

WHEN COMPANY DELISTS AMID PANDEMIC

Independent directors face testing times

Regulator must empower them to protect interests of minority shareholders, say experts

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SUDIPTO DEY

When shareholders of Vedanta Ltd vote on the special resolution to delist the company, not only investors but also legal experts are likely to keep a close eye on the developments in the metal and mining conglomerate. This will be the first instance of a major diversified manufacturing group initiating the delisting process during a pandemic-induced lockdown. Several other promoter groups — such as London-headquartered Diageo, which is planning to take United Spirits private — are looking at taking this route as they go about rebuilding business in the pandemic-stricken environment.

While there is a regulatory process in place when promoters decide to take their companies private, what has irked legal experts and several investor advisory services is the timing of this exercise. With shares of many

companies trading at low prices, minority shareholders are wary of any delisting exercise. There is also increased scrutiny of the role of the board when it approves of any delisting exercise.

"It is unethical for promoters to encash this condition and behave opportunistically," says Rajesh Vellakkat, partner at law firm Fox Mandal & Associates. "It must be discouraged," he adds.

Amit Tandon, founder & managing director, Institutional Investor Advisory Services, feels this is the time to debate: "Should voluntary delisting be permitted when the share is at or close to its 52-week low?"

Experts point out the Securities and Exchange Board of India's (Sebi's) voluntary delisting guidelines are comprehensive. But in a pandemic situation, there is no specific provision under the regulations to ensure the protection of the interests of minority share-

Analysts argue Sebi could look at revising the floor price norms to capture unprecedented situations, such as a pandemic

WHAT EXPERTS AND MINORITY INVESTORS ARE WAR Y OF

■ **Should voluntary delisting be permitted** when the share price of the company is at or close to its 52-week low, following a pandemic-induced business lockdown

■ **Does the board of directors** have any extra responsibility of sharing their reason with investors why it thinks any decision to delist is good for all shareholders and the business

■ **Should the regulator** revise floor price norms in order to capture unprecedented situations such as the Covid-19 pandemic

holders, notes Gaurav Pingle, Pune-based company secretary. "However, the board of directors can make necessary disclosures for ensuring transparency," he adds. Also, the regulations do not envisage any specific role for independ-

ent directors in the delisting exercise.

Many analysts and experts believe though Sebi determines the floor price at which investors offer their shares, the directors of the company should state what they believe is a fair price. "The board should provide commentary on whether it has looked at other options — such as selling some or all the business — and its outlook for the business," says Tandon.

J N Gupta, managing director, Stakeholders Empowerment Services (SES), agrees the board is duty-bound to clearly explain to shareholders why the de-listing exercise is in the interest of shareholders. "Any attempt to hide behind the regulation is bad governance."

According to Shriram Subramanian, founder & managing director, InGovern Research Services, given the current situation, promoters should weigh the risk of losing reputation against benefiting from low asset prices, and thus being unfair to minority investors.

Many feel independent directors need to rise to the occasion. Shailesh Haribhakti, chairman of audit and accounting firm Haribhakti & Co, is of the view that if independent directors don't think the delisting is in the interest of all, including minority shareholders, they should not approve of the proposal at all. "Their fiduciary responsibility has to be acutely exercised when making such a decision. They may take whatever external help they deem necessary to reach their conclusion," he adds.

Most experts feel the delisting process needs to be tweaked to give more say to independent directors in a board. "Independent directors should have an autonomous view of the delisting process, though the concluding delisting price will be revealed through the reverse book building process," says Sonam Chandwani, managing partner in law firm KS Legal & Associates.

A way forward could be to emulate the takeover regulation, says Vellakkat

Currently, there is no specific statutory requirement under the de-listing regulations mandating independent directors to give an independent view on the delisting proposal to shareholders. However, the takeover regulation mandates that in case of a takeover offer, the board of directors of the target company shall constitute a committee of independent directors to provide reasoned recommendations on such an open offer. This provision could be incorporated into the delisting regulations, say experts.

The regulators could also ask the board to make public their detailed logic for the approval or otherwise of a proposed delisting exercise, they add.

Analysts argue that Sebi could look at revising the floor price norms to capture unprecedented situations, such as the Covid-19 pandemic. "At the time of approval by public shareholders, the board may be asked to reveal material facts in the connection with Covid-19 pandemic," says Sheshashayee S Nandagudi, a consultant and former assistant legal advisor in Sebi.