WTM/GM/MIRSD/62/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 11B of the Securities and Exchange Board of India Act, 1992 in matter of Schneider Electric President Systems Limited in respect of complaints filed by Mr. Rajeev Thakkar and ors.

Background

1. Schneider Electric President Systems Limited ("Company/SEPSL") is a public limited company incorporated under the Companies Act, 1956 having its registered office at 5C/1, KIADB Industrial Area, Attlbel, Bangalore. Equity shares of the Company were listed on the Bangalore Stock Exchange(BgSE) and Pune Stock Exchange (PSE), and were also trading on the Permitted to Trade category of the IndoNext platform of BSE Ltd. BgSE got de-notified on December 26, 2014 and PSE got de-notified on April 13, 2015. Post de-notification of PSE, the equity shares of the Company were moved to the Dissemination Board of NSE on July 22, 2016.

2. Thereafter, on February 14, 2017, the Company came out with an Exit Offer in terms of the SEBI Circular dated October 10, 2016 (2016 circular) numbered SEBI/HO/MRD/DSA/CIR/P/2016/110 on 'Exclusively listed companies of De-recognised/Non-operational/exited Stock Exchanges placed in the Dissemination Board (DB)' at an exit price of Rs. 200.40 per equity share.

3. Securities and Exchange Board of India ("SEBI") received a complaint dated March 10, 2017, filed on behalf of 87 shareholders of Company. This was followed up by letters dated March 29, 2017, May 10, 2017 and July 03, 2017.

4. SEBI disposed of the initial compliant dated March 10, 2017 on April 17, 2017; the rest of the complaints were disposed of on September 20, 2017, stating that exit offer of ELCs are governed by SEBI circular dated October 10, 2016 and the Complainants may approach the Company/stock exchange for issues related to valuation. Rajeev Thakkar along with 31 other public shareholders together holding 9% of equity capital of the Company preferred an appeal before the Hon'ble Securities Appellate Tribunal (SAT) (Appeal No. 51) against the disposal of the SCORES complaint by SEBI. SAT vide order dated November 26, 2019 disposed the appeal with following directions to SEBI, -

"11. Given the importance of investor protection, though we observe certain gaps in the appeal particularly in the way the reliefs have been sought, we set aside the order/ communication dated September 20, 2017 passed by SEBI and in the interest of justice we direct SEBI to pass a reasoned order in the matter. The said order shall also address the issue relating to the stand of SEBI on the need for the ELCs to make a serious effort in continued listing and the procedure and monitoring of their endeavour in listing and / or the exit process when failing to get listed.

12. SEBI shall pass a reasoned order in the matter within three months from today."

5. SEBI filed a review petition against said order which was dismissed by SAT vide order dated February 21, 2020. SEBI preferred an appeal before the Hon'ble Supreme Court of India and the Hon'ble Court vide order dated October 15, 2020, passed the following directions, -

"SEBI is directed to decide the matter without being influenced by any observations made in the order dated 26.11.2019."

6. Thereafter, an opportunity of personal hearing was provided to both the complainants and the Company on January 08, 2021. The Complainants were represented by Mr. Somasekhar Sundaresan with Mr. Sumit Agarwal and Mr. Amit Agarwal. The Company

was represented by Mr. Nimay Dave with Mr. Vikram Raghani, Mr. Pulkit Sukhramani and Ms. Vidhi Jhawar.

7. Summary of arguments advanced on behalf of the Complainants

i. The language used in the circulars, and SEBI's intention has been to clearly prioritize listing of ELCs over exit. A reading to the contrary effectively leads to an arbitrary distinction being made between companies which are "listed" on a recognized stock exchange and which are "permitted to be traded" on a recognized stock exchange, and results in an entire section of the securities market being unfairly prejudiced.

ii. Listing is widely acknowledged as a public good. The Company had a robust trading history of 10 years in a recognized stock exchange and continues to be financially strong. If the circulars are read otherwise, the various rights of a large number of public shareholders of the Company including of trading/liquidity and the ability to question the management and hold it accountable for its performance are being unfairly taken away.

iii. SEBI itself has clearly acknowledged that the above circulars are directions under Section 11 of the SEBI Act and have been issued to protect the interests of the investors in securities and to promote the development of the securities market. [Illustratively, Para 10, Circular dated 30.05.2012; Para 9, Circular dated 10.10.2016]. If the circulars are interpreted to mean that ELCs should not even attempt to seek listing, that would be contrary to public interest and the interests of the public shareholders.

iv. Company completely violated the corporate governance norms and principles of shareholder democracy by not even putting its decision to have back door delisting to the consent/vote of its shareholder

v. The Promoter published "frequently asked questions" on 22.02.2017 purporting to state the misleading rationale for proving an exit offer, and also wrote a letter to shareholders stating that the Company is ineligible to get listed on nationwide stock exchanges. The Complainants received confirmations from the Bombay Stock Exchange and the Metropolitan Stock Exchange vide emails dated 07.04.2017 and 10.04. 2017 informing them that the Company had never ever attempted to get listed on either of these two nationwide exchanges.

vi. On 30.10.2017, the Company abruptly changed its position and posted a communication on its website stating the requirement of listing on a nationwide stock exchange was "not an obligation" and that a second opinion to that effect had been taken by them.

vii. The purported valuation exercise in the form of Valuation Report dated 03.02.2017 is a complete façade and the said Report must be totally discarded

8. Summary of arguments made on behalf of the Company, -

i. The shares of the Company were listed on the Bangalore Stock Exchange ("BgSE") and the Pune Stock Exchange ("PSE") since January 07, 2005 and were allowed to be traded on BSE Ltd. ("BSE") until May 2015 under the permitted category.

ii. On January 11, 2011, Schneider Electric South East Asia, the promoters of the Company made a public announcement to acquire up to 75% equity shares of the Company and categorically emphasized its intention to delist. Thus, the equity shareholders of the Company were aware of the promoter's intention to delist the Company since January 2011.

iii. On May 30, 2012, SEBI circular vide which it was specified that ELCs which fail to obtain listing on any other recognised stock exchange would cease to be listed and would be moved to the DB by the exiting stock exchange. At this time, the Company continued to be listed on both the PSE and the BgSE (which were both recognised stock exchanges) and was thus not an ELC and the provisions of the said circular were not applicable to it.

iv. Subsequently, SEBI vide its Circular dated May 22, 2014 provided that ELCs may opt for listing on a nationwide stock exchange after complying with the listing norms of the main board or diluted listing norms, if any; ELCs may also opt for voluntary delisting before the de-recognition of the stock exchanges by following the existing delisting norms of SEBI in terms of the SEBI (Delisting of Equity Shares) Regulations, 2009; and ELCs which fail to obtain listing on any other nationwide stock exchange, which do not voluntarily delist, or which are not considered as vanishing companies, will be moved to the DB by the exiting stock exchange. At this time too, the Company continued to be listed on both the PSE and the BgSE (which were both recognised stock exchanges) and was thus not an ELC.

v. Thereafter on December 26, 2014, the BgSE was de-recognised. The Company continued to be listed on the PSE until de-recognition of the PSE on April 13, 2015, which the Company became aware of only on May 18, 2015 when the BSE issued a notice informing trading members that trading in the shares of the Company was going to be discontinued. It is only upon derecognition of PSE that the Company was pulled into the ambit of the Exit Circulars.

vi. On April 17, 2015, SEBI vide its circular provided a timeline of 18 months for ELCs which were desirous of listing to obtain listing on a nationwide stock exchange.

vii. In terms of the May 22, 2014 Circular, companies could also opt for voluntary delisting before de-recognition of the stock exchanges. The Company became aware of the de-recognition of PSE only after the PSE was de-recognized and hence it could not have taken the steps required to be taken under the May 22, 2014 circular prior to de-recognition. Moreover, PSE did not take any steps to move the shares of the Company to the DB after its de-recognition. Since the Exit Circulars dated May 22, 2014 and April 17, 2015 did not provide the mode and manner vide which exit could be provided to the shareholders of companies listed on RSEs which had already been de-recognised, the Company was left with no option but to address a communication to SEBI and the PSE seeking their guidance on its listing status and the potential options for providing an exit to its shareholders.

viii. Despite the communication with PSE, it did not take any steps to move the shares of the Company to the DB. Accordingly, on November 20, 2015, in order to facilitate some form of exit / trading to its shareholders, the Company addressed a letter to BSE and NSE seeking its guidance in respect of the procedure to be followed for direct listing of its shares on BSE / NSE. The said letter dated November 20, 2015 was also served upon BSE / NSE vide email dated November 26, 2015. Vide its email dated November 26, 2015, BSE informed the Company that it would be able to list its shares on BSE only after its shares had been moved to the DB

ix. Upon receipt of the Company's request, vide its communication dated August 21, 2015 bearing reference no. MRD/DSA/OW/23811/2015, SEBI directed the erstwhile PSE to move the shares of the Company to the DB of NSE.

x. Given that the BSE categorically informed the Company that the shares of the Company could not be listed unless they were moved to the DB and the PSE was not cooperating in moving the shares of the Company to the DB, the Company was left with no option but to pursue a voluntary delisting under the Delisting Regulations. Accordingly, vide its letter dated July 08, 2016, the Company sought SEBI's permission to delist the shares of the Company in accordance with the Delisting Regulations.

xi. While the said application dated July 08, 2016 was pending before SEBI, the Exit Circular dated October 10, 2016 came to be issued, which provided detailed guidelines for ELCs to provide exit to its shareholders. In light of the provisions of the October 10, 2016 Circular, on December 02, 2016, the Board of Directors ("Board") of the Company took note of the promoter's decision to provide an exit opportunity to the public shareholders, in terms of the manner prescribed by SEBI.

xii. The interpretation of the Exit Circulars as adopted and sought to be advanced by the Complainants is incorrect. On a plain reading of the Exit Circulars, it is apparent that ELCs always had the option to either list on a nationwide stock exchange or provide exit to its shareholders.

xiii. A bare perusal of the Exit Circulars and the scheme thereof makes it categorically apparent that ELCs have always had an option to either seek listing on a nationwide stock exchange or provide exit to its shareholders, in the manner prescribed under the various Exit Circulars at the relevant time. The language of the Exit Circulars, especially the use of terms such as 'may', 'or', 'opt', 'desirous of',

make it apparent that the intention behind the scheme of these Exit Circulars was always to provide an option to ELCs to either list on a nationwide stock exchange or provide exit to its shareholders, irrespective of the size, profits or identity of the promoter.

xiv. Furthermore, it is crucial to note SEBI's own interpretation of the Exit Circulars, as evidenced by its Affidavit in Reply dated April 20, 2018 filed before the Hon'ble Tribunal in the Appeal wherein it has been categorically stated that there is no obligation imposed by the provisions of the Exit Circulars which require an ELC to provide an exit opportunity to its existing shareholders only if it cannot get listed on a nationwide stock exchange. It has been further clarified by SEBI that the Exit Circulars do not create any obligation on an ELC to mandatorily get listing on a nationwide stock exchange before providing an exit opportunity to its existing shareholders, as is being contended by the Complainants. In fact, reference may also be drawn to the Review Application dated February 07, 2020 filed by SEBI wherein it has been re-emphasised that it was mandatory to either seek listing or to provide an exit option and that SEBI's interpretation of the Exit Circulars has already been recorded in the Affidavit in Reply dated April 20, 2018.

xv. An interpretation of the Exit Circulars which forces ELCs to list on the recognized stock exchanges is contrary to the fundamental right of ELCs to opt not to undertake such a listing, as long as an exit opportunity to the investors has been provided as per the Exit Circulars. Further such an interpretation would result in discriminatory treatment against the Company since a number of ELCs have been permitted to comply with the Exit Circulars by providing an exit offer without listing or attempting to list their shares on the recognized stock exchanges as demanded by the Complainants.

xvi. Complainants are nothing but opportunists trying to get an exit from the Company at a higher valuation. The Complainants had sufficient time to raise grievances regarding the exit mechanism, however, they did so only on March 10, 2017, i.e., the last day of the exit offer given by the Company, in an obvious attempt to harass the Company for a higher exit price. It is a settled position of law that relief ought not be granted to a party which does not approach the court with clean hands. It is submitted that the Complainants have not approached SEBI with clean hands and have an ulterior motive behind their complaints. Thus, no relief ought to be granted to them.

xvii. Complainants have approached SEBI as belatedly as on March 10, 2017 only to scuttle the exit process duly provided to the shareholders in a mala fide attempt to seek exit at a higher valuation. The grievance of the Complainants seems to be the fair value of Rs. 200.40/- per share arrived at by the National Stock Exchange of India Limited ("NSE") empanelled independent valuer.

xviii. In terms of the October 10, 2016 Exit Circular, ELCs were to submit their letter of intent and plan of action to the designated stock exchange and in the event that an exit opportunity was being provided to the shareholders, to provide such exit in the mode and manner prescribed in Annexure A to the said circular.

xix. In terms of Annexure A to the October 10, 2016 Circular, the promoters of the Company duly submitted their plan of action to NSE and appointed an independent valuer empanelled with NSE to carry out the valuation exercise. The independent valuer on the basis of their independent judgment, expertise and skill, arrived at a fair value of Rs. 200.40/- per equity share of the Company.

xx. It is a settled principle of law that valuation of shares is not only a question of fact, but also raises technical and complex issues which may be appropriately left to the

wisdom of experts and that a valuation conducted by such an expert cannot be assailed unless it is shown ex facie that such valuation is patently erroneous or unreasonable. The courts have held that it is impossible to say which of several available valuation models are "best" or most appropriate. In a given case, the Comparable Company Market Multiples Method may be more accurate; in another, the Discounted Cash Flow (as applied by the valuer in the present matter) model. A valuation cannot be assailed or disregarded merely because it has used one or the other of various methods. Furthermore, to dislodge a valuation from a reputed firm, an objector must show mala fides or fraud.

xxi. Accordingly, without first establishing how the valuation conducted by an NSE empanelled independent valuer is ex facie erroneous, the Complainants cannot assail the valuation exercise on frivolous grounds such as the method adopted by the valuer. The submissions made by the Complainants have been made in paras 36 – 38 of their complaint dated March 20, 2017 (page no. 33 of the Appeal Memo) and apart from making generic and vague statements, the Complainants have not produced any material to show how the valuation arrived by the exchange empanelled valuer is incorrect.

xxii. It is submitted that the valuation of the shares conducted by M/s. Dass Gupta and Associates, an NSE empanelled valuer, was an independent exercise in which the limited involvement of the Company was to provide requisite and relevant information as sought by the valuer. The Complainants cannot now challenge the valuation conducted only because they are unhappy with the fair value amount arrived at by the valuer.

xxiii. Furthermore, the Complainants have submitted that the Company has made false and misleading statements that the Company was ineligible to list on nationwide

stock exchanges and that action ought to be taken against it for the same. It is submitted that the Company had at the relevant time, made appropriate enquiries and had sought legal advice regarding its eligibility to list and was informed that it was not eligible to list on a nationwide stock exchange. In any event, the Company has rightfully exercised its option to grant exit to its shareholders.

Consideration

9. I have considered the complaints filed on behalf of the complainants, the orders of the Hon'ble Securities Appellate Tribunal and Hon'ble Supreme Court, the oral and written submissions made before me and other material available on record. I note that the primary issue that arises for adjudication before me is whether an ELC is entitled to make a delisting offer in terms of the 2016 SEBI circular without making any efforts to get itself listed on a stock exchange having nationwide terminals.

10. Elaborate arguments have been made on behalf of the complainants that the true intent and import of the SEBI circulars governing the exit of ELCs is to mandate ELCs to first list on nationwide stock exchange and only in case such listing is not feasible then move to the dissemination board or get delisted. On the other hand, the counsel for the Company has vehemently argued that a plain reading of the 2016 Circular will make it clear that listing and delisting are equal options available to an ELC; the circular does not provide any hierarchy of options and leaves it open for the company to decide the course of action it wishes to adopt.

11. I also note that the Hon'ble Tribunal vide order dated November 26, 2019, had besides directing SEBI to pass an order in the facts of the matter, also directed that the SEBI to *"address the issue relating to the stand of SEBI on the need for the ELCs to make serious effort in continued listing and the procedure and monitoring of their endeavor in listing and / or the exit process when failing to get listed."*

12. Before proceeding further, I consider it appropriate to examine the policy background and evolution of the norms governing regional stock exchanges and ELCs over the years.

13. By 2008, there were 21 stock exchanges that were recognised under section 4(1) of the Securities Contract (Regulation) Act, 1956. However, with the advancements in technology and the emergence of screen based trading and abolition of compulsory listing on regional stock exchanges, trading eventually got concentrated in two exchanges – BSE Ltd.(BSE) and National Stock Exchange of India Ltd. (NSE) and there was negligible trading on the regional stock exchanges. Therefore, in order to provide a mechanism for orderly exit of the regional stock exchanges and the companies exclusively listed on such stock exchanges, SEBI came out with 'Guidelines in respect of exit option to Regional Stock Exchanges' vide circular dated December 29, 2008. The said circular provided that,-

"The companies which are listed in such de-recognised RSEs and also listed in any other stock exchange(s) may continue to remain listed in the other stock exchange(s). In case of companies exclusively listed on those de-recognised stock exchanges, it shall be mandatory for such companies to either seek listing at other stock exchanges or provide for exit option to the shareholders as per SEBI Delisting Guidelines / Regulations after taking shareholders' approval for the same, within a time frame, to be specified by SEBI, failing which the companies shall stand delisted through operation of law."

14. It can be noted that the 2008 circular mandated ELCs to either move to a recognised stock exchange or get delisted as per the prevailing SEBI delisting guidelines[1]. Thereafter in 2012, SEBI came out with a comprehensive framework governing 'Exit Policy for De-recognised/Non-operational Stock Exchanges' vide circular dated May 30, 2012. The said circular provided as under in respect of ELCs,-

[1] SEBI(Delisting of Equity Shares) Regulations, 2009 were notified only on June 10, 2009

"With regard to exit option to shareholders of exclusively listed companies, on stock exchanges seeking de-recognition and/ or exit and de-recognised stock exchanges, the following process should be followed by the exclusively listed companies. Such an exchange shall monitor the process given below until its exit:

3.1 Exclusively listed companies shall list on any other recognized stock exchange. Such other recognized stock exchanges may facilitate the listing of exclusively listed companies, and, if required, carry out changes to their listing eligibility criteria, in the interest of investors. Stock exchanges may have differential listing criteria for such exclusively listed companies in respect of following criteria viz, Market Capitalization, Dividend paying track record, profitability, and paid-up capital. In this regard, the stock exchanges shall issue the differential listing eligibility criteria for such exclusively listed companies.

3.2 The exclusively listed companies, which fail to obtain listing on any other stock exchange, will cease to be a listed company and will be moved to the dissemination board by the exiting stock exchange. Therefore, in the interest of investors of exclusively listed companies, a mechanism of dissemination board will be set-up by stock exchanges having nationwide trading terminals."

15. It can be noted that the circular provides that exclusively listed companies shall list on any other recognised stock exchange failing which it shall be moved to the dissemination board. I note from the information available on record that at this point of time, i.e. in 2012, there were 5152 companies which were exclusively listed on stock exchanges not having nationwide terminals. However, out of these 5152 companies, only 72 companies were satisfying the profitability and net worth norms for listing on the stock exchanges with nationwide terminals. It is in this context that the circular empowered stock exchanges to have a differential listing criteria for ELCs. It is however a matter of record that nationwide stock exchanges (NSE and BSE) did not relax their existing listing norms to enable ELCs to get listed on their main board. I therefore note that SEBI's objective at

this point was to migrate ELCs to stock exchanges having nationwide terminals to the extent possible. ELCs which failed to list on any other recognised stock exchange were to be moved to the DB.

16. The 2012 circular also provided that stock exchanges which are not able to achieve a turnover of Rs.1000 crore per year on a continuous basis within a period of two years from the date of the said circular and does not seek voluntary surrender of registration, shall be compulsorily derecognised by SEBI. Thereafter, on the expiry of two years from the said circular, when the process of de-recognition/exit of non-compliant exchanges was about to begin, SEBI came out with revised norms for 'Companies exclusively listed on De-recognised/Non-operational Stock Exchanges' vide circular dated May 22, 2014.

17. The 2014 circular provided with respect to ELCs as under,-

"

i. *The exclusively listed companies of such non-compliant stock exchanges may opt for listing in nation-wide exchanges after complying with listing norms of main board or the diluted listing norms, if any, on or before the exit of the exchange, either on voluntary or compulsory basis. Nation-wide stock exchanges shall facilitate the listing of these companies on priority basis in a time bound manner. For this purpose, these nation-wide stock exchanges shall immediately create a separate dedicated cell to expedite processing the listing requests from such companies.*

ii. *Such exclusively listed companies may also opt for voluntary delisting before the de-recognition of the stock exchanges by following the existing delisting norms of SEBI in terms of SEBI (Delisting of Equity Shares) Regulations, 2009. Nation-wide stock exchanges shall provide a platform to these companies to facilitate reverse book building for voluntary delisting using their platform.*

iii. With a view to facilitate voluntary delisting, if they so desire, it is clarified that for such companies as referred to at Para 2(ii) above, the requirements of 'Minimum Public Shareholding' prescribed in Rules 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 and Clause 40A of the Listing Agreement, shall not be applicable.

iv. In case of companies exclusively listed in the non-operational stock exchanges that are not traceable or where the data available is more than three years old, the process of inclusion in list of companies identified as 'Vanishing' (maintained by Ministry of Corporate Affairs) may be initiated by the respective stock exchanges.

v. As per the 'Exit Circular' the exclusively listed companies, which fail to obtain listing on any other stock exchange, which do not voluntary delist or which are not considered as 'Vanishing companies', will cease to be listed company and will be moved to the dissemination board by the existing stock exchange. It shall be the responsibility of the exchanges which are being derecognized either on voluntary or compulsory basis, to place their exclusively listed companies on the dissemination board. These exchanges shall ensure that the database of the exclusively listed company is transferred to SEBI and to those stock exchanges on whose dissemination board, the shares of these companies are available."

18. It can be noted that SEBI vide the said 2014 circular clarified that ELCs on non-compliant stock exchanges have to exercise one of the two options –list on a nationwide stock exchange or delist in compliance with the SEBI delisting regulations. The circular also provided that such companies had to exercise one of the said options prior to the exit of the stock exchanges where they were listed.

19. In view of the same, SEBI vide the said circular clarified that ELCs which have been moved to DB have to exercise one of the two options – either list on a nationwide stock exchange or provide an exit following the procedure laid in the circular. The circular also

provided that ELCs which fail to obtain listing on any other recognised stock exchange or delist, will be moved to the DB.

20. Pursuant to issuing the said circular, SEBI began receiving representations from ELCs stating that they have been unable to list on nationwide stock exchanges due to paucity of time. SEBI vide circular dated April 17, 2015 granted such a period of 18 months for complying the listing conditions and listing on nationwide stock exchanges. It was also clarified vide the said circular that prior to listing on nationwide stock exchange, the shares of such ELCs will remain on the DB.

21. Thereafter, ELCs approached SEBI seeking clarifications on the process to be followed for raising further capital for fulfilling the listing criteria prescribed by nationwide stock exchanges and also the process of exit from DB. I note that, SEBI with a view to ensuring the protection of interests of investors of companies which were moved to the DB – where there was no exit opportunity available to them in the real sense as not many trades were being executed over the platform – granted further relaxation in respect of both capital raising norms and exit norms to ensure either the company migrates to main board and regains its listed status or moves out of the DB by giving an exit opportunity, vide circular dated October 10, 2016. Granting such relaxations became necessary because companies in the DB were finding it difficult both in raising capital to comply with listing norms of nationwide stock exchanges and in complying with the provisions of the Delisting Regulations and providing an exit to the public shareholders. In such a situation, the investors of such ELCs which were moved to the DB were left in the lurch without any real exit opportunity. The 2016 circular prescribed a less stringent delisting process for companies on the DB. Such companies could get delisted at a price determined by a valuer who was empanelled with a nationwide stock exchange. The requirement of special resolution for approving the process of delisting and the reverse book building process for

determining the exit price under the Delisting Regulations was relaxed in terms of the said circular.

22. Upon an evaluation and appreciation of the manner in which the policy has evolved, it is for certain that listing norms on a nationwide stock exchange was considered to be more stringent when compared to the listing norms of regional stock exchanges. SEBI, therefore, tried to focus on the aspect that exit of the regional stock exchanges should not serve as a ground for the ELCs to go for delisting. SEBI, rather, wanted to grant exit to the regional stock exchanges without affecting the listed status of ELCs. In this regard, as stated earlier SEBI also permitted nationwide stock exchanges to have differential listing norms for such companies. Further, a 'Dissemination Board' platform was also created for facilitating an exit opportunity for shareholders in companies which neither migrated to a another recognised stock exchange nor delisted in compliance with the Delisting Regulations. It is also important to note that prior to the 2016 circular, ELCs could not opt to delist without complying with the SEBI Delisting Regulations.

23. It is a matter of record that pursuant to 2016 circular, the Company appointed a valuer following the procedure prescribed therein and thereafter came out with an exit offer. On February 14, 2017, the Company announced its exit offer proposal for its public shareholders at the fair value price of Rs. 200.40/- per share arrived at by the independent valuer. On February 22, 2017, the letter of offer was published on the Company's website and the offer period for the exit offer opened on February 24, 2017 and closed on March 10, 2017. In terms of the Exit Circular dated October 10, 2016, shareholders who did not participate in the offer could tender their shares for a period of up to 1 year from the date of closing of the offer i.e., March 17, 2018. It is noted from records that the Company had a total of 1986 non-promoter shareholders as of February 24, 2017 and they were together holding 1512006 shares of the company representing 25% of the paid up equity share

capital of the Company. Out of these 1986 shareholders, 344 shareholders holding 331939 shares participated in the exit offer and tendered their shares.

24. In light of the above, the issues that arise for consideration in my view are the following,-

A. Was the company ever eligible for listing on a nationwide stock exchange and has the company made any effort to get itself listed on any such exchange?

25. I note that the entire premise of the arguments made on behalf of the complainants primarily rests on the claim that the Company was eligible to list on nationwide stock exchanges. It was argued that despite being eligible to migrate to such an exchange, the Company took advantage of the diluted delisting norms prescribed under the 2016 circular and opted to delist. In view of the same, it becomes imperative to address this issue first because in case the company was ineligible then the arguments raised on behalf of the Complainants should fail.

26. I note that the Complainants had stated in their complaint dated March 10, 2017 that "*Company was in compliance with the Listing Requirements of BSE during the period between April 2016- September 2016, but made no efforts to get listed on BSE. BSE changed the norms for listing of the shares of ELC on a retrospective basis (to be effective from March 2016) by amending the net profit criteria for listing of ELCs from one year in the preceding two years as per diluted norms of listing of ELC companies on BSE to a staggering three years of net profit. Due to this change, the Company is no longer eligible to list on BSE. However, if the promoter had applied to BSE prior to October, 2016, it could have gotten itself listed on BSE as the norms have been made stricter only recently."* It was also stated by the Complainants that the Company was eligible to get listed on the Metropolitan Stock Exchange of India(MSEI) at all times.

27. In reply, the Company has stated that *"Company had at the relevant time, made appropriate enquiries and had sought legal advice regarding its eligibility to list and was informed that it was not eligible*

to list on a nationwide stock exchange. In any event, the Company has rightfully exercised its option to grant exit to its shareholders."

28. SEBI sought confirmation from BSE and MSEI in this regard. BSE vide email dated January 04, 2021, stated "Schneider Electric President Systems Ltd. was not eligible for listing on Main Board of BSE in July 2016 as per the Direct Listing Norms since the Company was not meeting the financial parameters namely Capital Requirement and Net Profit Before Tax.". MSEI, however, vide email dated January 01, 2021 confirmed that the Company was prima facie complying with the primary eligibility criteria to get listed on the exchange from July 2016 till date.

29. In view of the same, it is noted that Company was fulfilling the eligibly criteria to get listed on at least one nationwide stock exchange at the time it was moved to the DB.

B. In case the company was eligible to get listed, was it mandatory for the company to get listed prior to exercising the option to get delisted as per the 2016 circular.

30. I note from the records available before me that the equity shares of the Company were listed on the BgSE and PSE w.e.f January 07, 2005. The shares were also traded under permitted to trade category on the IndoNext platform of BSE. The equity shares of the company continued to be listed on BgSE and PSE till the exit of the said exchanges. Pursuant to the exit of the stock exchanges on which the Company was listed, BSE also suspended trading of the scrip on the IndoNext platform. Thereafter, the Company was shifted on the DB on July 25, 2017.

31. In terms of the regulatory framework put in place by SEBI, any company seeking to delist has to comply with the procedure laid down in the Delisting Regulations. The Delisting Regulations contain safeguards to protect the interest of public shareholder in such companies seeking to delist and has been framed by SEBI to ensure that promoters of a company do not take advantage of the public shareholders and exit at an arbitrary price.

The regulations put in place various safeguards including approval of the shareholders by a special resolution to initiate the process of delisting, the process of reverse booking building to discover the exit price, participation of 90% of the shareholders in the exit offer etc.. Further, the process of delisting would be successful only if the post offer shareholding of the promoter taken together with the shares accepted during the delisting process cross 90% of the total of shareholding in the company; this in effect provides that an approval of 90% of the shareholders would be required for a successful delisting.

32. This being the standard regime applicable to listed companies' certain relaxations were provided to ELCs by SEBI as stated earlier. The 2016 circular permitted such companies to exit at a price determined by a valuer; the requirement of special resolution, reverse book building to discover the exit price and the mandate that shareholders holding atleast 90% of the shares in the company have to approve the delisting offer at the exit price, were done away with. These are significant relaxations to the applicable delisting norms and it is important to keep in mind the context in which such relaxations were granted. Vast majority of the ELCs were neither in a position to meet the listing requirements of the nationwide stock exchanges nor in a position to delist after complying with the provisions of the delisting regulations. Shares of most such companies were infrequently traded even while they were listed on RSEs and in many such companies a significant proportion of the public shareholders could not be traced at the last available address. Further, many such companies had negative net worth or were 'vanishing companies'.

33. Having looked at the context in which relaxations were being granted to ELCs under the 2016 circular, the issue that remains to be addressed is whether companies which were eligible to migrate to a nationwide exchange should be allowed to take advantage of the relaxed delisting criteria prescribed under the said circular and exit.

34. I note from the records that Schneider Electric South East Asia (HQ) Pte. Ltd (Promoter) acquired control of the Company in 2012 through an open offer under the Takeover Regulations, with a stated intention to delist the Company. Thereafter, on December 13, 2012, a public announcement was made by the Promoters for delisting the Company under the Delisting Regulations. The exit price of Rs.250 discovered under the reverse book building process was rejected by the promoters and the Company continued to remain listed. Thereafter, the Bangalore Stock Exchange and Pune Stock Exchange were de-recognised and the Company was moved to the DB on July 22, 2016.

35. Prior to being moved to the DB, the 2012 and 2014 circulars had cast an obligation on the Company to migrate to a nationwide exchange or provide an exit option to the shareholders in terms of the Delisting Regulations. The said circulars had provided that ELCs have to exercise one of the said options prior to the exit of the stock exchanges where they were listed. I have not seen any evidence of efforts made by the Company to comply with either of the said options prior to the exit of the BgSE and PSE. Therefore, admittedly the company has not been in compliance with the provisions of the said circulars issued by SEBI as it neither made any efforts to migrate to a nationwide exchange even though it satisfied the listing norms of one such exchange nor made a delisting offer under the Delisting Regulations.

36. I note from the reply filed by the company that it has submitted that the Company became aware of the exit of PSE only on May 18, 2015 when the BSE issued a notice informing that trading in the shares of the Company was going to be discontinued. It was also stated that prior to de-recognition of BgSE and PSE, the Company was not aware that the two exchanges had applied for derecognition. In view of the same, it was submitted that the Company could not seek delisting prior to the exit of BgSE and PSE, as mandated under the 2012 and 2014 circulars, as the Company became aware of the exit of the said

exchanges only after the exit orders in respect of the said exchanges were passed by SEBI. It was also submitted that it was only upon derecognition of PSE that the Company was pulled into the ambit of the Exit Circulars; the 2012 and 2014 circulars were not applicable to the Company prior to that as it was not an ELC prior to the exit of PSE and BgSE.

37. I find the said arguments advanced on behalf of the Company to be untenable. As stated in para 15 above, the SEBI circular of 2012 had clearly laid down that SEBI will derecognise stock exchanges which are unable to achieve the minimum turnover criteria prescribed therein within a period of two years. I further note that the 2014 circular clearly mandates companies listed on non-compliant stock exchanges to either move to a recognised stock exchange or delist as per the Delisting Regulations. I therefore find no merit in the contention raised by the Company that it came under the ambit of the exit circular only pursuant to the exit of PSE in 2015. I also reject the contention advanced on behalf of the Company that it was unable to comply with the provisions of the 2014 circular and delist prior to exit of PSE as it became aware of the derecognition of the exchange only after the exit order was passed by SEBI. There was an obligation cast on the Company by the 2014 circular to either migrate to another recognised stock or to delist in compliance with the Delisting regulations, prior to the exit of the exchanges on which it was listed. The Company cannot avoid the said obligations claiming that it was not aware of the exit of the exchanges and such arguments are untenable in law.

38. I also note that the Company had filed an application before SEBI dated July 8, 2016 for seeking approval for providing exit opportunity for the public shareholders. I note from the said Application that the Company had submitted that *"since the equity shares of SEPSL are neither listed on any of the stock exchanges nor placed on the dissemination board of any nation-wide stock exchange, it will not be possible for SEPSL to compute the offer price on the basis of the book building process. Even if SEPSL was to follow the process of book building for computing the exit price,*

it is likely to fail.". I therefore note that even prior to issuance of the 2016 circular, the Company had expressed its inability to follow the book building process specified under the Delisting Regulations for discovering the exit price. I further note in this regard that the inability expressed by the Company is without merit as the 2014 circular had mandated that *"Nation-wide stock exchanges shall provide a platform to these companies to facilitate reverse book building for voluntary delisting using their platform."*

39. Given this factual matrix, the question that needs to be considered is whether such a Company should be permitted to delist as per the relaxed delisting norms under the 2016 circular which was admittedly put in place by SEBI in the interest of investors of companies in the DB which were finding it difficult to migrate to a nationwide exchange or delist in compliance with the Delisting Refutations.

40. I note from the above that the maxim: '*Nullus commodum capere potest de injuria sua propria*' - No man can take advantage of his own wrong- is squarely applicable in the facts and circumstances of the present matter. The Hon'ble Supreme Court in the matter of Eureka Forbes Limited v. Allahabad Bank and Ors.(2010) 6 SCC 193 has held that *"the maxim nullus commodum capere potest de injuria sua propria has a clear mandate of law that, a person who by manipulation of a process frustrates the legal rights of others, should not be permitted to take advantage of his wrong or manipulations."*

41. The Supreme Court explaining this principle of law, in the matter of Union of India and others v/s. Major General Madan Lal Yadav [Retd.], (1996)4 SCC 127. in paragraph 28, observed as under:

"In this behalf, the maxim nullus commodum capere potest de injuria sua propria - meaning no man can take advantage of his own wrong- squarely stands in the way of avoidance by the respondent and he is estopped to plead bar of limitation contained in Section 123(2). In Broom's Legal Maximum [10th Edn.] at page 191 it is stated:"...it is a maxim of law, recognized and established, that no man shall take

advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognized in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."… It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law."

42. I, therefore, note that the Company, which was satisfying the eligibility criteria to move to a nationwide stock exchange, cannot be allowed to take advantage of the diluted delisting criteria prescribed under the 2016 circular. Had the company complied with the 2012 or 2014 criteria and got itself listed on a nationwide stock exchange, then it would have had to follow the process specified under the delisting regulations for getting delisted.

43. It has been argued on behalf of the company that listing of shares on a recognized stock exchange is as much a prerogative of the listed company as it is that of the recognized stock exchanges and companies which are listed on RSEs cannot be forced to list their shares on nationwide/ recognized stock. However, having carefully considered the evolution of policy in this regard, I am of the view that the question here is not regarding the right of a company to get delisted rather it is regarding the eligibility of a company which was fulfilling the criteria to migrate to a nationwide stock exchange seeking to delist by taking advantage of the diluted delisting norms prescribed under the 2016 circular. To sum up, in general, an ELC which was eligible to list on a nationwide stock exchange, cannot unilaterally opt for delisting by taking recourse under the 2016 circular. Such companies can delist only through the process laid down in the Delisting Regulations, and not by availing the relaxations under the 2016 circular.

ORDER:

44. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Section 19 read with Section 11B(1) of the SEBI Act, 1992 hereby direct Schneider Electric

President Systems Limited to within a period of six months from the date of this order, either,

i. list the equity shares of the company on a stock exchange having nationwide terminals. In case the Company desires to get listed on a nationwide stock exchange other than the one it is presently eligible to get listed, then it shall be eligible to the relaxations granted by SEBI to companies on DB for enabling listing on such exchanges., or

ii. delist the company following the procedure prescribed under the SEBI (Delisting of Equity Shares) Regulations, 2009. In case the company opts for delisting, the reference date for computing the floor price would be the date on which the company made the public announcement for the exit offer under the 2016 circular.

45. The shareholders who have tendered their shares in the exit offer shall be given an opportunity by the company for buying back the shares tendered in such offer at the exit price if they choose to.

46. The Company shall inform shareholders and also NSE, the designated stock exchange, regarding the option availed as provided in para 43 above, within a period of one month from the date of this order. NSE shall also monitor the compliance of the Company with the directions in this order.

47. The complaints filed on behalf of the complainants are accordingly disposed off.

Place: Mumbai **G. MAHALINGAM**

Date: January 19, 2021 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA