareholding

(along with the persons acting in concert with the promoter) taken together with the shares accepted at the counter offer price 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.”

- (m) in regulation 18, -
 - i. the word “the” shall be inserted before the words “closure of the offer”;
 - ii. clause (iii) shall be omitted.
- (n) in regulation 20, in sub-regulation (1), the words “on ascertaining” shall be substituted with the word “upon”.
- (o) in regulation 21, in sub-regulation (1), the word ‘atleast’ shall be substituted by the word “minimum”.
- (p) in regulation 22, -
 - i. in sub-regulation (3), the word “making” shall be substituted with the word “passing”;
 - ii. in sub-regulation (6), in clause (b), the words ‘and the surrounding circumstances’ shall be omitted.
- (q) in regulation 23, -
 - i. the existing sub-regulation (1) shall be renumbered as sub-regulation (2);
 - ii. the existing sub-regulation (2) shall be re-numbered as sub-regulation (1) and the words and figure “sub-regulation (1)” appearing therein shall be substituted with the words and figure “sub-regulation (2)”;

- iii. in sub-regulation (3), after the words “the valuer” and before the symbol “,”, the words “within three months of the date of delisting from the recognised stock exchange” shall be inserted.
- (r) the existing regulation 24 shall be numbered as sub-regulation (1) and after sub-regulation (1) so numbered, the following new sub-regulation shall be inserted,-
 - “(2) In case of such companies whose fair value is positive -
 - (a) such a company and the depositories shall not effect transfer, by way of sale, pledge, etc., of any of the equity shares held by the promoters/ promoter group and the corporate benefits like dividend, rights, bonus shares, split, etc. shall be frozen for all the equity shares held by the promoters/ promoter group, till the promoters of such company provide an exit option to the public shareholders in compliance with sub-regulation (3) of regulation 23, as certified by the concerned recognized stock exchange;
 - (b) the promoters and whole-time directors of the compulsorily delisted company shall also not be eligible to become directors of any listed company till the exit option as stated in clause (a) above is provided.
- (s) in regulation 25, the words ‘in the form of circulars’ shall be substituted with the words “from time to time”.
- (t) in regulation 25A, in sub-regulation (3), the words and figure “sub-regulation (3)” shall be substituted with the words and figure “sub-regulation (2)”.
- (u) in regulation 26, the proviso shall be omitted.
- (v) in regulation 27, in sub-regulation (3), in clause (d), the words “at least ninety per cent of such public shareholders give their positive consent” shall be substituted with the words “the public shareholders, irrespective of their numbers, holding ninety percent or more of the public shareholding give their consent”.

(w) in regulation 31, -

- i. the heading “Transitional provisions” shall be substituted with words “Repeal and Savings”;
- ii. in sub-regulation (2), the words and figure “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” shall be substituted with the words, figure and symbol “Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, as amended from time to time”.

Sd/-
AJAY TYAGI
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA

Footnote:

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.
2. The Principal Regulations were subsequently amended on:
 - a) October 8, 2013 by the SEBI (Listing of Specified Securities on Institutional Trading Platform) Regulations, 2013 vide No. LAD-NRO/GN/2013-14/28/6720.
 - b) March 24, 2015 by the SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2015 vide No. LAD-NRO/GN/2014-15/27/541.
 - c) August 14, 2015 by the SEBI (Delisting of Equity Shares) (Second Amendment) Regulations, 2015 vide No. SEBI/LAD-NRO/GN/2015-16/010.
 - d) January 12, 2016 by the SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2016 vide No. SEBI/LAD-NRO/GN/2015-16/30.

- e) March 6, 2017 by the SEBI (Payment of fees and mode of payment) (Amendment) Regulations, 2017 vide No. SEBI/LAD-NRO/GN/2016-17/037.
- f) June 1, 2018 by the SEBI (Delisting of Equity Shares) (Amendment) Regulations, 2018 vide No. SEBI/LAD-NRO/GN/2018/23.
