Takeover code for unlisted companies rolled out with safeguard norms

Analysts say rules may have a bearing on Tata Sons in midst of battle with its ex-chairman Mistry

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The Corporate Affairs ministry on Tuesday notified the takeover rules for unlisted companies. This will allow a majority shareholder in an unlisted company to move the National Company Law Tribunal (NCLT) to take over the rest of the stake in the entity. For this to kick off, a member with at least three-fourths of equity shares carrying voting rights can file an application to acquire any part of the remaining shares.

Analysts believe these rules may have a bearing on Tata Sons, the unlisted holding company of the salt-to-software group in the midst of a corporate battle with its former chairman Cyrus Mistry. Shapoorji Pallonji Group, promoted by Mistry family, is a minority shareholder at 18.5 per cent stake in Tata Sons, where Tata Trusts holds 66 per cent. But, sources close to the development argued that the Mistry family shares are not for sale.

In order to protect the interests of minority shareholders, the new rules do not provide for a "compulsory squeezing out" option that may force such persons to sell their stake. The rules would also not be applicable to "any transfer or transmission of shares through a contract, arrangement or succession."

According to experts, the application for the will has to be made to the Tribunal which will put in place some checks and balances to ensure a fair amount is paid to the minority shareholder. “Because there is a regulator and the rules have prescribed a valuation report, any deal should be fair and equitable,” said Manoj Kumar, partner, Corporate Professionals.

So far, takeover code, notified by the Securities & Exchange Board of India (Sebi) was in place only for public listed companies in the country. One of the main objectives is to protect the interests of minority shareholders--a key principle for corporate governance.

Under the new rules, the majority shareholder triggering the takeover will have to provide a report by a registered valuer disclosing the details of the valuation of the shares that are proposed to be acquired.

This amount has to take into account the highest price paid by any person or group of persons for acquisition of shares during the last 12 months and the fair price of the shares.

The valuation parameters have to be based on return on net worth, book value of shares, earning per share, price earning multiple vis-a-vis the industry average. The members making a takeover bid will have to provide details of the bank account where a sum of amount not less than one-half of total consideration of the takeover offer is deposited.

However, experts say the rules are not exhaustive, and do not make any

reference to the “acquirer” or competing offers or mode of payment of consideration. “The only relief for minority shareholders is that valuation of shares will be done by Registered Valuer only. However, no timeline has been provided for depositing consideration of the takeover of the firm,” said Gaurav Pingle, company secretary, Gaurav Pingle and Associates. He said based on the Rules, it has to be a cash acquisition only, as against swap ratio or any other option.

“This amendment is likely to promote value enhancing transactions by enabling the controller to acquire the entire unlisted company. However, NCLT must safeguard the minority interests on a case to case basis, lest it increases the overall cost of capital for unlisted firms,” said Pratik Dutta, senior research fellow, Shardul Amarchand Mangaldas.

In 2014, the government had added a provision in the Companies Act under section 230 (11) that said: “Any compromise or arrangement may include takeover offer made in such manner as may be prescribed: Provided that in case of listed firms, takeover offer shall be as per the regulations framed by the Sebi.”

Section 230 (12) further added, “An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of firms other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.”

According to people in the know, it took the government nearly six years to commence the two provisions of the Companies Act since there was confusion about the purpose of such a law. “The government did not want to snatch away minority shareholders’ rights by providing a compulsory exit and for voluntary exit there are provisions already in the Act,” a source said.

However, the idea behind the rules was to protect all shareholders and lay down procedures for certain takeover offers, officials pointed out.

Section 237 of the Companies Act provides that if an acquirer comes to hold 90 per cent of the issued equity share capital through an

MIND THE CODE

- **Anyone holding 3/4th of equity shares** can make a takeover bid
- **Registered valuer** must determine a fair price
- **Valuation must consider highest price paid** in the last 12 months
- **Half of proposed amount to be transferred** in a bank account

Source: The Companies (Compromises, Arrangements and Amalgamations) Rules 2020

amalgamation, share exchange, conversion of securities or for any other reason, they shall notify the firm of their intention to buy the remaining equity shares. In such a takeover, the acquirer doesn't have to go to the Tribunal. With 90 per cent share, the acquirer is within his rights to buy out others.