BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

IN THE MATTER OF DELISTING OF EQUITY SHARES OF REIL ELECTRICALS INDIA LIMITED

Background –

1. Securities and Exchange Board of India ("**SEBI**") received an application dated March 29, 2018 ("**Application**"), from REIL Electricals India Limited ("**REIL/Applicant**"), under Regulation 25A of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, seeking exemption from the provisions of regulation 27(3) (c) & (d) of Chapter VII (i.e Special Provisions for the small Company and delisting by operation of law) of SEBI (Delisting of Equity Shares) Regulations, 2009 which states that at least ninety per cent of the public shareholders should give positive consent in matter of voluntary delisting of the Company's equity shares.

2. Facts relevant to the case as borne out from the application made by REIL, written submissions dated June 18, 2018 and September 19, 2018 and oral submissions made during the opportunity of personal hearing on September 12, 2018 granted to REIL are as follows:

(i) REIL was incorporated on April 11, 1973 and was formerly known as Sahney Paris Rhone Limited. The shares of the Company are listed on BSE Limited ("BSE") since 1978. Currently the Promoters/PACs of the Company hold 37,06,550 Equity Shares representing 98.19% of the issued and paid-up capital. A nominal percentage of 1.81%, i.e. 68,450 Equity shares are held by public shareholders and the total number of public shareholders are 456 as on March 20, 2018.

(ii) As the Company was unable to meet the minimum public shareholding criteria, SEBI vide order dated 26.05.2014 advised the Company to (1) off-load the Promoter shareholding to increase the Public Shareholding to meet the minimum public shareholding criteria; or (2) voluntarily delist

the Company's Shares from the Stock Exchange. In this regard, company had opted for making the voluntary delisting offer to the public shareholders for delisting the equity shares of the company from BSE Limited. The voluntary delisting offer was made by REIL, but the same had failed as it could not get the desired number of shares/shareholders to participate in the Delisting offer.

(iii) As on date, the number of public shareholders is 457 (68,450 shares) and out of this, 127 shareholders (holding 20,200 shares) have their holdings in demat form. REIL has enclosed the full list of shareholders with their addresses and holdings details.

(iv) Between 1-Jan-2014 and 31-Dec-2017, only 2,800 Equity Shares were traded on the stock exchange, which represents 0.074% of total paid-up capital. Between 1-Jan-2014 and 31-March-2018 only 3,500 Equity Shares were traded on the stock exchange, which represents 0.08% of total paid-up capital and the last trading took place on 02nd February 2018.

(v) 184 public shareholders out of 396 Public shareholders had not encashed dividend warrants for the year 2011-12 which was the last financial year when dividend was declared by the Company.

(vi) REIL was originally listed on BSE in the year 1978 and over the years the public shareholding had come down to 1.82% due to foreign collaborator acquiring shares from public during the year 1998. The company no longer has any foreign technical collaboration in place. The company which was into manufacturing of starter motors currently has only one factory operating in Puducherry. The company's business is not expanding due to technological obsolescence. The turnover of the company in the last 3 financial years is averaging around of Rs.16 crore (Rupees Sixteen Crore only) with marginal profits.

(vii) Since there are no growth prospects and with a low EPS, company is unable to attract new investors to increase public shareholding to the minimum levels required by offloading the promoter shareholding in lieu of maintaining the Minimum Public Shareholding of 25% of total share capital under the provisions of Regulation 38 of SEBI (LODR) Regulation

read along with Rule 19A of the Securities Contracts (Regulation) Rules, 1957 ("**SCRR**").

(viii) The RTA had sent communications to shareholders on the 26.10.2015, 09.09.2016 and 20.03.2017 for updation of addresses and converting the holdings into demat form but the response has been very poor as only 127 are in demat form as of date. Company has also during the last few years engaged the services of outside agencies to contact the shareholders at the given addresses, but this effort also did not yield any result.

(ix) When the delisting offer was made in 2014, the number of public shareholders was 392 with demat holding being about 25, whereas now the number of such shareholders is 457 and out of them the demat holders are 127. At the time of making the offer in 2014, Company had advertised in Financial Express (all editions) and Andhra Prabha (vernacular newspaper) as per the guidelines of SEBI.

