**WTM/GM/CFD/30/2019-20**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

**UNDER SECTIONS 11(1) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 25A OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (DELISTING OF EQUITY SHARES) REGULATIONS, 2009.**

**IN THE MATTER OF PROPOSED DELISING OF EQUITY SHARES OF BHILAI ENGINEERING CORPORATION LIMITED**

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**Background**

1. Securities and Exchange Board of India (SEBI) vide an ex-parte interim order dated June 04, 2013 (Interim Order) had issued directions against 105 listed companies, including Bhilai Engineering Corporation Limited (BECL / the company) *inter alia* freezing the voting rights and corporate benefits like dividend, rights, bonus shares, split etc. in respect of the proportion of promoter / promoter group shareholding which was in excess of the minimum public shareholding (MPS) norms, as stipulated under Rule 19A of the Securities Contracts (Regulations) Rules, 1957 (SCRR), prohibiting the promoters/promoter group of the company from buying, selling or dealing in the securities of the company except for the purpose of complying with MPS requirements, and restraining the directors of the company from holding any new position as a director in a listed company, till such time the company complied with such MPS requirements.

2. In response to the Interim Order, BECL submitted *inter alia* that compliance with the MPS norm was not a feasible option for the company. It further submitted that it proposed to delist its equity shares from the Bombay Stock Exchange and other stock exchanges where its scrip is listed, which was the only practicable and viable route available to the company. Subsequently, since the company remained non-compliant with MPS requirements, SEBI, vide an order dated December 29, 2015 (Confirmatory Order), confirmed the said directions issued against BECL vide the Interim Order. The Confirmatory Order had observed *inter alia* that though the company proposed to voluntarily delist its equity shares from all stock

exchanges, the said proposal did not appear to be serious, since the company had neither taken any concrete steps towards the delisting process prior to June 04, 2013 or afterwards nor had it fixed any timeline for completing the same.

3. Subsequently, the company filed an appeal before the Hon'ble Securities Appellate Tribunal (SAT) (Appeal No. 410 of 2018) *inter alia* for quashing the said orders and directing SEBI to consider the company's request to delist its shares voluntarily. In the course of the appeal proceedings, the Hon'ble SAT vide its order dated March 25, 2019 granted leave to the company to file an application before SEBI under Regulation 25A of the SEBI (Delisting of Equity Shares) Regulations, 2009 (the Delisting Regulations) and directed that if such an application was filed, SEBI would take appropriate measures in deciding the said application as expeditiously as possible, preferably within a period of six weeks from the date of the order.

4. In pursuance of the abovementioned order of the Hon'ble SAT, the company has filed an application dated June 06, 2019 (the Application) before SEBI under Regulation 25A of the Delisting Regulations. Subsequently, it has filed written submissions dated July 06, 2019 and July 08, 2019. The company was granted an opportunity of personal hearing in the matter on July 08, 2019, which was attended by its authorized representatives, namely Shri Sumit Agrawal (Partner, Regstreet Law Advisors), Shri Mahaveer Rajguru and Shri Ravi Shekhar Pandey, Advocates. Later, the company filed further written submissions dated July 19, 2019 and July 22, 2019. The company has made *inter alia* the following submissions in the Application, its abovementioned written submissions and during the personal hearing:

   (a) The company was originally incorporated on 03.12.1960 and had come out with its public issue in the year 1983. It currently has a total of issued, subscribed and paid up capital of Rs.4,71,93,200/- divided into 47,19,320 equity shares of Rs.10/- each. The promoter holding in the company since 1997 has been above 95% and presently, the same is 99.83%. The total number of public shareholders in the company is 5 who collectively hold 7890 shares (0.17%). The details of the shareholding pattern of the company are as under:

| **Particulars** | **No. of Shares** | **Percentage** | **No. of Shareholders** |
|---|---|---|---|
| Promoters | 47,11,430 | 99.83% | 33 |
| Public | 7,890 | 0.17% | 5 |
| Total | 47,19,320 | 100% | 38 |

(b) The shares of the company were listed on BSE, the Kolkata Stock Exchange (KSE) and Madhya Pradesh Stock Exchange (MPSE) (granted exit by SEBI vide order dated 09.06.2015). The trading in the scrip of the company was suspended with effect from 01.10.2002 by BSE and the suspension continues.

(c) Post the suspension of trading in shares of the company by BSE in 2002 and even before the Interim Order, the company had taken concrete steps to comply with the pending compliance requirements and had written to BSE on various occasions requesting for the list of pending compliances. On receiving a list of such non-compliances from BSE and also *suo moto*, the company has been ensuring compliances with the various requirements under the Listing Agreement and the SEBI (Listing Obligations and Disclosure Requirements) Regulations (LODR) and has been providing satisfactory replies to the queries raised by the BSE. However, while the company was continuously taking tangible measures for ensuring compliances with the BSE requirements for ensuring revocation of suspension, SEBI passed the Interim Order against the company.

(d) Even though SEBI Circular dated December 16, 2010 and various subsequent amendments have provided various methods for complying with the MPS requirements, it was not practically viable for the company to achieve MPS compliance by adopting any of them due to various reasons, which are as follows:

(i) The shares of the company were suspended from trading since 2002 from BSE and there was no trading on the remaining two stock exchanges (KSE and MPSE).

(ii) Due to adverse market conditions, there were no takers / buyers for the shares of the company, especially to the extent of reducing promoters' holding from 99.83% to 75%.

(iii) Increasing the public shareholding through rights issue and bonus issue was not feasible since the prevailing public shareholding was a meagre 0.17%.

(iv) Further, the intention of the promoters / promoter group of the company is to delist the company, and accordingly, any attempt to increase the public shareholding will be futile, even if the same was feasible.

(e) Due to the aforesaid reasons, the company, on 26.06.2013 (immediately following the Interim Order) informed SEBI that it had decided to voluntarily delist the company in accordance with the Delisting Regulations. In furtherance to the company's intention to delist, it took the following concrete steps:

(i) The company appointed a consultant to co-ordinate with BSE for all activities relating to delisting and communicated the same to BSE vide letter dated 26.06.2014.

(ii) It applied to BSE for Capital Confirmation Certificate vide letter dated 04.07.2014.

(iii) It undertook various compliance activities, like submission of financial statements and reports, payment of listing fees and various other compliances under SEBI Regulations.

(iv) Vide letter dated 11.08.2014, the company made representation to SEBI requesting it to allow the commencement of voluntary delisting process by lifting the restrictions on acquisition of shares by promoters imposed in the Interim Order. The company also reiterated the said request during the personal hearing on 08.07.2015 and in its letter dated 10.07.2015.

(v) The company also obtained consent for delisting from 2 public shareholders, holding 7,649 shares in total, on 22.06.2015.

(f) Even though the aforesaid steps by the company clearly showed that it was making genuine attempts in getting voluntarily delisted, SEBI viewed the same as non-serious and passed the Confirmatory Order.

(g) Subsequent to the passing of the Confirmatory Order, the company has initiated various steps and has taken active measures to ensure compliance with the delisting process under Delisting Regulations. The same is evident from the following:

(i) The Board of the company on 25.02.2016 has approved the delisting of shares of the company, the appointment of a Merchant banker for fixation of exit price and the appointment of a scrutinizer for votes received by postal ballot.

(ii) The Merchant Banker has submitted the valuation report dated 25.03.2016 and has estimated the fair value of the equity shares of the company as on 31.03.2015.

(iii) On 26.03.2016, the company dispatched notice of postal ballots for passing resolution for delisting to the shareholders. The same was also published in newspapers.

(iv) The company vide letters dated 13.04.2016 informed BSE, KSE and MPSE of the board's approval of the proposed delisting.

(v) On 29.04.2016, the scrutinizer submitted its report wherein the shareholders' approval by postal ballot for the proposed delisting was received by the requisite majority. Intimation of the same was also given to BSE on 03.05.2016.

(h) As on date, out of the 5 public shareholders of the company, the company has identified 4 shareholders, who together hold 7,863 shares out of total public shareholding of 7,890 equity shares, which means consent of 99.66% of the public shareholders has been obtained. Only one public shareholder holding 27 shares has not responded to the company. However, due to the Confirmatory Order, since the promoters continue to be prohibited from buying the shares of the company from public shareholders, the company is unable to proceed with the delisting process.

(i) Since the shares of the company are suspended from trading since 2002, the investments of the public shareholders have become illiquid. Delisting will provide these public shareholders an opportunity to liquidate their shares and exit from the company, thereby ensuring that their interests are protected.

(j) The promoters have not taken any advantage arising out of non-compliance with the MPS norms. The company has not declared any dividend since 1994-95 and no corporate benefits have been enjoyed by the promoters.

(k) As on July 19, 2019, the company is in complete compliance of the BSE requirements, as intimated to it by BSE vide letter dated March 13, 2019.

(l) The company is eligible for delisting under the special provisions for small companies as provided in Regulation 27 of the Delisting Regulations. Under Regulation 27 of the

Delisting Regulations, the company is not required to follow the procedure specified in Chapter IV thereof.

5. In view of the above, the company vide the Application dated June 04, 2019 filed under Regulation 25A of the Delisting Regulations and the subsequent submissions, has prayed for the following relaxations/ exemptions:

   (a) ***Modification of the Interim Order and Confirmatory Order*:** The company requests modifications to the extent necessary to allow the promoters of the company to buy the equity shares of the company held by the public shareholders as may be available and tendered by them in the delisting process and to enable them to exit from the company and allow the company a reasonable time to carry out the delisting procedure in consultation with the stock exchanges where the shares are listed.

   (b) ***Exemption from the requirement of dematerialization of the promoters' shareholding:*** Since the promoters are holding 99.83% shares, such technicality should not become a hindrance to the completion of the delisting process.

   (c) ***Exemption from Regulation 27(1)(c) of the Delisting Regulations:*** The said provision requires that a company should not have been suspended by any of the recognised stock exchanges having nation-wide trading terminals for any non-compliance in the preceding one year, in order to be eligible for taking recourse to special provisions for small companies as provided under Regulation 27 of the Delisting Regulations. While the company is suspended from 2002 by BSE which remains in force, the company has not been suspended by any stock exchange in the last one year. However, as an abundant caution, exemption from Regulation 27(1)(c) is requested.

   (d) ***Exemption from MPS requirements:*** The company requests exemption from compliance with MPS norms as stipulated under Rule 19(2)(b) and Rule 19A of the SCRR, since no purpose is likely to be served by asking the promoters to first bring down the holding to 75% and then asking for acquiring it fully in order to enable delisting.

6. Since the company had submitted that it was eligible to follow the special route provided under Regulation 27 of the Delisting Regulations, SEBI vide email dated August 07, 2019 asked it to substantiate the said claim with supporting evidences. Pursuant to the same, the company vide letter dated August 08, 2019 has submitted *inter alia* the following:

   (a) Prior to the amendment of the Delisting Regulations in 2015 (2015 Amendments), the company was eligible for delisting under special provisions for small companies as per Regulation 27(2) of the Delisting Regulations as they stood before the 2015 Amendments. According to Regulation 27(2) of the Delisting Regulations (prior to 2015 Amendments), where a company had three hundred or fewer public shareholders and where the paid up value of the shares held by such public shareholders in such company was not more than one crore rupees, its equity shares could be delisted from the stock exchanges where they were listed, without following the procedure in Chapter IV of the Delisting Regulations. Since the total public shareholders in the company were five and their holding was only 7,890 shares of Rs.10 each, the company was eligible to follow the special provisions applicable to a small company, prior to the 2015 Amendments.

   (b) As regards meeting the eligibility conditions for delisting under special provisions for small companies as stipulated under the revised Regulation 27 (post 2015 Amendments), the company is fulfilling the same, except some conditions provided under Regulation 27(1)(a) and 27(1)(c). Under Regulation 27(1)(a), a company needs to have a paid-up capital of less than Rs.10 Crores and net worth of less than Rs.25 Crores as on the last date of the preceding financial year. In this regard, while the company is not meeting the condition pertaining to net-worth limit, it is meeting the condition pertaining to paid-up capital limit, since it has a paid up capital of Rs.471,93,200, which does not exceed Rs.10 Crores. Further, the company is in compliance with the requirement under Regulation 27(1)(b) since there was / is no trading in the shares of the company on the stock exchanges since 2002.

   (c) While the company has already prayed for exemption from the requirements under Regulation 27(1)(c), it further requests SEBI to grant exemption to the company from complying with the requirements pertaining to the net worth, as contained in Regulation

27(1)(a) of the Delisting Regulations, to the extent required for the company to be eligible under Regulation 27 of the Delisting Regulations.

(d) As regards the compliance with the requirement of Regulation 27(3) of the Delisting Regulations, the company has taken various steps, which include Board approval for delisting and appointment of Merchant Banker, Valuation Report by the Merchant Banker, Publication of Notice of Postal Ballots, Shareholders approval etc.

(e) The company undertakes to ensure compliance with the requirement of Regulation 27(3) of the Delisting Regulations and once again obtain fresh approval and valuation as may be required to ensure eligibility under Regulation 27 of the Delisting Regulations.

**Consideration of issues**

7. I have considered the facts of the case, the submissions of the company as contained in the Application and subsequent letters and other material available on record. After examination of the same, I note that the promoters have continuously held more than 95% equity shares of the company since 1997, which increased to 99.83% as on December 31, 2010 and remains so as on date, indicating that the breach of MPS norms by the company did not take place subsequent to incorporation of the said norms in SCRR in 2010. The total public shareholding in the company as on date is a meagre 0.17% and the total number of existing public shareholders is only 5. Given such low public shareholding in the company, coupled with the fact that the scrip of the company has remained suspended since 2002, the scrip is practically illiquid and makes it difficult for the public shareholders to realise the real economic value of the shares held by them.

8. I further note that the company had declared its intention to delist its shares immediately after the issuance of the Interim Order in 2013 and has taken various steps in this regard post the issuance of Confirmatory Order in December 2015. Further, as per the company's submissions, four out of five existing public shareholders have already given their consent for delisting and only one shareholder, holding 27 shares, has not responded to the company's notice.

9. I note that the company has submitted that it has complied with all the pending compliances with BSE, as pointed out in BSE's letter dated March 13, 2019. However, I note that the BSE

vide email dated August 05, 2019 to SEBI has informed that apart from remaining non-compliant with the MPS norms as on June 30, 2019, the company has certain pending compliances, as provided in the table below.

| SR | Description | Provisions of LODR, 2015 | Pending submission for quarter/ half year/ Financial Year |
|---|---|---|---|
| 1 | Certificate | 40(9,10) | Half Year - September 2018, March 2019 |
| 2 | Standalone Results | 33 | March 2018, June 18, September 2018, December 2018, March 2019 - The company did not file Standalone Financial Results in PDF format. |

10. I note that as per available records, there are no investor grievances pending against the company as on date.

11. Considering all the above mentioned facts and observations in totality, I am of the view that there is no useful purpose for either the company or its public shareholders for the company to remain listed and that the company may be permitted to delist its shares in accordance with the provisions of the Delisting Regulations. However, I note that the company is unable to proceed with the proposed voluntary delisting and has sought certain relaxations from SEBI in this regard, as detailed under para 5 and para 6(c) above. The company has prayed that it be permitted to follow the relaxed norms of delisting for small companies, as provided under Regulation 27 of the Delisting Regulations, although it is not compliant with the requirement pertaining to net worth as stipulated under Regulation 27(1)(a) and the requirement that it should not remain suspended by the stock exchanges for any non-compliance in the preceding one year, as stipulated under Regulation 27(1)(c) of the Delisting Regulations. I am of the view that while the said requirements ought not to be relaxed under normal circumstances, considering the fact that the company has only 5 public shareholders holding 0.17% equity shares of the company in total, relaxing the said conditions will not adversely impact the investors' interests. Thus, I am inclined to grant the said relaxations, given the special context of this case.

12. I note that even after grant of exemption from compliance with requirements as stipulated under Regulations 27(1)(a) and 27(1)(c) of the Delisting Regulations, the company's non-compliance with the MPS norms would still come in the way of delisting. The company has sought exemption from the compliance of the said requirement. Further, it has sought

exemption from the requirement of dematerialization of promoters' shareholding, since they already hold 99.83 % shares. Lastly, it has sought relaxation of the prohibitions on the promoters and directors of the company on acquisition of shares by them, imposed by the Interim Order and the Confirmatory Order, since in the absence of the same, the delisting process would not proceed. Having considered all the facts and circumstances of the case in totality, I am inclined to grant the abovementioned relaxations, to enable delisting of the company, subject to certain conditions.

**Directions**

13. In view of the above, in the interest of investors in the securities market and in compliance with the direction of the Hon'ble SAT in the instant matter issued vide order dated March 25, 2019, I, in exercise of powers under Section 11(1) and 11B of the SEBI Act, 1992 and Regulation 25A of the Delisting Regulations, and in supersession of para 10 of the Confirmatory Order, hereby issue the following directions:

(a) For the purpose of the proposed delisting of equity shares, the company shall be exempt from compliance with the MPS norms and the requirement to maintain promoter / promoter group shareholding in dematerialized form. However, the company shall ensure completion of all the pending compliances with the BSE, as mentioned in the Table under para 9 above.

(b) For the purpose of delisting under the special provisions applicable to small companies, as provided under Regulation 27 of the Delisting Regulations, the company shall be exempt from meeting the eligibility conditions stipulated under Regulation 27(1)(a) of the Delisting Regulations, to the extent they pertain to net-worth, and that stipulated under Regulation 27(1)(c) of the Delisting Regulations.

(c) The company shall complete the delisting process by March 31, 2020 and shall report the outcome within one (1) month's period from the date of completion of the delisting process.

(d) The direction issued in paragraph 17(b) of the Interim Order stands modified / relaxed to the extent that it shall not hinder the already commenced voluntary delisting process initiated by the company and that its promoters and directors shall be permitted to buy

the equity shares from the company's existing public shareholders as part of the delisting offer.

(e) The direction contained in 17(b) of the Interim Order shall be re-imposed / revived immediately (without the need for passing of a separate order) in case the delisting process of the company is not successful within the period directed in sub-paragraph (c) above.

(f) Upon the company getting delisted in accordance with this order, the directions contained in para 17 of the Interim Order shall stand vacated automatically without any further order.

(g) The company shall ensure compliance with the requirement of Regulation 27(3) of the Delisting Regulations and shall obtain fresh consent of the public shareholders for delisting proposal and carry out fresh valuation exercise for calculation of the exit price, as may be required to ensure eligibility for following the special provisions applicable to small companies, as provided under Regulation 27 of the Delisting Regulations.

(h) In case the proposed delisting is successful, the promoters / promoter group shall continue to accept shares tendered by any remaining public shareholder holding such equity shares, for a minimum period of one year from the date of the delisting, at the same price at which the shares were earlier accepted from other public shareholders while delisting.

14. This order shall come into force with immediate effect.

15. A copy of the order shall be served upon the depositories and the concerned stock exchanges.

**Place: Mumbai**
**Date: August 19, 2019**

**G. MAHALINGAM**
**WHOLE TIME MEMBER**
**SECURITIES AND EXCHANGE BOARD OF INDIA**