

Article

SAT order brings relief to small companies delisting

Nidhi Bothra

nidhi@vinodkothari.com

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Article

In the matter of M/s Trichy Distilleries and Chemicals Limited on the issue of Delisting of Small Companies, the Hon'ble Securities Appellate Tribunal (SAT), in its order dated November 4, 2011, has deliberated on the issue of whether ninety percent of the shareholders in number or shareholders holding ninety percent of the public shareholding in value irrespective of their numbers should consent to the proposal to delist a small company under Regulation 27(3)(d) of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009.

The shares of the Trichy Distilleries was exclusively listed on Madras Stock Exchange (MSE) and with the advent of National Stock Exchange (NSE) likes of MSE became defunct, hence there was no exit option available to the shareholders of such public companies. SEBI (Delisting of Equity Shares) Regulation, 2009 provided some exit route under Regulation 27(3)(d) and the promoters decided to provide the shareholders an exit option by getting the shares of the company delisted.

Under sub-regulation (1) and (2) of Regulation 27 of Delisting Regulations, the following are types of small companies that qualify for delisting:

1. A Company with a paid up capital up to Rs 1 Crore and its equity shares have not been traded in any recognized stock exchange in the one year immediately preceding the date of decision; or
2. A Company with 300 or fewer public shareholders and the paid up value of the shares held by such public shareholders in such company is not more than Rs 1 cr.

For the purpose of this regulation, public shareholders mean equity shareholders other than promoters. Delisting of equity shares for the aforementioned company could be done under Regulation 27(2). The company accordingly sought in-principle approval, sought shareholders' approval, sent a letter to the public shareholders offering to purchase their shares and sought their consent for delisting. As required under Regulation 27(3)(d), while the company was able to get consent of more than 90% of the shareholders in value, the number of shareholders giving consent did not add upto 90% of the public shareholders. Hence, MSE declined to delist the equity shares of the company on these grounds.

Referring to Section 87 of the Companies Act, 1956 on the principle of "one share, one vote," the Hon'ble SAT held that regulations are special provisions that operate against the backdrop of the Companies Act, 1956 and it would lead to absurdities if consent of ninety percent public shareholders in value was not accepted.

The interpretation of Hon'ble SAT in the judgment, would come as a relief to such small companies that were not able to avail the relaxations under the Delisting Regulations, 2009 as they were not able to acquire consent of 90% of the public shareholders in numbers and could not provide an exit route to the public shareholders who otherwise could not exit by trading in the market.