भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

Consultation Paper

Recalibration of threshold for Minimum Public Shareholding norms, enhanced disclosures in Corporate Insolvency Resolution Process (CIRP) cases

1. Objective

1.1. The objective of this discussion paper is to seek comments / views from the public and market intermediaries on Recalibration of threshold for Minimum Public Shareholding norms (MPS) in companies which undergo Corporate Insolvency Resolution Process (CIRP) and seek relisting of its shares pursuant to implementation of the approved resolution plan.

2. Background

2.1. In order to ensure sufficient float in a listed entity, in terms of Securities Contracts (Regulation) Rules, 1957 (SCRR), the minimum public shareholding is mandated to 25 per cent of total shareholding.

2.2. In view of the fundamental change in management and governance of a listed entity during CIRP, a necessity was felt for providing a suitable framework of compliance with securities laws. Accordingly, certain relaxations have been granted to such listed companies under various SEBI Regulations and under SCRR as well relating to minimum public shareholding norms.

2.3. Currently, relaxation has been provided from all provisions of Chapter V of the SEBI(Issuer of Capital and Disclosure) Requirements, 2018 (ICDR Regulations) pertaining to preferential issue such as conditions for eligibility, pricing, conditions for consideration and allotment etc. except lock-in provisions. Thus, the shares allotted to an incoming investor under a resolution plan through a preferential issue continue to remain under lock-in for a period of at least 1 year (for allotment in excess of 20 percent of the total capital of the company).

2.4. Relaxation has also been provided in Regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations) which allows an acquirer to breach minimum public shareholding norms.

2.5. Further in such cases, where the fall in public shareholding is due to implementation of the resolution plan approved under IBC, 2016, SCRR mandates as follows:

a. In cases where the public shareholding falls below 10 percent, then such listed company shall bring public shareholding to at least 10 percent within a period of eighteen months and to 25 percent within three years from the date of such fall.
b. In cases where the public shareholding falls below 25 percent but is above 10 percent, such listed company shall bring its public shareholding to 25 percent within three years from the date of such fall

2.6. Furthermore exemption has also been granted from applicability of delisting regulations in case of delisting arising out of resolution plan approved under the IBC, 2016. The minimum value that the shareholder can receive in such cases is the liquidation value, or the price at which existing promoters/ shareholder are being granted exit. Thus, it is possible in case of delisting under the resolution plan, the shareholders may not get sufficient/any value as compared to the potential value that may be realized over a period of time after the implementation of the resolution plan if the shares continue to remain listed.

The existing legal provisions are placed Annexure 1.

3. Concerns

3.1. IBC is an evolving law, only 6 post- CIRP companies have been listed on NSE (details at Annexure 2). However, in terms of the relaxation available as described above, it is possible that pursuant to implementation of the resolution plan, the public shareholding in such companies may drop to abysmally low levels. In one recent case it was observed that post-CIRP the public shareholding has decreased to 0.97%, and showed 8764% increase in its share price in spite of additional preventive surveillance actions including reduction in price band and moving the scrip into trade for trade segment. Such low public shareholding raises multiple concerns like failure of fair discovery of price of the scrip, need for increased surveillance measures etc. and may therefore pose as a red flag for future cases. Low float also prohibits healthy participation in trading of such companies majorly due to issues related to demand and supply gap of shares.

Threshold for public shareholding post CIRP

3.2. While such MPS non-compliant companies are required to achieve minimum public shareholding norms over a period of three years (atleast 10 percent in 18 months), it is felt that concerns as mentioned above shall remain till the company achieves MPS of at least 10%

3.3. Such exemptions are not considered in case of companies which seek listing pursuant to a scheme of arrangement. Under schemes of arrangement, it is mandatory to have atleast 25% public shareholding, or atleast Rs 400 Crores or alteast 10% in case the valuation exceeds Rs 4000 Crores whichever is higher. The draft scheme of arrangement not in compliance to the above provision is liable to be rejected by Stock Exchanges and SEBI. The relaxation to breach minimum public shareholding norms is unique to IBC matters.

3.4. The rationale for providing such exemptions only to IBC cases was to ensure revival of the corporate debtor pursuant to resolution plan and also to provide any listing gains over the next three years to shareholders of corporate debtor. While the revival of corporate debtor is essential for all stakeholders, it is also imperative to maintain market integrity in respect of such companies.

3.5. The main purpose of listing of scrips on the exchanges is that the investors have a ready opportunity to invest or exit their investments as per the efficient price and liquidity associated with listing. Allowing no lower limit for minimum public shareholding in post- CIRP cases may result in cases where the public shareholding would be extremely low, thus leading to less float, hampering the efficiency in the price discovery process of the scrip in the secondary market. Allowing continued listing of companies that have miniscule public float may therefore be counterproductive in providing opportunity to other investors.

3.6. In case the resolution plan involves allotment to an incoming investor (designated as promoter) then in terms of Regulation 167(1) of the ICDR Regulations the shares shall be locked-in for a period of atleast 1 year. This may not facilitate dilution of promoter shareholding to achieve immediate compliance with atleast 10 percent public shareholding.

Disclosures of CIRP

3.7. Another aspect regarding post CIRP cases is the details of disclosures made pursuant to the approval of Resolution plan and aiding the price discovery mechanism in relisting post CIRP cases. The disclosure of the salient features not involving commercial secrets, of the resolution plan approved by the Tribunal is mandatory in terms of LODR regulations, 2015. The nuances of the resolution plan such as shares/ convertibles to be allotted to incoming investor, terms of such allotment, source(s) of funds (if any), impact of the resolution plan on the existing shareholders etc. may be crucial for public shareholders in ascertaining the actual value of shares on re-listing pursuant to implementation of the resolution plan.

4. Proposals

4.1. The matter was deliberated at the Primary Market Advisory Committee (PMAC), which has recommended that SEBI may seek public comments on the following options:

a. Options:

Option 1: Post-CIRP companies may be mandated to achieve at least 10 percent public shareholding within six months and 25 percent within 3 years from the date of breach of MPS norm

Currently, Rule 19A(5) of the SCRR mandates that in case public shareholding of a listed company falls below 10% as a result of implementation of resolution plan under IBC, 2016, then the same shall be increased to atleast 10% within 18 months from the date of fall and 25% within 3 years from the date of fall.

It is proposed that 18 months as mandated under Rule 19A(5) may be brought down to 6 months.

Option 2: Post-CIRP companies may be mandated to have at least 5 percent public shareholding at the time of relisting

Such companies may be provided 12 months to achieve public shareholding of 10 percent and further 24 months to achieve public shareholding of 25 percent.

A concern in 5 percent threshold is that it may not be significant threshold to allay concerns as mentioned above. However, the positive side is that a lower threshold (such as five percent) will incentivize companies from staying listed and any higher threshold may push for total delisting.

Option 3: Post-CIRP companies may be mandated to have at least 10 percent public shareholding at the time of relisting

Such companies may be provided three years to achieve minimum public shareholding of 25 percent.

In case of IPOs, in terms of Rule 19(2) (b) companies are mandated to have at least 10 percent minimum public shareholding.

b. <u>Lock-in requirements:</u>

Typically, in view of preferential issuance of shares to the incoming investor/promoter under the resolution plan, such shares would be under lock-in for at least 1 year in terms of ICDR Regulations. Thus, achieving MPS compliance through means involving off-loading of shares by the incoming investor/ promoter within one year is not possible. Therefore, it may be permitted to free such shares from lock-in so as to help achieve MPS (only to the extent to enable MPS compliance).

c. Whether there is a need to introduce a standardized reporting framework pursuant to approval of resolution plan? If so, what details may be mandated?

Some of the disclosure requirements could be as follows:

i. Pre and Post net-worth of the company

ii. Detailed pre and post shareholding pattern assuming 100% conversion

iii. Details of funds infused, creditors paid-off.

iv. Additional liability on the incoming investors due to the transaction/ source of funding etc.

v. Impact on the investor – revised P/E, RONW ratios etc.

vi. Names of the new promoters, key managerial persons(s) if any. Past experience in the business or employment. In case where promoter are companies, history of such company and names of natural persons in control.

vii. Brief description of business strategy

viii. Resolution plan (excluding confidential information, commercial secrets etc.)

5. Considering the implications of the said matter on the market participants including issuer companies and investors, public comments are invited on the proposals at Para 4 above. Comments may be sent by email or through post, in the following format:

Name of entity / person : Contact Number & Email Address :			
Sr. No.	**Reference Para of the consultation paper**	**Suggestion/ Comments**	**Rationale**

While sending email, kindly mention the subject as **"Recalibration of threshold for Minimum Public Shareholding norms in -Corporate Insolvency Resolution Process (CIRP) cases"**

The comments may be sent by email to Smt. Yogita Jadhav, DGM at (yogitag@sebi.gov.in), and Shri Abhishek Rozatkar, AGM (abhishekr@sebi.gov.in) latest by September 18, 2020:

Annexure 1

1. Regulation 158(2) of the ICDR Regulations states as follows (emphasis supplied):

The provisions of this Chapter, except the lock-in provisions, shall not apply where the preferential issue of specified securities is made in terms of the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 [1 of 1986] or the resolution plan approved under Section 31 of the Insolvency & Bankruptcy Code, 2016 [No. 31 of 2016], whichever is applicable.

a. Regulation 3(2) of the Takeover Regulations states as follows (emphasis supplied):

No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:
Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Provided further that, acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 [No. 31 of 2016] shall be exempt from the obligation under the proviso to the sub-regulation (2) of regulation 3.

2. Rule 19A(5) of the SCRR states as follows (emphasis supplied):

(5) Where the public shareholding in a listed company falls below twenty-five per cent, as a result of implementation of the resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), such company shall bring the public shareholding to twenty-five per cent within a maximum period of three years from the date of such fall, in the manner specified by the Securities and Exchange Board of India:

Provided that, if the public shareholding falls below ten per cent, the same shall be increased to at least ten per cent, within a maximum period of eighteen months from the date of such fall, in the manner specified by the Securities and Exchange Board of India.

3. Regulation 3(3) of the Delisting Regulations, 2009 state as follows:

(3) Nothing in these regulations shall apply to any delisting of equity shares of a listed entity made pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 [No. 31 of 2016], if such plan, –
(a) lays down any specific procedure to complete the delisting of such share; or
(b) provides an exit option to the existing public shareholders at a price specified in the resolution plan:

Provided that, exit to the shareholders should be at a price which shall not be less than the liquidation value as determined under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 after paying off dues in the order of priority as defined under section 53 of the Insolvency and Bankruptcy Code, 2016[No. 31 of 2016]:

Provided further that, if the existing promoters or any other shareholders are proposed to be provided an opportunity to exit under the resolution plan at a price higher than the price determined in terms of the above proviso, the existing public shareholders shall also be provided an exit opportunity at a price which shall not beless than the price, by whatever name called, at which such promoters or other shareholders, directly or indirectly, are provided exit:

Provided also that, the details of delisting of such shares along with the justification for exit price in respect of delisting proposed shall be disclosed to the recognized stock exchanges within one day of resolution plan being approved under section 31 of the Insolvency and Bankruptcy Code, 2016 (No. 31 of 2016)

4. Regulation 167(1) of the ICDR Regulation states as follows:

167. (1) The specified securities, allotted on a preferential basis to the promoters or promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on a preferential basis to the promoters or the promoter group, shall be locked-in for a period of three years from the date of trading approval granted for the specified securities or equity

shares allotted pursuant to exercise of the option attached to warrant, as the case may be:
Provided that not more than twenty per cent. of the total capital of the issuer shall be locked-in for three years from the date of trading approval
Provided further that equity shares allotted in excess of the twenty per cent. shall be locked-in for one year from the date of trading approval pursuant to exercise of options or otherwise, as the case may be.
Provided further that in case of convertible securities or warrants which are not listed on stock exchanges, such securities shall be locked in for a period of one year from the date of allotment.

5. Schedule III Part A – Clause A. 16(k) of the SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 states as follows:

"Disclosures of events or information: specified securities

A. Events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30):
16. The following events in relation to the corporate insolvency resolution process (CIRP) of a listed corporate debtor under the Insolvency Code:
...
(k) Salient features, not involving commercial secrets, of the resolution plan approved by the Tribunal, in such form as may be specified;"

Annexure 2

Scrip Name	Date of Relisting	Public percentage as on 31-03-2020
Electrosteel Steels Limited	19-Jun-18	Delisted w.e.f. December 20, 2018
Monnet Ispat & Energy Limited	12-Sep-18	25.65
GB Global Limited	04-Jul-19	67.99
Ruchi Soya Industries Limited	24-Jan-20	0.97
Alok Industries Limited	19-Feb-20	93.85
Bafna Pharmaceuticals Limited	27-Feb-20	73.6

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