(x) REIL has stated that out of the communications sent to the public shareholders, the communication got returned undelivered in the case of 153 shareholders. In this situation, obtaining positive consent from 90% of the public shareholders for complying with the requirements of Regulation 27 of the SEBI delisting Regulations is difficult.

(xi) The RTA has confirmed that that there are no investor/shareholder grievances pending.

3. Based on the above facts, the following submissions were made by the Applicant:

(i) Since the Company is eligible to make the Delisting Offer to the public shareholders of the Company under Chapter VII (Special Provisions for the small Companies and Delisting by operation of law) of SEBI (Delisting of Equity Shares) Regulations, 2009, REIL has requested for permission to make the delisting offer with certain relaxations.

(ii) REIL has sought relaxation from compliance with the Minimum Public Shareholding requirement.

(iii) Applicability of regulation 27(3) (c) & (d) of Chapter VII (Special Provisions for the small Company and delisting by operation of law of SEBI (Delisting

of Equity Shares) Regulations, 2009 which states that at least ninety per cent of such public shareholders should give positive consent for the said delisting of the Company, may be relaxed in the case of the Applicant by exemption. REIL has undertaken to accept the shares of all the public shareholders at the exit price during the exit offer period of one year and also to extend the exit offer period to another one year period to facilitate all the public shareholders to avail the exit opportunity.

Delisting Regulations and scope of SEBI's powers

4. The requirement to maintain Minimum Public Shareholding in a listed company was explicitly laid out by way of insertion of Rule 19A in the Securities Contracts (Regulation) Rules, 1957 ("**SCRR**") with effect from June 04, 2010. Rule 19A as it reads as follows:

> *"**Continuous Listing Requirement.***
>
> ***19A.** (1) Every listed company other than public sector company shall maintain public shareholding of at least twenty five per cent.:*
>
> *Provided that any listed company which has public shareholding below twenty five per cent, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2014, shall increase its public shareholding to at least twenty five per cent, within a period of four years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India.*
>
> *Explanation: For the purposes of this sub-rule, a company whose securities has been listed pursuant to an offer and allotment made to public in terms of clause (b) of sub-rule (2) of rule 19, shall maintain minimum twenty five per cent public shareholding from the date on which the public shareholding in the company reaches the level of twenty five percent in terms of said sub-clause.*
>
> *(2) Where the public shareholding in a listed company falls below twenty five per cent. at any time, such company shall bring the public shareholding to twenty five per cent. within a maximum period of twelve months from the date of such fall in the manner specified by the Securities and Exchange Board of India.*
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> ...
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> ..."

5. The procedure relating to voluntary delisting of a company's equity shares is governed by the provisions of SEBI (Delisting of Equity Shares) Regulations, 2009. While

Chapter IV of the Delisting Regulations lays down the procedure to be complied with in relation to exit opportunity provided for public shareholders, a relatively less onerous procedure is laid out in Chapter VII for Small Companies. Post amendment to the regulations on November 14, 2018, the relevant provision of Chapter VII i.e. Regulation 27(3) reads as follows:

"

(3) A delisting of equity shares may be made under sub regulation (1) 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 floor price determined in terms of sub-regulation (2) of regulation 15 of these regulations read with clause (e) of sub-regulation (2) of regulation 8 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;

(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) the public shareholders, irrespective of their numbers, holding ninety percent or more of the public shareholding give their 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).

"

It must also be noted that Regulation 8(1B) of the Delisting Regulations reads as follows:

"(1B) The board of directors of the company while approving the proposal for delisting shall certify that :

(i) the company is in compliance with the applicable provisions of securities laws;

(ii) the acquirer or promoter or promoter group or their related entities, are in compliance with sub-regulation (5) of regulation 4;
(iii) the delisting is in the interest of the shareholders."

6. Therefore what is relevant to examine in this case is whether the criteria of Minimum Public Shareholding (MPS) and the need to receive consent of atleast 90% of public shareholding of the company can be relaxed in order to enable REIL to seek voluntary delisting.

7. I have perused the facts and circumstances of the case. I have also examined the scope of the powers of the Board under Regulation 25A of the Delisting Regulations. Under Regulation 25A, the Board has the power to relax strict enforcement of the regulations, if it is satisfied that the relaxation is in the interests of the investors in securities and the securities market and while doing so, the reasons for grant of relaxation need to be recorded in writing. This would imply that the Board is empowered to relax the rigors of the requirements under the Delisting Regulations on a case to case basis, upon being satisfied that such relaxation would serve the interest of investors of the company and the securities market as a whole.

8. The question that arises in the context of consideration of relaxation from the strict enforcement of the Delisting Regulations, are-

(i) Whether the company can be allowed to get delisted from BSE by relaxing the requirements under regulation 27(3)(c) and (d); and

(ii) Whether the company which has failed to comply with Rule 19A of SCRR can be said to be fulfilling the requirement under Regulation 8(1B)(i) of the Delisting Regulations; and

(iii) Whether the directions issued vide SEBI order dated December 01, 2015 against the Company, its directors and promoters shall be revoked to allow delisting.

9. I find that from 1998 onwards, the public shareholding in REIL was 1.82%. It is seen from the submissions made by REIL that its then foreign collaborator had acquired shares from the public leading to the reduced public shareholding. The company continued with such reduced public shareholding and the Board of REIL decided to go for voluntary delisting for the first time in its Board Meeting dated

9/6/2010, soon after the SCRR was amended *(mandating the continuous MPS requirement w.e.f. 4/6/2010).* However the voluntary delisting exercise failed as the proposal was not approved by the required strength of votes from the public shareholders *(In terms of regulation 8(1)(b) of the Delisting Regulations, the public shareholders supporting the proposal should be two times than those from the public who are opposing it).* Thereafter, SEBI passed the interim order dated June 04, 2013 against 106 companies, including the Applicant company, containing certain directions against the promoters and promoter group entities and directors thereof. Subsequently vide SEBI order dated 26th May, 2014, relying upon the submissions made by REIL, certain modifications were effected to the interim order so as to allow REIL to delist and permit the promoters to buy the shares held by the public shareholders within a period of six months. It is seen from the submissions of REIL that the proposal of Voluntary Delisting was again approved in the Board meeting held on 28/06/2014 and in-principle approval was obtained from BSE on 15/09/2014. Again, even though the public share holders had tendered 11,100 shares, it did not meet the then requirement of the minimum number of equity shares to be acquired by the Promoters to deem the delisting offer to be successful, in terms of Regulation 17.

10. The company has submitted that it had made continuous efforts to delist itself from BSE by providing exit opportunity to the existing public shareholders but is unable to do so as many of its shareholders are untraceable. The company has furnished the entire list of its public shareholders as available from its records with the names, addresses, folio numbers in case of physical shares and Demat IDs in case of Demat shareholders. Accordingly, the total number of public shareholders is 457 of which 127 shareholders are holding in demat mode. It is also relevant to state that the promoter shareholder details have also likewise been furnished. The volume of trades of the company during 2017 and 2018 has been around 1% as seen from the BSE information forwarded by REIL. It has also been brought out that out of the dividend declared by the company in 2011-12, out of 396 public shareholders *(as then existed)*, 184 shareholders have not encashed the warrants. Proof of REIL's RTA, namely, M/s Aarthi Consultants Pvt. Ltd., Hyderabad having issued letters to request the public shareholders to dematerialize their shareholding and other communication seeking updation of their address/ bank account details/ email addresses etc., has also been furnished along with the list containing names of shareholders contacted and the address to

which the letters were sent. These attempts continued during October 2015 and September, 2016. The company has stated that the responses to these letters have been very poor. Further, a certification of the RTA dated 17th September 2018 has also been furnished to show that there are no investor grievances pending against the company. I observe that genuine attempts have been made from the Company's side to set up lines of communication with all its public shareholders, but the same has not been successful, so as to meet the requirements in Regulation 27(3)(c) and (d) of the Delisting Regulations.

11. I note from the submissions of REIL and available records that REIL qualifies to seek voluntary delisting under Chapter VII since it satisfies the criteria under regulation 27. As far as the total number of shareholders is concerned, I find that REIL has a total of 464 shareholders which includes 7 promoter shareholders and 457 public shareholders. As far as the shareholding is concerned, the 457 public shareholders together constitute only 1.82% of the total shareholding and the remaining is in the hands of the promoter shareholders. The mandate contained in Regulation 27 (3) (d) of Delisting Regulations is impossible of performance as is borne out from the proof of attempted service that has been furnished by REIL. I note that the recent amendment on 24th November 2018 has substituted the words in Regulation 27(3)(d) *"at least ninety per cent of such public shareholders give their positive consent"* with *"the public shareholders, irrespective of their numbers, holding ninety percent or more of the public shareholding give their consent"*. Even otherwise the mandate of the positive consent of 90% of the public shareholding of 1.82% is itself so meagre to have any vital significance in the decision of the Board to delist the company.

12. The Delisting Regulations, as it stands today, primarily deals with three aspects - Procedure for Compulsory Delisting, Voluntary Delisting for regular companies and Voluntary Delisting for small companies. While Chapter IV deals with the procedure for Delisting in the case of regular companies, Chapter VII provides for has a less onerous mechanism of voluntary delisting for small companies. In other words, while exit opportunity under Chapter IV is the general rule applicable to all companies, Chapter VII is an exception offered to eligible companies. Under the regulations, 'Small companies' refer to those companies which are financially weak and with substantially low investor interest as evidenced by low levels of trades in the company's scrip. REIL has submitted that it satisfies the criteria specified in

regulation 27. Regulation 27(1) which explains the kind of companies to which the Chapter applies, reads as follows:

*"**27.** (1) Equity shares of a company may be delisted from all the recognised stock exchanges where they are listed, without following the procedure in Chapter IV, if,-*

a) the company has a paid up capital not exceeding ten crore rupees and networth not exceeding twenty five crore rupees as on the last date of preceding financial year;

b) the number of equity shares of the company traded on each such recognised stock exchange during the twelve calendar months immediately preceding the date of board meeting referred to in sub-regulation (1B) of regulation 8 is less than ten per cent of the total number of shares of such company:

Provided that where the share capital of a particular class of shares of the company is not identical throughout such period, the weighted average of the shares of such class shall represent the total number of shares of such class of shares of the company; and

c) the company has not been suspended by any of the recognised stock exchanges having nation-wide trading terminals for any non-compliance in the preceding one year;"

13. In accordance with Chapter VII, Small companies are neither required to issue a public announcement/letter of offer for the purposes of voluntary delisting nor resort to Reverse Book Building ("**RBB**") in order to determine the price at which shares will be acquired from the public shareholders.

14. Importantly, regulation 17 *(which appears in Chapter IV)* specifies that in order for a voluntary delisting to be successful, it must satisfy two criteria -

(i) the post offer promoter shareholding must be 90% or more; and,

(ii) atleast 25% of the public shareholders in demat mode must have participated in the RBB.

For ease in reference, extract of Regulation 17 is reproduced hereunder:

"17. If a counter offer has not been made by the acquirer or promoter in accordance with regulation 16 (1A), an offer made under chapter III shall be deemed to be successful only if,- (a) the post offer promoter shareholding (along with the persons acting in concert with the promoter) taken together with the shares accepted through eligible bids at the final price determined as per Schedule II, reaches ninety per cent. of the total issued shares of that class excluding the shares which are held by a custodian and against which depository receipts have been issued overseas; and (b) at least twenty five per cent of the public shareholders holding shares in the demat mode as on date of the board meeting referred to in sub-regulation (1B) of regulation 8 had participated in the Book Building Process:

..."

In the case of REIL admittedly, promoter shareholding has been significantly above the threshold of 90%, since 1998. Taking a cue from regulation 17, what remains to be seen is whether a sufficient number of public shareholders in demat mode are agreeable to the voluntary delisting offer proposed by the company.

15. In this background, I have examined the exemption/relaxation request of REIL to relax the requirement of positive consent from 90% of the public shareholders (or 90% of the public shareholding). In this connection, I note that regulation 17, which is applicable to delisting process of companies other than Small companies, itself specifies the requirement of participation in the RRB by 25% of public shareholders holding shares in the demat mode. I am inclined to adopt the same requirement in the instant case as well.

16. To summarise, I find the following facts to be relevant to take a view in the instant matter :

(i) The company was listed in 1978 i.e. around 40 years before.

(ii) The breach of the limits on promoter shareholding did not take place subsequent to the incorporation of the provisions in SCRR (in 2010) mandating continuous maintenance of Minimum Public Shareholding("MPS"). In other words, the alleged non-compliance was a pre-existing one and therefore not a wanton subsequent breach.

(iii) The percentage of public shareholding is too low to constitute a sufficiently liquid market, thereby making it difficult for public shareholders to realize the real economic value of REIL's shares.

(iv) As on date, the promoters would need to dilute more than 23% of their shareholding for the company to be in compliance with MPS. The poor financial condition of the company and the inadequate potential for its revival would mean that investors are unlikely to evince interest in acquiring shares of the company. Consequently, it would be very difficult or almost impossible for the company to increase its public shareholding to be in compliance with MPS norms. For the same reason, in the specific facts of this case, it may not be practicable to insist strict compliance of MPS norms for the purpose of regulation 8(1B)(i) of the Delisting Regulations.

(v) The process of voluntary delisting is hampered by the fact that public shareholders are, admittedly, not traceable. The company's efforts to trace them are noted to be quite consistent.

(vi) As per available records, there are no investor grievances as on date against the company.

In such circumstances, I am of the view that there is no useful purpose either for the shareholders or for the company or the investors at large, for this company to remain listed.

17. By virtue of Para 8(iii) of the SEBI order dated May 26, 2014 *(read along with the direction in para 17(b) of the SEBI order dated June 04, 2013)*, the promoter/promoter group and directors of REIL were prohibited from buying, selling or otherwise dealing in securities of REIL, as they had failed to successfully complete the delisting offer permitted by SEBI within the period of 6 months stipulated in the order dated May 26, 2014. As the delisting application of REIL is considered denovo in the background of the facts and circumstances made out in their Application, the aforesaid prohibition is required to be relaxed.

18. In view of the above, in the interest of investors in securities and in exercise of powers under sections 11(1) and 11B of the SEBI Act,1992 and regulation 25A of the SEBI(Delisting of Equity Shares) Regulations, 2009, and in supersession of para 8(iii) of the SEBI order dated May 26, 2014 against REIL Electricals India Ltd., I find it appropriate to grant the Applicant relaxation from the applicability of regulation 8(1B)(i) *(limited to the extent of compliance with minimum public shareholding norms)* and Regulation 27(3) (d) of the SEBI(Delisting of Equity Shares) Regulations, 2009, subject to the following conditions:

(i) The Applicant shall ensure compliance with regulation 27(3)(c). Additionally, the Applicant shall cause to publish newspaper advertisement in one national newspaper in English and in newspapers in local vernacular in each State where its public shareholders are residing, as per the address contained in its records, announcing its delisting proposal within 30 days of this Order, and atleast 10 days before the letter is sent to the public shareholders seeking their consent for the delisting proposal.

(ii) The Delisting Offer shall be proceeded with if at least 25% of the public shareholders holding shares in the demat mode, as on the date of this Order, consent to sell their equity shares at the price offered by the promoters.

(iii) The offer price shall be paid to tendering shareholders by way of Cheque, demand draft, internet banking or any form of transfer that provides bank record of payment.

(iv) As undertaken by the Applicant, pursuant to delisting of REIL's equity shares, the promoters shall continue to accept shares tendered by any remaining public shareholder holding such equity shares, for upto a period of two years from the date of delisting, at the same price at which the earlier acceptance of shares was made and in a manner that provides bank record of payment.

(v) Subject to the above, the Applicant shall comply with all other conditions, including those pertaining to determination of the offer price, stipulated in Chapter VII of the SEBI(Delisting of Equity Shares) Regulations, 2009.

19. The Application dated March 29, 2018 along with related communications are accordingly disposed of.

DATE: February 04, 2019 **G. MAHALINGAM**

PLACE: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA