

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER**

ORDER

IN THE MATTER OF PROPOSED VOLUNTARY DELISTING OF EQUITY SHARES OF AMBATTUR ENTERPRISES LIMITED (FORMERLY KNOWN AS T & R WELDING PRODUCTS (INDIA) LTD.) UNDER SEBI (DELISTING OF EQUITY SHARES) REGULATIONS, 2009.

Date of Hearing: November 29, 2011

Appearances:

For Company:

1. Mr. Somasekhar Sunderasan, Partner, J. Sagar Associates
2. Mr. Paras Parekh, Associate, J. Sagar Associates, and
3. Mr. A. Janakiraman, CA and Partner, Guru & Ram

For SEBI:

1. Mr. Santosh Kumar Sharma, General Manager
2. Ms. Deepti Agrawal, Asst. General Manager, and
3. Mr. Amitesh Kumar, Asst. Legal Adviser

1. Ambattur Enterprises Limited (Formerly known as T&R Welding Products (India) Ltd.) (hereinafter referred to as “the Company”) is a listed company having its equity shares listed on the Madras Stock Exchange Limited (MSE). Consequent to the exemption granted by SEBI, vide order dated May 16, 2002, under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (Takeover Regulations), Mr. Manoj Kumar Sonthalia and Mrs. Kalpana Sonthalia (“the acquirers/ promoters”) had acquired 19,186 shares (82.34%) in the Company in terms of the said order. Now the promoters of the Company desire to delist its shares from MSE by giving exit offer to the public shareholders (holding 17.66%) of the Company in accordance with Chapter VII of the SEBI (Delisting of Equity Shares) Regulations, 2009 (“Delisting Regulations”).
2. The Company vide its letter dated August 10, 2010 requested SEBI to grant exemption from the following provisions of the Delisting Regulations in respect of its proposed voluntary delisting offer:
 - a) Regulation 8(1)(b)- the Company should obtain prior approval of 2/3rd majority of the public shareholders through postal ballot, in favour of delisting proposal.
 - b) Regulation 27(3)(a)- appointment of merchant banker for determining the exit price

c) Regulation 27(3)(d)- at least 90% of the public shareholders give their positive consent in writing to delisting proposal as well as to the offer of exit price.

3. SEBI had not acceded to the above request of the Company and communicated its decision vide its letter dated November 30, 2010 which was challenged before the Hon'ble Securities Appellate Tribunal (SAT) by the Company in Appeal No. 20 /2011. In the appeal Hon'ble SAT passed the following order on September 02, 2011:-

“In this view of the matter, we set aside the impugned communication and remit the case to the respondent Board for passing a fresh order in accordance with law giving reasons in support of its conclusions. In case the appellant applies to the Board for a personal hearing the same shall be granted to it before passing the final order.”

4. An opportunity of personal hearing was granted to the Company on November 29, 2011 before me. Before the scheduled date of hearing, the Company filed a representation dated November 24, 2011. The Company appeared on November 29, 2011 and made oral submissions through its authorized representatives. The Company was given four weeks time to file written submission which it filed vide its letter dated December 26, 2011.

5. I have carefully considered the application dated August 10, 2010, oral as well as written submissions made on behalf of the Company and other relevant material available on record. The relevant provisions of the Delisting Regulations are reproduced below:

Reg 8(1):

“8. (1) Any company desirous of delisting of its equity shares shall,

(a).....

(b) obtain the prior approval of shareholders of the company by special resolution passed through postal ballot, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution:

Provided that the special resolution shall be acted upon if and only if the votes cast by public shareholders in favour of the proposal amount to at least two times the number of votes cast by public shareholders against it.”

Reg 25:

“Power of the Board to issue clarifications.

25. In order to remove any difficulties in the application or interpretation of these regulations, the Board may issue clarifications and guidelines in the form of circulars.”

Reg 27(3):

“Special provisions in case of small companies.

27. (1)

(2)

(3) A delisting of equity shares may be made under sub-regulation (1) or sub-regulation (2) only if, in addition to fulfillment of the requirements of regulation 8, the following conditions are fulfilled:-

(a) the promoter appoints a merchant banker and decides an exit price in consultation with him;

(b) the exit price offered to the public shareholders shall not be less than the price arrived at in consultation with the merchant banker;

(c) the promoter writes individually to all public shareholders in the company informing them of his intention to get the equity shares delisted, indicating the exit price together with the justification therefor and seeking their consent for the proposal for delisting;

(d) at least ninety per cent of such public shareholders give their positive consent in writing to the proposal for delisting, and have consented either to sell their equity shares at the price offered by the promoter or to remain holders of the equity shares even if they are delisted;

(e) the promoter completes the process of inviting the positive consent and finalisation of the proposal for delisting of equity shares within seventy five working days of the first communication made under clause (c);

(f) the promoter makes payment of consideration in cash within fifteen working days from the date of expiry of seventy five working days stipulated in clause (e).”

6. I note that in the application dated August 10, 2010 the Company had submitted that its shares are listed only in the MSE and there is no active trading in its shares since 1995. The MSE has not been operational over a decade and there is no advantage of shares of the Company being listed on MSE. Further, the promoters are unable to off load their

shareholding to public to increase public shareholding to 25% to comply with the continuous listing requirements under clause 40A of the Listing Agreement. Therefore, the Company proposes to delist its shares from MSE in accordance with special provisions for small companies in the Delisting Regulations. According to the Company this is the only option available to it in view of difficulties faced by promoters. As on the date of the application, remaining 17.66% shares of Company are held by 32 public shareholders out of which one shareholder viz Tamil Nadu Industrial Corporation (TIIC) holds 15.79% shares of the Company. Majority of the 31 public shareholders are not available at their available address and their present address could not be ascertained. The Annual Reports sent to shareholders are returned undelivered in majority of the cases. In view of these circumstances, it will be difficult to obtain requisite public shareholders' approval under regulation 8(1) (b) and 27(3) (d). The Company had also submitted that as the only public shareholder who can be contacted and negotiated for determining the exit price is TIIC, the promoters may be exempted from appointment of a merchant banker for finalizing the exit price. Further, the price finalized for the shares held by TIIC would be offered to any other public shareholder willing to sell the shares.

7. The Company, in its oral and written submissions, has now revised its request and has submitted that the requirements of obtaining prior approval of 2/3rd majority of public shareholders by special resolution passed through postal ballot [*regulation 8(1)(b)*] and positive consent of at least 90 % public shareholders [*regulation 27(3)(d)*] may be exempted in this case. The Company has proposed and is willing to comply with the following conditions in the event of the voluntary delisting being allowed by SEBI:

- a. *The company would appoint a merchant banker to value the fair price that the Company ought to offer to the shareholders in the event that they wish to surrender their shareholding to the promoters pursuant to the Delisting. The Company is willing to appoint any merchant banker who is approved by SEBI or among a list suggested specifically by SEBI for this purpose;*
- b. *The Company would advertise in national and local newspaper/s about the Delisting as SEBI requires;*

- c. *The offer to procure shares being offered by the shareholders of the Company would be kept open until a period of one year after the Delisting or upto such reasonable time that SEBI requires.*
 - d. *The promoters of the Company would undertake to procure remaining shares (upto a ceiling) offered by the public shareholders of the Company even after the expiry of the pendency of the offer for the Delisting. [The consideration in this regard would be deposited in a separate escrow account created for such purpose from where payouts could be effected.]*
 - e. *In the unlikely event that there is a claim by any shareholder of the Company in relation to the Delisting, the Company would defend the same at its own costs without requiring SEBI to be a party to the same.”*
8. The Company has submitted that serious difficulties have arisen in relation to the implementation of the provisions of the Delisting Regulations. There are factors beyond the Company’s control on account of which it is not possible for the Company to be able to comply with the requirements of approval of 2/3rd majority of public shareholders and obtaining positive consent of 90 % of the public shareholders of the Company. Most of the shareholders are not traceable and this factor was considered by SEBI while granting exemption under the Takeover Regulations in 2002.
9. The Company has further submitted that on account of the requirement of the Government (*of Tamil Nadu*), the TIIC, which is the largest public shareholder (holding 15.79% shares of the Company), would not be in a position to participate in the delisting process and it would neither agree nor disagree to the proposal of delisting. Further, in view of non -participation of TIIC and given the unavailability/unresponsiveness of other public shareholders of the Company, it is not possible for the Company to meet the requirements of approval of 2/3rd majority of public shareholders and obtaining the positive consent of 90% public shareholders on proposed delisting offer. Therefore, the exemption from these conditions has been sought.
10. The Company has contended that the provisions of regulation 25 of the Delisting Regulations read in the context of the wide powers conferred upon SEBI under Sections 11(1), 11A, 11B and 30 of the SEBI Act, 1992 includes within its fold any *measure* that

SEBI may be required to take to protect the interests of investors. Such *measures* would include granting, in the interest of investors, the exemptions from the requirements under the Delisting Regulations that may become impossible to be complied with.

11. I note that the Delisting Regulations has been made in exercise of the powers conferred by section 31 read with section 21A of the Securities Contracts (Regulation) Act, 1956 (SCRA), section 30, section 11(1) and section 11A(2) of the SEBI Act. Section 11(1) casts a duty on the Board to protect the interest of investors in the securities and to promote the development of and to regulate the securities market by such '*measures*' as it thinks fit. The test for such '*measures*' is the 'investors interest', 'promotion of the development' and 'regulation' of the securities market. The Delisting Regulations have to be administered and implemented keeping in view the objective of sections 11(1) and 11A (2) of the SEBI Act and conditions of delisting prescribed under the SCRA and the Securities Contracts (Regulation) Rules, 1957 (SCRR). I note that there is no provision in SCRA, SEBI Act, SCRR and the Delisting Regulations either for filing exemption application or grant of exemption from the requirements and conditions of delisting under the Delisting Regulations. In this regard, reliance of the Company on sections 11, 11A (2), 11B and section 30 of the SEBI Act is misplaced.
12. Regulation 25 of the Delisting Regulations empowers SEBI to issue clarification and guidelines in the form of circulars in order to remove any difficulty in the application or interpretation of the regulations. The intention of the regulation is to enable administration of regulations by removing difficulties in the application of regulations which are faced generally. This regulation does not enable SEBI to grant exemption from the requirements and conditions for delisting stipulated in the Delisting Regulations on specific requests as in this case.
13. This case falls under Chapter VII of the Delisting Regulations. Regulation 27 of this Chapter provides for the special provisions in case of small companies which fulfill the criteria provided in sub-regulation (1) or (2). Sub-regulation (3) provides for conditions of voluntary delisting of such companies. As per sub-regulation (3), a delisting of equity shares may be made by such companies under Chapter VII only if, in addition to fulfillment of the requirements of regulation 8, the other conditions specified in

regulation 27(3) are also fulfilled. Regulation 27(3) provides for conditions subject to compliance of which the benefit of special provision under Chapter VII is available. The requirements contemplated under regulation 8(1) (b) and 27(3) (d) are substantial conditions and are *sine qua non* for availing the benefit of the special provisions of Chapter VII. It is settled position that if any relaxation is available subject to compliance of conditions, the conditions have to be interpreted and implemented strictly and no exemption from those conditions can be granted.

14. In this regard, it is also pertinent to mention that the Hon'ble SAT in its order dated November 04, 2011 in the matter of *V. T. Somasundaram and other Vs. SEBI* has observed that:

“Delisting of equity shares under regulation 27(2) could be done only after fulfilling the requirements of regulation 8 of the regulations which falls in chapter III. Under regulation 8, the company is required to obtain the approval of its shareholders by way of a special resolution passed through postal ballot. It is the requirement of regulation 8(1)(b) that the votes cast by “public shareholders” in favour of the proposal to delist should be atleast two times the votes cast against such proposal.”

15. In this case, it is an admitted fact that TIIC, a major public shareholder holds 3680 shares (89.45% of total public shareholding) is available and contactable and impossibility has not arisen on account of non-availability of all public shareholders. Exemption from conditions of approval of 2/3rd of public shareholders by passing special resolution through postal ballot and taking positive consent of 90% public shareholders has been sought because TIIC would not participate in the delisting process. Even if it is assumed, for the sake of argument, that the exemption from these conditions could be granted, in my view, the grant of such exemption would defeat the objective and spirit of those conditions. As sated above, the above requirements are conditions subject to which benefit of voluntary delisting under Chapter VII is available. Hon'ble SAT in the above mentioned *V. T. Somasundaram* case has also held that a company would become eligible for delisting its equity shares under regulation 27(3) (d) if the public shareholders holding 90% or more of the public shareholding give their positive consent to delisting. Voting in favour of delisting and giving positive consent in respect of delisting is the prerogative of a public shareholder and SEBI cannot dilute the

same by granting exemption, because a public shareholder holding majority of public shareholding is though traceable and available but is not willing to participate in the delisting process.

16. I also note that in terms of section 21A of the SCRA, securities of a company may be delisted by the recognized stock exchange on the grounds prescribed in the SCRR. A company making voluntary delisting offer is also required to comply with the provisions of Rule 21(3) of the SCRR which states as under:-

“(3) A recognized stock exchange may, on the request of the company, delist any securities listed thereon in accordance with the regulations made under the Act by Securities and Exchange Board of India, subject to the following conditions, namely:-

(a) the securities of the company have been listed for a minimum period of three years on the recognized stock exchange;

(b) the delisting of such securities has been approved by the two-third of public shareholders; and

(c) the company, promoter and/or the director of the company purchase the outstanding securities from those holders who wish to sell them at a price determined in accordance with regulations made by Securities and Exchange Board of India under the Act;

Provided that the condition at (c) may be dispensed with by Securities and Exchange Board of India if the securities remain listed at least on the National Stock Exchange of India Limited or the Bombay Stock Exchange Limited.”

17. I note that the proviso to Rule 21(3) of the SCRR permits SEBI to dispense with the condition prescribed in clause (c) only and the company making voluntary delisting offer must comply with other conditions. The Delisting Regulations are in addition to the conditions prescribed in the SCRR. Under section 11 and 11A of the SEBI Act, SEBI can not grant exemption from the conditions stipulated in SCRR. Even if it is assumed that the exemption could be granted from compliance of the provisions of Delisting Regulations, the conditions stipulated under Rule 21(3) (b) the SCRR, shall have to be still complied with by the Company.

18. In view of the aforesaid reasons, the request made by Ambattur Enterprises Limited [Formerly known as T& R Welding Products (India) Ltd.] seeking exemption from provisions of regulations 8(1)(b) and 27(3)(d) of the SEBI (Delisting of Equity Shares) Regulations, 2009 in respect of its proposed voluntary delisting offer cannot be acceded to . The request of the Company is accordingly disposed of.

DATE: February 28, 2012
PLACE: MUMBAI

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA