WTM/SKM/CFD/DCR2/41/2020–21

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1) AND 11B OF THE SEBI ACT READ WITH REGULATION 42 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (DELISTING OF EQUITY SHARES) REGULATIONS, 2009.

In the matter of The Rubber Products Ltd.

BACKGROUND –

1. Rubber Products Limited (hereinafter referred to as "**RPL/Applicant/Company**") is having its registered office at Plot C-44, Road No.28, Wagle Industrial Estate, Thane-400604. The equity shares of the Applicant are listed on the BSE Limited (hereinafter referred to as "**BSE**") since July 04, 1994, however, the trading in the same is suspended w.e.f. July 19,2017.

2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") has received an application dated August 11, 2020 (hereinafter referred to as "**the Application**") from RPL under Regulation 25A of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 [w.e.f. June 10, 2021, SEBI (Delisting of Equity Shares) Regulations, 2009 have been repealed and instead SEBI (Delisting of Equity Shares) Regulations, 2021 have been notified], seeking exemption from certain provisions of SEBI (Delisting of Equity Shares) Regulations, 2009. The Applicant has also furnished further submissions/clarifications vide emails dated November 19, 2020, November 27, 2020, December 16, 2020 and February 02, 2021 and July 02, 2021.

3. The gist of the submissions made in the Application and the subsequent clarifications offered by the applicant is as under:

    a) The equity shares of the *Company* are listed on BSE since July 04, 1994.

b) The Issued, Subscribed and paid up capital of the *Company* is INR 4,08,84,000/- (INR Four Crores Eight Lakhs Eighty Four Thousand Only) divided into 40,88,400 equity shares of INR 10/- each.

c) Since the *Company* was facing various issues like financial and operational trouble/insolvency; the *Company* is at a lockout stage and is closing down all the operations. Further, due to continuous losses and huge long term and short term liabilities, the *Company* has on December 05, 2017, filed an application (hereinafter referred to as a 'Corporate Debtor') under Section 10 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC**") seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") against itself.

d) The National Company Law Tribunal, Mumbai Bench (hereinafter referred to as "**the NCLT**"), vide its order dated January 02, 2018 admitted the *Company's* application and ordered for initiation of the *Company's* CIRP. Subsequently, the Committee of Creditors (hereinafter referred to as "**CoC**"), after evaluating all the resolution plans on the basis of evaluation matrix, has in its meeting held on September 01, 2018 approved the Resolution Plan of Mr. Jagmeet Singh Sabharwal along with Mrs. Sheetal Jagmeet Singh Sabharwal and Max Spare Ltd. (hereinafter referred to as the "**Resolution Applicant/RA**"), with 100% voting in their favour. Accordingly, the Plan as approved by the CoC was put up to the Adjudicating Authority, i.e., NCLT for final approval.

e) The Adjudicating Authority having been satisfied with the Resolution Plan as approved by the CoC, approved the same vide its order dated February 19, 2019. In terms of the Plan as approved by the NCLT, the rights of the existing equity shareholders in the *Company* would cease after approval of the Resolution Plan. In exact words: "*After approval of the resolution plan by NCLT, existing equity shareholders of the Rubber Products Limited shall have no rights whatsoever in the Company*." Further, the existing

shareholders of the *Company* were required to transfer their shares to the new incoming shareholders of the *Company* i.e. the **Resolution Applicant**. It was further provided that if the equity shares held by the existing shareholders were not transferred to the **Resolution Applicant within the stipulated time**, then the existing shares shall be deemed to have been derecognized/cancelled. The Resolution Applicant, *inter alia* being aggrieved of certain observations of the aforesaid order of NCTL, filed an appeal before the National Company Law Appellate Tribunal (hereinafter referred to as "**NCLAT**"). The said appeal was disposed of by an order dated June 11, 2019, passed by the NCLAT and vide the said order, the manner of distribution provided in the original Resolution Plan as approved by the NCLT was substituted with a revised distribution chart for payment of liability, as incorporated in the said order of NCLAT dated June 11, 2019.

f) After the expiry of time limit provided to the existing shareholders for transfer of their shares, the Board of Directors of the *Company,* on March 19, 2020 passed resolutions and approved the following actions:

   i. Cancellation of Existing 40,88,400 equity shares (in the category of Promoters & Public) of the *Company* including all rights and privileges of shareholders on such shares as approved & directed by the NCLT and NCLAT vide their orders dated February 19, 2019 and June 11, 2019 respectively,

   ii. Issue & Allotment of fresh 40,88,400 equity shares of INR 10 each to the following new shareholders (Resolution Applicants) on such terms and condition as approved & directed by NCLT and NCLAT vide their orders dated February 19, 2019 and June 11, 2019 respectively:

Name of New Shareholders	No. of Shares	Face Value	Total Share Capital	%age of holding
Jagmeet Singh Sabharwal	20,43,950	10	2,04,39,500	49.994%
Sheetal Jagmeet Singh Sabharwal	20,43,950	10	2,04,39,500	49.994%
United Van Der Horst Ltd.	100	10	1,000	0.002%
Dew Drops Properties	100	10	1,000	0.002%
Lata Madhusudan Kaimal	100	10	1,000	0.002%
Akshay Ashokan Veliyil	100	10	1,000	0.002%
Sangita Kiran Todkar	100	10	1,000	0.002%
Total	**40,88,400**	**10**	**4,08,84,000**	**100%**

g) The *Company* has submitted a listing application for newly allotted shares pursuant to cancellation of existing shares, to BSE Ltd. and has got approval for the same on May 19, 2020.

h) After allotment of the new shares pursuant to cancellation of existing shares and listing of the same by BSE Ltd., the *Company* is currently having its 100% shareholding listed on Stock Exchange allotted to various shareholders, as indicated in the above table.

i) The new promotors are taking best efforts to revive the *Company*. However, the *Company* is incurring losses and its net worth has been eroded exponentially. In view of the same, the *Company* through its promoters understands that the delisting of the

equity shares of the *Company* is the ultimate viable option available in the facts and circumstances of the matter.

j) As the trading of its equity shares is under suspension, under the circumstances, following the route of first getting the suspension of trading revoked and then to apply thereafter for voluntary delisting of shares, shall further cause an additional financial burden and the same is not a practical and viable route.

k) Accordingly, an exemption application has been made to SEBI seeking exemption to allow the *Company* to apply for Voluntary Delisting of Equity Shares with BSE without revocation of suspension of its shares.

l) Further, the entire 100% shares of the *Company* are held by Promoters only and there is no Public shareholding in the *Company*. There is no purpose likely to be served by asking promoters to first bring down their holding to 75%, achieve requirement of Minimum Public Shareholding (hereinafter referred to as "MPS") and then to acquire those shares back from the public shareholders so as to enable delisting of shares;

m) Since there is no public shareholder in the *Company*, hence, requirements of giving an exit opportunity, opening of an escrow account and right of shareholders to participate in the book building process are not attracted/applicable in the present case.

Consideration

4. Before I proceed further, I find it appropriate to quote the relevant regulatory provisions of SEBI (Delisting of Equity Shares) Regulations, 2021 (hereinafter referred to as "Delisting Regulations"), relevant to the present matter:

2 (1) (bb) "voluntary delisting" means the delisting of equity shares of a company voluntarily on an application made by it under Chapter III of these regulations;

Conditions and procedure for delisting where exit opportunity is required

10(4) The board of directors of the company, while considering the proposal for delisting, shall certify that :
(i) the company is in compliance with the applicable provisions of securities laws

Power to relax strict enforcement of the regulations.

42. (1) The Board may, in the interest of investors or for the development of the securities market, relax the strict enforcement of any requirement of these regulations, if the Board is satisfied that-
a) the requirement is procedural in nature; or
b) any disclosure requirement is not relevant for a particular class of industry or company; or
c) the non-compliance was caused due to factors beyond the control of the acquirer.

(2) For seeking relaxation under sub-regulation (1), the acquirer or the company shall file an application with the Board, supported by a duly sworn affidavit, providing details of such relaxation of the regulations and the grounds on which the relaxation has been sought.
(3) The acquirer or the company, as the case may be, shall alongwith the application referred to under sub-regulation (2) pay a non-refundable fee of rupees one lakh, by way of direct credit in the bank account through electronic modes including payment gateways or such other mode allowed by the Reserve Bank of India.
(4) The Board may also exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc. in live environment of regulatory sandbox in the securities markets.
(5) Any exemption granted by the Board under sub-regulation (5) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.
Explanation,—For the purposes of these regulations, "regulatory sandbox" means a live testing environment where new products, processes, services, business models, etc. may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board.

5. I observe that in terms of the extant legal framework, in order to achieve voluntary delisting of equity shares, various requirements viz., opening of escrow account, deposit of certain percentage of amount into the escrow account, entering into tripartite agreement, making public announcement, deciding floor price, providing exit opportunity to the shareholders etc., need to be complied with by the *Company*. However, the issue for consideration before me in the present matter is whether, the requirement for revoking the suspension of its shares, complying with requirements of Minimum Public Shareholding along with fulfilling various requirements of providing exit opportunity, opening escrow account and honouring the right

of shareholders to participate in the reverse book building process etc., as mandated under the provisions of Delisting Regulations can be relaxed, given the peculiar facts and circumstances of the case, so as to enable the *Company* to seek voluntary delisting.

6. I have perused the material available on record and also examined the scope of the powers conferred under Regulation 42 of the Delisting Regulations, as well as various conditions for delisting of equity shares, as laid down in the Delisting Regulations. I note that by virtue of the Regulation 42 of Delisting Regulations, SEBI inter alia has the power to relax strict enforcement of any of the requirements which is procedural in nature, if it is satisfied that the relaxation is in the interests of the investors in the securities market. Therefore, the only parameter that needs to be tested is whether the relaxation, if given, would be in the interest of the investors of securities market.

7. Reverting to the facts of the present matter, it is noted that the Applicant has admittedly been incurring losses and being confronted with its rapidly deteriorating financial condition, the *Company* is finding it difficult to discharge the burden of compliance with various requirements of the applicable laws and regulations. The entire shareholding of the *Company* is currently held by the Resolution Applicants who are the new shareholders and effectively there is no public shareholder of the *Company*, hence, the necessity of opening an escrow account and allowing the shareholders to participate in the reverse book building process does not arise.

8. In this regard, I observe that the intent of the Delisting Regulations is the protection of the interest of the public shareholders of those companies where the promoters are seeking to delist the shares of the company. Such purpose is sought to be achieved by mandating compliances with the various requirements like, the requirement to arrive at a fair exit offer price, participation of public shareholders in the process of passing the resolution, keeping the offer open for stipulated period and discovery of delisting price through reverse book building etc.

9. After carefully perusing the extant legal framework and the unique set of facts of the present case, I observe that there is no dispute to the fact that entire shareholding in the *Company* is being held by the present promoters/Applicant on the basis of the Resolution Plan, as approved by the NCLT and NCLAT. There is also no record before me to dispute the claim pertaining to the poor financials of the *Company* as presented and narrated by the Applicant. As observed above, the requirements prescribed under the Delisting Regulations are laid down primarily to protect the interest of the shareholders of the *Company* in case of delisting of the equity shares. The essence of these procedural requirements seems to be that once a company gets its equity shares delisted from the bourses, the public shareholders should not be left high and dry by the promoters of such a company. However, as noted earlier, in the present case, the *Company* is not having any public shareholder at all, therefore, the question of any kind of possible prejudice being caused to the interest of the public shareholders of the *Company* does not arise at all. Consequently, the regulatory compliance of all the procedural requirements of the Delisting Regulations have been rendered merely "procedural" in the present case. Thus, I am of the view that no prejudice would be caused to the interests of any public shareholders or the interest of the securities markets, if any relaxation/exemption is granted to the Applicant *Company* for voluntary delisting.

10. Keeping the aforesaid in view, I find that compliance with the processes/requirements contemplated in the Delisting Regulations by the Applicant *Company* which has no public shareholders, would not be required and therefore, this is a fit case to exercise powers conferred under Regulation 42 of the Delisting Regulations. I am, therefore, inclined to grant relaxation from the compliances of the Delisting Regulations to the *Company*, for the reasons stated above.

11. In view of the above, in the interest of investors in securities market and in exercise of powers under Sections 11(1) and 11B of the SEBI Act, 1992 and regulation 42 of the Delisting

Regulations, I find it appropriate to grant the Applicant *Company* relaxation from the applicability of Regulations dealing with Exit Opportunity, requirement of achieving minimum public shareholding, provisions of Escrow Account and right of shareholders to participate in the reverse book building process of the Delisting Regulations etc., subject to the following conditions:

(i) The Applicant *Company* shall issue a public announcement in at least one English national daily with wide circulation, one Hindi national daily with wide circulation and one regional language newspaper of the region where the concerned recognised stock exchange, i.e. BSE, is located, disclosing*, inter-alia* that the *Company* is 100 % promoter held and is seeking delisting from BSE, pursuant to this order, within a period of one month from this order;

(ii) After completion of the aforesaid period of one month, the Applicant *Company* shall approach the Stock Exchange for guidance and the Stock Exchange shall do the needful to allow the *Company* to get delisted;

(iii) The exercise of delisting shall be completed within a period of 6 months from the date of this order; and

(iv) The delisting will be subject to the restrictions contained in Regulation 40(1) (a) of the Delisting Regulations.

12. A copy of this order shall also be served to BSE for information and necessary action.

13. The Application dated August 11, 2020 along with related communications are accordingly disposed of.

-Sd-

DATE: July 15, 2021 **S. K. MOHANTY**

PLACE: Mumbai **WHOLE TIME MEMBER**

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