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Delisting Regulations in India and the Position of Minority Shareholders

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The Securities and Exchange Board of India ('SEBI') recently **announced** its plan to revisit the **SEBI (Delisting of Equity Shares) Regulations, 2021** ('Delisting Regulations') to simplify the procedure for determination of the exit of a listed company from stock exchanges. SEBI has established a committee under *Keki Mistry* to assess the possibility of replacing the existing system of reverse book building with the fixed price method. The idea behind this change is to curb the malpractice of hoarding shares of the company, prior to the delisting announcement, which is then used to manipulate the exit price. SEBI intends to remedy this situation by mandating a fixed price method of price determination which, if it fails, can be replaced with the reverse book-building procedure by the promoter/acquirer. However, it has failed to specify the rationale for this adoption of reverse book building as a second-stage option.



I argue that this change would go against SEBI's mandate of protecting the interest of investors, especially minority shareholders, who are in a vulnerable position in India due to the **concentrated shareholding system**. The existing provisions of the Delisting Regulations enable minority shareholders, in a limited way, to effectively challenge the delisting initiated by the promoter/acquirer. In such a situation, the proposed shift to fixed price method may severely curtail their ability to oppose the proposed delisting.

The Existing Framework

The Delisting Regulations provide for certain procedural safeguards to protect the interests of shareholders, especially the minority shareholders. These include the appointment of a peer review company secretary, who is required to certify that the proposed delisting is not the outcome of any fraudulent or deceptive scheme. Moreover, even the board of directors of the company is required to certify that the proposed delisting is in the best interest of the company, and that the delisting is in compliance with the applicable laws. Apart from this, the public shareholder votes required to approve the proposed delisting should be at least twice the number of votes cast against it by them. While this numerical threshold aims to prevent minority shareholders from being strong-armed into accepting the proposed delisting, the mandate of voting only through **postal-ballots** or **e-voting**, coupled with the limited participation of shareholders in such mechanisms of voting, hampers the communication of minority shareholders' interests in delisting resolutions.

Due to this, a fundamental safeguard for minority shareholders is the reverse book-building process. Since the **inception** of Delisting Regulations in 2003, SEBI has been clear about the benefits of the reverse book-building procedure over the fixed price method, as the former ensures transparency in price-determination and protects investors from losses arising due to market fluctuations. This transparency and protection were further strengthened with the introduction of a detailed price discovery mechanism based on three types of prices— the floor price (minimum price offered), the indicative price (minimum price with a premium offered by the promoter/acquirer), and the discovered price (the price determined through bids). The discovered price can be higher or lower than, or equal to the indicative price. If the discovered price is higher than the indicative price, then the acquirer/promoter has the option to reject the same and propose a counteroffer, which shall not be less than the book value of the company, as certified by the manager to the offer. Such a

detailed system based on the inter-relationships of three different prices is unique to India.

Moreover, for a delisting to be successful, the acquirer/promoter is required to receive a cumulative of 90% of the total issued shares of the company. Minority shareholders usually use the detailed price mechanism and the 90% threshold to block the delisting proposal. They acquire a sufficient number of shares to ensure that the 90% benchmark is not achieved and, by making an egregiously high bid than the indicative price or by not accepting the counteroffer (if received), they restrict the proposed delisting. This strategy was successfully employed in 2020 in the case of the delisting proposal of [Vedanta Resources Ltd.](#)

The Problem Ahead

In light of the use of the reverse book building process, as a defence strategy, I believe that a shift to the fixed price method may leave the minority shareholders completely defenceless, at the mercy of the price decided by the company's board. Be it a promoter-initiated delisting or an acquisition-driven one, the board led by the majority shareholders of the company (considering the controlled-shareholding pattern of India) possibly in collusion with the promoter/acquirer, would single-handedly decide the exit price of the shares without any inputs from the minority shareholders. In such a situation, minority shareholders would be left with the meagre protection accorded by the general directorial obligations of [reasonable care and good faith](#) in their dealings, and SEBI's [mandate](#) for the boards to treat the varied interests of all groups of shareholders fairly. Due to the absence of a specific duty of loyalty to the minority shareholders in cases of delisting, the efficacy of these general principles in protecting the interests of minority shareholders would remain uncertain.

Under the existing delisting framework, minority shareholders neither have any veto rights to oppose the proposed delisting, nor do they have the option to approach SEBI to challenge the delisting. In such a situation, the existing framework created by the reverse book building procedure in conjunction with other provisions of the Delisting Regulations, serve as an effective tool for minority shareholders to protect their interests. While I commend SEBI's focus on enhancing the ease of business, it should not come at the cost of protection of minority shareholders' interests. Hence, it is imperative that SEBI reassess its proposal of introducing the fixed price method, as it may have ramifications for effective corporate governance.