WTM/SKM/CFD/DCR/51/2021–22

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1) AND 11B OF THE SEBI ACT,1992 READ WITH REGULATION 25A OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (DELISTING OF EQUITY SHARES) REGULATIONS, 2009 READ WITH REGULATION 44 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (DELISTING OF EQUITY SHARES) REGULATIONS, 2021

IN THE MATTER OF CLASSIC ELECTRICALS LIMITED

BACKGROUND –

1. Classic Electricals Limited (hereinafter referred to as "**Classic/Applicant/Company**") is having its registered office at 1301, 13th Floor, Peninsula Business Park, Tower B, Senapati Bapat Marg, Lower Parel (West), Mumbai-400013. The equity shares of the Applicant are listed on the BSE Limited (hereinafter referred to as "**BSE**").

2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") has received an application dated October 06, 2020 (hereinafter referred to as "**the Application**") from the *Company* under Regulation 25A of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (**"Delisting Regulations, 2009"**) [w.e.f. June 10, 2021, SEBI (Delisting of Equity Shares) Regulations, 2009 have been repealed and instead SEBI (Delisting of Equity Shares) Regulations, 2021 have been notified], seeking exemption from certain provisions of SEBI (Delisting of Equity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 as well as from the provisions of Securities Contract (Regulation) Rules, 1957, pertaining to minimum public shareholding requirements. The Applicant has also furnished further submissions/clarifications vide email dated April 26, 2021.

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

a) The *Company* was incorporated on April 26, 1985 and the equity shares of the *Company* are also listed on BSE Limited since 1985, however, there has not been any trading in the said shares since October 05, 2007.

b) The Issued, Subscribed and paid up capital of the *Company* is INR 1,48,52,100/- divided into 14,85,210 equity shares of INR 10/- each. The net-worth of the *Company* as on March 31, 2020 was INR 7,49,72,100/- only.

c) Since the year 2001, the promoter and promoter group are holding above 90%, and as per the shareholding pattern for the quarter June, 2020 they are holding 94.30% (14,00,535 shares) of equity shares of the *Company*. The rest of the 5.70% (14,85,210 shares) shares of the *Company* are held by 183 public shareholders.

d) The promoters of the *Company* are willing and interested in acquiring the remaining shares which are presently held by the 183 public shareholders, in accordance with the provisions of Delisting Regulations, 2009.

e) Since the equity shares are not having any trading on the stock exchange platform, the investment of the public shareholders in the scrip of the *Company* has become illiquid. Delisting of the shares would provide the public shareholders an opportunity to liquidate their shares at a fair market value in terms of the formula prescribed under the Delisting Regulations, 2009. The delisting of the shares is a practical move, financially for the public shareholders.

f) The *Company* has fulfilled the criteria laid down under Regulation 27 of the Delisting Regulations, 2009.

g) As there has been no trading in the scrip of the *Company* since October, 2007, there is no investor interest in the shares of the *Company* and hence, the various methods

prescribed by SEBI to comply with the Minimum Public Shareholding ("**MPS**") requirements were not feasible. As there is no liquidity in the shares of the *Company,* there are no buyers for the shares so as to reduce the promoter's shareholding from 94.30% to 75%.

h) Accordingly, the *Company* has made an application seeking exemption from the requirements of Minimum Public Shareholding as laid down under Rule 19 (2) (b) of the Securities Contract (Regulation) Rule, 1957 ("**SCRR**").

i) As there is no liquidity, the public shareholders have been denied the benefit of listing, i.e., an opportunity to exit by liquidating their investments at a reasonable price. The proposal of delisting could probably be the only chance for such public shareholders to liquidate their investment made in the shares of the *Company*. The promoters are ready to provide an exit opportunity to all public shareholders at a reasonable and fair price.

Consideration

4. In pursuance of the application so made, a personal hearing was granted to the *Company* on September 21, 2021, which was attended by its authorized representative through Video Conferencing mode. The authorized representative made submissions on the line of the same contentions already made in the application and during the course of hearing. When it was indicated that *prima facie* based on the past conduct of the *Company,* there does not appear to be any merit for acceptance of the aforesaid application, it was expressed by the authorized representative that liberty may be accorded to the *Company* to consider to withdraw the present application and a decision in this regard by the *Company* would be conveyed shortly preferable within 10 days thereto. However, it is noted from the records that till date no such intimation

seeking withdrawal of the present application has been received, therefore, I shall proceed to decide the application on its own merit.

5. Before I proceed further, I find it appropriate to quote the relevant regulatory provisions relevant to the present matter:

Securities (Contract) Regulation Rule, 1957

Requirements with respect to the listing of securities on a recognised stock exchange.

19 (2) Apart from complying with such other terms and conditions as may be laid down by a recognised stock exchange, an applicant company shall satisfy the stock exchange that:

(b) The minimum offer and allotment to public in terms of an offer document shall be-

(i)at least twenty five per cent of each class or kind of equity shares or debenture convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is less than or equal to one thousand six hundred crore rupees;

SEBI (Delisting of Equity Shares) Regulations, 2009

Delisting from all recognised stock exchanges

5. Subject to the provisions of these regulations, a company may delist its equity shares from all the recognised stock exchanges where they are listed or from the only recognised stock exchange where they are listed: Provided that all public shareholders holding equity shares of the class which are sought to be delisted are given an exit opportunity in accordance with Chapter IV".

"Conditions and procedure for delisting <u>where exit opportunity is required</u>

8(1) .....

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

(i) the company <u>is in compliance with the applicable provisions</u> of securities laws;
(ii) …...
(iii) the delisting is in the interest of the shareholders.
(4)(d) the compliance with any condition of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 with that recognised stock exchange having a material bearing on the interests of its equity shareholders;"

"Power to relax strict enforcement of the regulations.

25A. (1) The Board may for reasons recorded in writing, grant relaxation from strict enforcement of any of the requirements of these regulations, if the Board is satisfied that the relaxation is in the interests of investors in securities and the securities market.

(2) For seeking exemption under sub-regulation (1), the promoter or the acquirer or the company shall file an application with the Board, supported by a duly sworn affidavit, giving details for seeking such exemption and the grounds on which the exemption has been sought.

(3) The promoter or the acquirer or the company, as the case may be, shall along with the application referred to under sub-regulation (2) pay a non-refundable fee of rupees fifty thousand, by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

(4) The Board may after affording reasonable opportunity of being heard to the applicant and after considering all the relevant facts and circumstances, pass a reasoned order either granting or rejecting the exemption or relaxation sought as expeditiously as possible."

Special provisions in case of small companies

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 net worth 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".

SEBI (Delisting of Equity Shares) Regulations, 2021

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.

Repeal and Savings

44.(1) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, stand repealed from the date on which these regulations come into force.(2) Notwithstanding such repeal,—(a) anything done or any action taken or purported to have been done or taken including in-principle approval given by the recognised stock exchanges, relaxation or exemption granted by the Board, fee collected, any adjudication, enquiry or investigation commenced or show cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;"

Underline supplied

6. Moving on to the merits of the application, I observe that admittedly, the *Company* is not in compliance with the prescribed threshold of MPS which requires that at least 25% of the shareholding of a listed company needs to be held with the public shareholders. It is noted from the records that in order to ensure enforcement of the said regulatory provision, SEBI has taken various actions from time to time on the administrative as well as quasi-judicial fronts.

7. It is noted that whenever companies are found to be not in compliance with the requirement of minimum public shareholding requirement, the same has ensued the initiation of actions against such erring entities. In this regard, acknowledging the gravity of the issue, a common interim order dated June 04, 2013 (hereinafter referred to as the **"interim order"**) was passed by SEBI against 105 such listed companies (including the applicant *Company)* who were non-compliant with the aforesaid minimum public shareholding norms. The said *interim order inter alia* has highlighted the fact of various prescribed modes available to such non-compliant companies for the purpose of achieving the MPS. The said modes through which a company should try to achieve its MPS requirement are viz., by way of issuance of shares to the public through prospectus; offer for sale of shares held by promoters to public through prospectus; and sale of shares held by promoters through the secondary market i.e. OFS through Stock Exchange (in terms of circular dated December 16, 2010); institutional placement programme (in terms of circular dated February 08, 2012); by way of rights issues to public shareholders with promoters/promoter group shareholders foregoing their rights entitlement and bonus issues to public shareholders with promoters/promoter group shareholders forgoing their bonus entitlement etc. Apart from the aforesaid prescribed modes, it has also been prescribed that any other method as may be approved by SEBI, on a case to case basis may also be deployed by a non-compliant company for achieving the MPS norms, as per the provisions of Rule 19 (2) (b) of SCRR, 1957.

8. The said *interim order* has further noted that despite efforts on SEBI's part to facilitate the companies to achieve the MPS requirement and despite issuance of repeated cautionary advises by SEBI, many of such erring companies have not yet fulfilled the said MPS requirement mandated under SCRR, 1957, and the Applicant *Company* is one of such non-compliant companies which appeared at Serial no. 10 in the said list of 105 non-compliant companies.

9. The above-said *interim order* has further recorded a categorical observation that the persons forming part of the promoter/promoter group and the directors of such non-compliant companies are responsible for such a non-compliance with the MPS requirement and that such promoter/promoter group are enjoying an advantage on account of their disproportionate stake as compared to the public, in the respective companies.

10. SEBI, vide the aforesaid *interim order* has also passed certain directions like, freezing of the voting rights and corporate benefits with respect to the excess of promoter/promoter group shareholding till the time the companies achieve compliance with minimum public shareholding as per the SCRR and further, prohibiting the promoter/promoter group and Directors of such companies from buying, selling, or otherwise dealing in securities of their respective companies, except for the purpose of complying with MPS requirement, till the time such compliances are achieved.

11. It is noted from the records that the applicant *Company* never filed any response to the said *interim order*, however, when an opportunity of personal hearing was granted to it, the *Company* promptly responded by contending *inter alia,* that it is proposing for delisting of its equity shares from BSE and it has not been able to do so, due to financial and other administrative difficulties. However, I find that during the personal hearing in course of the proceedings emanating from the *interim order*, the *Company* had requested for a time of about one year, so

as to be able to take necessary steps for the proposed delisting. After considering all the contentions of the *Company,* it was observed by SEBI that the *Company* has not taken any steps either towards the achievement of MPS or towards the delisting of its equity shares, as was being proposed by it, repeatedly. Ultimately, vide confirmatory order dated July 31, 2014, *inter alia* the directions passed against the *Company* vide the aforesaid *interim order* dated June 04, 2013 were confirmed by SEBI.

12. Adverting to the present application in consideration, I note that the *Company* has filed the instant application seeking exemption from certain provisions of SEBI (Delisting of Equity Shares) Regulations, 2009 as well as from the provisions of Securities Contract (Regulation) Rules, 1957 pertaining to compliance with MPS and to grant permission for delisting of its equity shares listed on the exchange of BSE. As noted above, after observing continued non-compliance of the requirement of minimum public shareholding by 105 companies including the applicant *Company,* an interim order was passed in the year 2013 and the same was further confirmed vide order dated July 31, 2014 *qua* the applicant *Company*. In this respect, it is observed that is even after elapse of more than 7 years since the *interim order* was passed by SEBI against the erring companies including the Applicant herein directing them to take urgent steps to ensure the compliances of Minimum Public Shareholding requirements, applicant *Company* has visibly taken no concrete action to even attempt to achieve its MPS threshold as mandated under SCRR. Having gone through the instant application of the applicant *Company* seeking exemption from the compliances of provisions pertaining to securities laws for the purpose of delisting its equity shares, it is observed that neither the application contains any details concerning the steps so far taken by the Applicant *Company* towards achieving the requirement of law of maintaining minimum public shareholders, nor during the course of hearing, any submissions have been advanced before me to justify the

Company's inaction or failure to take any steps to achieve the mandate directed under the *interim order*.

13. It is also noted that SEBI, from time to time through circulars and other measures, has provided numerous methods and opportunities to the listed companies for achieving their MPS requirement. In addition to the above measures listed out in circulars issued by SEBI, listed companies have also been provided with option to suggest any other method as may be deemed appropriate by them under law for approval by SEBI, on a case to case basis which would help them achieve the MPS norms. As pointed out above, it has been more than 7 years since issuance of directions under the *interim order*, however, the Applicant *Company* has failed to submit an *iota* of evidence to even suggest remotely that it had made any serious steps to achieve the desired objectives and that despite having taken sincere steps, for the reasons beyond its control, it has failed to achieve the requirement of minimum public shareholding. I may also hasten to add here that the instant application filed by the *Company* seeking exemption from compliances of requisite provisions of SCRR and relevant regulations of SEBI dos not even mention or make any reference to the passing of the afore-noted interim order/confirmatory order by SEBI against it.

14. The Applicant *Company* has submitted that there has not been any trading in the scrip of the *Company* since October 05, 2007, hence, it should be permitted to get its equity shares delisted. In this respect, the records show that that since 2001, the promoter and promoter group have been holding above 90% of equity shares of the *Company* and at present, the public shareholders are holing only 5.70% (14,85,210 shares) shares of the *Company*, which as per information furnished by the *Company* are held by 183 public shareholders. The holdings of the promoters have increased from 90 % in 2001 to 94.30% in June 2020 whereas the mandate of law was to dilute the promoters holding and increase public shareholding. The promoters have not brought any cogent evidence to substantiate their *bonafide* intent and willingness to

remain compliant with the MPS and rather have acted contrary to the regulatory and legislative intention of achieving a minimum of 25% shareholding, and have gone ahead to increase their own shareholding instead of divesting their holding in favour of more and more public shareholders. Thus, it is more than evident that no steps whatsoever, have been taken by the *Company* over the period to increase public participation, which could have rather enhanced the possibility of better trading and making the scrip liquid. The promoters of the *Company* have undisputedly taken no steps to ensure public shareholding requirement as mandated under law for the reasons best known to them and now, after 7 years of issuance of the confirmatory order, under the guise of lack of liquidity, the *Company* has requested for exemption from requirement of the said rules and regulations to help it to delist its equity shares, thereby demonstrating a glaring misconduct and defiant attitude on the part of the *Company* by deliberately disobeying the directions issued to it by SEBI 7 years ago.

15. As mentioned above, as per the information furnished by the Applicant *Company*, as of now there are only 183 non promoters shareholders comprising only 5.70 % shares of the *Company*. The Applicant *Company* is also claiming to have filed all disclosures and that it has remained a complaint entity, however, the application is conspicuously silent about the details of those public shareholders viz; who are those 183 shareholders, whether they have been participating in the board meetings; and whether are those shareholders approachable by the *Company* etc. The *Company* has sought permission for delisting by stating that delisting of the shares is financially a practical move for the public shareholders as there is no investors' interest in the shares of the *Company* but the *Company* itself seems to be oblivious about the existence of those 183 shareholders and their whereabouts. I find no reason to accede to the request made by the Applicant *Company* for grant of exemptions from MPS requirements and other provisions of law, as the promoters have been seen consolidating their holdings and have failed miserably to show even a single step taken by them towards achieving the public shareholding

requirement, hence the argument of no investors' interest in the *Company* is not found to be based on any verifiable fact, hence, is not acceptable.

16. From the contentions made in the present application seeking delisting of the shares, it is noted that an elusive reasoning has been offered by the *Company* to justify as to why the minimum public shareholding norms have not been achieved by the *Company*. In exact words, it has been stated as: "*As regards the steps taken to comply with Minimum Public Shareholding ("**MPS**") requirement, since there is no trading has been done (sic) since October 06, 2007, there is no investor interest in the shares of the company and hence, various methods prescribed by SEBI to achieve MPS compliance were not feasible*"

17. A plain reading of the aforesaid statement would show that the *Company* instead of adopting any of prescribed modes for achieving MPS so as to show that it has made some efforts towards achieving the same, it has simply cited absence of trading of its shares as the reason for non-compliance and has called the methods prescribed by SEBI as not feasible, without even trying its hands on any of those methods. I find that the *Company* had the liberty of exercising several options through which it could have diluted the shareholding of the promoters and consequentially could have inched towards achieving the mandate of MPS which in turn, could have enhanced the scope of liquidity of its scrip as well. Admittedly, the *Company* chose not to pursue any of the laid down mechanisms as prescribed by SEBI and deliberately chose to stay non-compliant with the directives of SEBI. Even the directions passed by SEBI through the *interim order* and the confirmatory order also were not complied with by the *Company* to yield the desired level of MPS. The claim of the *Company* that absence of trading is the reason behind its non-compliance with MPS norms is also a fallacious claim for the reason that since the year 2013, there has not been any change in the promoter's holding which stood at 94.30% and continues till date. It shows that there has been no efforts on the part of the *Company* to even make an attempt to comply with the requisite norms.

Ironically, the prejudice that is being caused to the public shareholders by not getting the equity shares delisted has been taken as a ground for seeking exemption from the provisions of SCRR by stating that: "*In such a scenario, the public shareholders in the company have been denied the benefit of listing, i.e., an opportunity to exit by liquidating their investments at a reasonable price.* ", whereas for last several years, the *Company,* by not complying with the MPS norms has deliberately rendered the scrip illiquid thereby prejudicing the interest of its minority shareholders.

18. Perusal of the relevant governing regulations shows that SEBI has been vested with the power to relax the strict enforcement of any requirement of the regulations, however, the power is not absolute, and is required to be exercised only to grant exemption from those provisions of law which are procedural in nature and/or where the non- adherence has been caused due to factor beyond the control of the entity/acquirer, which in this case, the Applicant *Company* has grossly failed to establish. The records rather show that the *Company* on the one hand has intentionally stayed non-compliant ever since the relevant rule was introduced in the year 2010, nor did even comply with the said MPS rule despite passing of categorical directives by SEBI, and only now at this stage, exemption from the said rule has been sought stating that it is "only ray of hope for the public shareholders to liquidate their investment in the *Company",* which is nothing but an empty claim by a non-compliant company and its promoters only to get the *Company* delisted somehow without any regards for the governing laws and rules.

19. I observe that the listing of securities on bourses is a very crucial event for any company as after getting the equity shares listed, the public shareholders have a freedom to buy and sell the shares as per the market prevalent prices. As the listing status of a company is associated with the interests of the common investing public, stringent measures have to be taken to protect such interest. One of such measures is the rule to maintain a minimum number of shares with public as a floating stock. Such a requirement is aimed towards maintaining a continuous market for the securities by offering adequate liquidity and investing avenues to

the public investors and also to keep the promoters under some checks by keeping their holding limited to a particular threshold. It is also an undisputed position that more the concentration of holding with limited number of entities, more the scrip would be susceptible to manipulation. Accordingly, for the sustained and healthy growth of the companies seeking public capital and at the same time for protecting the rights of the public shareholders, it becomes all the more important to maintain a certain threshold of minimum public shareholding in the listed companies. I find it apt to refer to the findings of the Hon'ble Securities Appellate Tribunal rendered in the matter of *Siel Financial Services Limited Vs. SEBI (Appeal no. 158/2020, date of decision: August 03, 2020)*: "*The reason for bringing in the minimum pubic shareholding requirement was to ensure that there is no concentration of shares at the hands of single person or a group of persons. The idea is that if there are a large number of shareholders then there is less scope of price manipulation and further provides liquidity to the investors and helps in discovery of fair price.*" The said findings underscore the importance of achieving the minimum public shareholding in a listed company.

20. Under the circumstances, I am constrained to observe that despite providing various methods to dilute the promoters' shareholding and despite passing of *interim order* and confirmatory order to this effect, there does not seem to be any intent on the part of the *Company* to follow the law, either in letter or in spirit. No efforts whatsoever have been demonstrated to have been made to show any *iota* of sincerity or regards to the applicable law, and instead an application seeking exemption from the said requirement has been made, after 7 years of passing of confirmatory order by SEBI directing the *Company* to take every effort to achieve the MPS which were never adhered to during these 7 years.

21. In view of the foregoing discussion, I observe that the present case does not call for exercise of the powers conferred under the Delisting Regulations, 2009 as the *Company* has miserably failed to carve out a case for exemption which can only be granted in exceptional

circumstances, which are conspicuously absent in the facts of the present application. Accordingly, the present application of the *Company* dated October 06, 2020 seeking exemptions for delisting of its equity shares is rejected for want of merit.

22. Needless to say the rejection of the present application would not have any impact on any action taken or proposed to be taken in pursuance of the interim order or otherwise

-Sd-

DATE: NOVEMBER 17, 2021 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA