

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

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

In the matter of Delisting of Equity Shares of LEDO Tea Company Limited

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**BACKGROUND**

1. LEDO Tea Company Limited (hereinafter referred to as “**LEDO/Applicant/the Company**”) was incorporated under the provisions of the Companies Act, 1956, on April 19, 1983 having its Registered Office at Sir R.N.M. House, Lal Bazaar Street, Kolkata, 700001. The shares of the *Company* are listed on the Bombay Stock Exchange Limited (hereinafter referred to as “**BSE**”) with effect from August 14, 1986.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received an application dated January 20, 2021 (hereinafter referred to as “**the Application**”) from LEDO under regulation 25A of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 (hereinafter referred to as “**the Delisting Regulations, 2009**”), seeking exemption from the provisions of regulation 27 of the Delisting Regulations, 2009. The Applicant also provided further submissions/clarifications vide letters dated March 04, 2021, March 15, 2021, March 24, 2021, April 07, 2021, April 20, 2021 and April 22, 2021.
3. Vide the Application and subsequent aforesaid further submissions/clarifications, the *Company* has submitted various details and grounds for seeking exemptions from the applicability of regulation 27 of the Delisting Regulations, 2009 which are summarized hereunder:
  - (a) The *Company* has not carried out any corporate action for the last ten years despite the equity shares of the *Company* listed on BSE for almost 35 years;
  - (b) The *Company*’s paid-up share capital comprises of 8,63,500 equity shares of face value INR 10/- each. Out of these, 5,88,701 equity shares representing 68.18% are held by the promoters and the balance 2,74,799 shares representing 31.82% are held by 2148 public shareholders as of November 26, 2020. Therefore, the *Company* is in compliance of Minimum Public Shareholding (MPS) requirement of 25% public shareholding all the time in terms of rule 19A of Securities Contract Regulation Rules, 1957;

- (c) The *Company* is a small company in terms of regulation 27 of Chapter VII of the Delisting Regulations, 2009 as the paid-up capital of the *Company* is less than INR 10 Crore and net worth is less than INR 25 Crore and thus, is eligible for delisting process under the said Chapter;
- (d) Pursuant to the receipt of the intention letter for delisting of equity shares of the *Company* from its one of the promoters i.e., Mr. Nirmal Kumar Lohia on November 20, 2020, the Board of Directors of the *Company*, in its meeting held on November 25, 2020 appointed VC Corporate Advisors Private Limited as the Merchant Banker (hereinafter referred to as “**VC Corporate/MB**”) to carry the due diligence process;
- (e) On November 25, 2020, VC Corporate has submitted its due diligence report which was taken on record by the Board of Directors of the *Company* in its subsequent meeting held on November 26, 2020. Further, as per the valuation report, the fair value of equity shares is valued at negative INR 13.52 per equity share. However, the promoters have expressed their willingness to acquire the equity shares from the public shareholders at the face value i.e., INR 10/- per equity share. The offer price of INR 10/- was clearly indicated in the Postal Ballot Notice dated November 26, 2020 (hereinafter referred to as “**the PBN**”);
- (f) To ensure compliance with regulation 8 (1) (b) of the Delisting Regulation, 2009, the *Company* on November 29, 2020 sent the PBN to all the shareholders, seeking their approval for the delisting of the equity shares, by way of special resolution. Further, the notice of dispatch of PBN was also published in Financial Express (All India edition) and Arthik Lipi [(Bengali) Kolkata edition] of the Newspapers on November 30, 2020. In order to ensure, fair, easy and comfortable access to the shareholders, the PBN and relevant Form were also uploaded on *Company*’s website. The voting through Postal Ballot and remote e-voting had commenced on November 30, 2020 and ended on December 29, 2020. The Special Resolution approving the delisting was passed by the shareholders of the *Company* through Postal Ballot on December 30, 2020. Accordingly, the result of the Postal Ballot, showing that shareholders have voted in favor of delisting of the equity shares of the *Company*, was published in the aforesaid two Newspapers on December 31, 2020 wherein the notice of dispatch of PBN was earlier published. Simultaneously, the result of the Postal Ballot was also forwarded to BSE and uploaded on the website of the *Company*.
- (g) Out of 2148 shareholders, only 50 shareholders, representing only 10.51% of the public shareholding participated in the delisting process despite the fact that a significant majority of the shares are held in dematerialized form;
- (h) The details of the shares held in physical and dematerialized forms are as under:

Form in which shares held by Public Shareholders	Number of shareholders	Percentage	Number of shares	Percentage	Percentage to the total shareholding
Demat	1692	78.77%	2,31,992	84.42%	26.86
Physical	456	21.23%	42,807	15.58%	4.96
Total Public Shareholding:	2148	100.00%	2,74,799	100.00%	

- (i) The details of PBN and Form sent to all shareholders which were returned undelivered as confirmed by the Registrar and Share Transfer Agent are summarised as under:

Mode of dispatch of Postal Ballot Notice and Form	Form in which shares held		Total Sent	Returned Undelivered	Percentage
	Demat	Physical			
Sent by E-mail	1194	0	1194	0	0
Sent by Registered Post	505	456	961	55	5.72%

- (j) There has been very low participation by the shareholders in the e-voting process for the resolutions being considered for the Annual General Meetings (“AGMs”). The details of the participation are as under:

Year of AGM	Total Public Shareholders		Public Shareholders who participated		
	Total Number of Public Shareholders	Number of Shares held	Number of public shareholders	Number of Shares held	As percentage of total public shareholding by number of shares
2018	2190	274799	6	8260	3.00
2019	2158	274799	6	8335	3.03
2020	2148	274799	24	8311	3.02

- (k) The shares of the *Company* are infrequently traded and there has been very low trading in the shares of the *Company* to the tune of 0.11% during the 12 calendar months (November 1, 2019 to October 31, 2020). Therefore, delisting of the shares shall provide an exit opportunity to the public shareholders and at the same time shall reduce the burden of the *Company* of regular compliance requirements as applicable to a listed company;
- (l) The *Company* has made the following attempts to reach out to the public shareholders vide various notices and communications sent to the shareholders: -
- i. Newspaper advertisement regarding dispatch of PBN got published on November 30, 2020;

- ii. Newspaper advertisement regarding result of PBN for delisting of equity shares was published on December 30, 2020;
  - iii. Newspaper Notice to the shareholders was also got published asking shareholder to update their contact details with the *Company* vide publication made on March 04, 2021;
  - iv. Newspaper Notice to the shareholders to update their contact details with the *Company* vide publication dated March 13, 2021; and
  - v. Newspaper Notice to the shareholders to update their contact details with the *Company* dated March 24, 2021.
- (m) The *Company* is suffering from financial distress. In this respect, in the previous Financial Year, the *Company* had reported turnover of INR 8.09 Crore and it incurred a loss before taxes of INR 4.92 Crore. For the last few years, the *Company* has been suffering from losses due to overall poor market conditions in the Tea industry and its small size as far as the quantity of production, in comparison to other big market players of the Tea industry is concerned. The net worth of the *Company* has fully eroded and the book value per share is negative INR 76.06/- per equity share. The Tea industry does not offer any promising growth opportunities in future;
- (n) The *Company* had submitted that it has become practically impossible for it to comply with the day to day ever changing statutory formalities for public limited companies which entails substantial financial outgo. It has also submitted that cost cutting is the only way ahead to ensure survival of the *Company* and more than 1200 workers who live and work in the Tea Estate. Therefore, the *Company* has applied for delisting to save on listing expenditures which includes Annual Listing Fee to BSE, appointment and maintenance of Company Secretary and Compliance Officer, newspaper advertisements etc. which incur substantial costs;
- (o) The *Company*/LEDO is a very small organization, employing only 6 persons in its corporate office. Due to its small size, continuous incurring loss, not having profit and bleak prospect of profit in near future, the *Company* is unable to attract and retain managerial talent, causing possibilities of non-compliances leading to further imposition of penalties and adding further financial burden on the *Company*, for no deliberate fault;
- (p) The *Company* is in need of capital infusion due to its net worth being negative, so as to continue as a going concern. The *Company* is being advised by its bankers to infuse fresh capital and raising of the same through Rights/Preferential Issue, and other ways have been deliberated, however, considering the current net worth, valuation of the equity shares of the *Company*, financial performances, the chance that public shareholders or new investors would be interested to subscribe shares and infuse capital is highly negligible and doubtful. Further, the promoters are already holding 68 % of the total paid up capital of

the *Company* and additional acquisition by them would lead MPS norms to be breached. However, if the *Company* gets delisted, promoters will have the flexibility to arrange funds as capital for the *Company*;

- (q) The *Company* had made significant losses in the last few years and its net worth has almost eroded completely. Therefore, the *Company* cannot afford to take chances of incurring huge costs relating to merchant banker fees, scrutinizer fees, etc. to attempt delisting, which may or may not be successful depending on whether the *Company* is able to garner positive consent of such number of shareholders who hold more than 90% of the public shareholding in favor of delisting proposal which is highly unlikely given the low response of the shareholders so far;
- (r) The *Company* had also sought relief from payment of delisting processing fees of INR 12,50,000/- from BSE to reduce the financial burden on the *Company*.

#### **CONSIDERATION**

4. Before considering the Application made by the Applicant, it would be appropriate to refer to the relevant regulatory provisions pertaining to the matter, extract whereof is reproduced below:

#### **The Delisting Regulations, 2009**

##### ***Conditions and procedure for delisting where exit opportunity is required***

8(1) Any company desirous of delisting its equity shares under the provisions of Chapter III shall, except in a case falling under clause (a) of regulation 6, -

(a) obtain the prior approval of the board of directors of the company in its meeting; (b) obtain the prior approval of shareholders of the company by special resolution passed through postal ballot, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution:

##### ***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.

##### ***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:*

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

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

*(2) [Deleted]*

*(3) A delisting of equity shares may be made under sub regulation (1) only if, in addition to fulfilment of the requirements of regulation 8, the following conditions are fulfilled: -*

*(a) the promoter appoints a merchant banker and decides an exit price in consultation with him;*

*(b) the exit price offered to the public shareholders shall not be less than the floor price determined in terms of sub-regulation (2) of regulation 15 of these regulations read with clause (e) of sub regulation (2) of regulation 8 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;*

*(c) the promoter writes individually to all public shareholders in the company informing them of his intention to get the equity shares delisted, indicating the exit price together with the justification therefore and seeking their consent for the proposal for delisting;*

*(d) the public shareholders, irrespective of their numbers, holding ninety percent or more of the public shareholding give their consent in writing to the proposal for delisting, and have consented either to sell their equity shares at the price offered by the promoter or to remain holders of the equity shares even if they are delisted;*

*(e) the promoter completes the process of inviting the positive consent and finalization of the proposal for delisting of equity shares within seventy five working days of the first communication made under clause (c);*

*(f) the promoter makes payment of consideration in cash within fifteen working days from the date of expiry of seventy five working days stipulated in clause (e).*

*(4) The communication made to the public shareholders under clause (c) of sub-regulation (3) shall contain justification for the offer price with particular reference to the applicable parameters mentioned in regulation 15 and specifically mention that consent or the proposal would include consent for dispensing with the exit price discovery through book building method.*

*(5) The concerned recognised stock exchange may delist such equity shares upon satisfying itself of compliance with this regulation.”*

5. I note that the issue for consideration before me in the present matter is whether the requirement for receiving consent of the shareholders holding at least 90% of public shareholding of a company, as mandated under Regulation 27(3)(d) of the Delisting Regulations, 2009, can be relaxed, given the facts and circumstances, in order to enable the *Company/LEDO* to seek voluntary delisting.

6. I have perused the material available on record and also have examined the scope of the powers of the Board under regulation 25A of the Delisting Regulations, 2009. I note that the regulation 25A empowers the Board to accord relaxation from the strict compliance of the provisions of the Delisting Regulations, 2009, in the facts and circumstances so warrant, where an entity is unable to comply with certain specific procedural requirements due to *bonafide* reasons and where there is a case made out for non-applicability of the Delisting Regulations, 2009, for various reasons and such exemption is in the interest of the investors and the securities market.
  
7. I note that the *Company*, in its Application, has sought exemption from regulation 27(3)(d) of the Delisting Regulations, 2009 i.e., exemption from written consent of shareholders holding at least 90% of public shareholding. In this regard, I note that the equity shares of the *Company* are listed on BSE for almost 35 years wherein the *Company* has not carried out any corporate action for the last ten years. Further, the shares of the *Company* are infrequently traded and there has been very low trading in the shares of the *Company* to the tune of 0.11% during the 12 calendar months (November 1, 2019 to October 31, 2020). The Applicant has submitted that the *Company* is currently incurring heavy losses and given its rapidly deteriorating financial condition, the *Company* is finding it difficult to ensure compliance with the requirements applicable to a listed entity. The promoter of the *Company* holds 68.18 % of the total paid up equity share capital of the *Company* and the remaining 31.82% are held by 2148 public shareholders. I note that the Applicant has made efforts to get positive consent of the shareholders for the delisting. The records show that the *Company* had made several attempts, as recorded at paragraph 3(l) above, to reach out to the shareholders. It is also observed that letters to majority of the shareholders (97.44%) have been delivered successfully, however, there was no positive and active participation by them towards the proposal of delisting. Further, endeavours have been made to reach out to the shareholders through Newspaper publications and in this regard the Newspaper notices have been made on March 04, 2021, March 13, 2021 and March 24, 2021, however, the same resulted in inviting only 3 shareholders holding 9 equity shares in aggregate, representing only a negligible percentage of the public shareholding to respond and participate as a result of the abovementioned advertisements. Further, considering the total participation of 50 shareholders, representing only 10.51% of the public shareholding as against prescribed requirement of 90% public shareholding and the lukewarm response of the shareholders to the three advertisements and in such circumstances, the possibility of seeking/receiving the required ninety percentage or more consent from the public shareholders to the proposal for delisting is very bleak. Therefore, considering the above low participation by the shareholders in the past AGMs and also in the Postal Ballot for delisting, I observe that despite repeated attempts made by the *Company*, which are detailed in para 3 (l) of this order, the *Company* has been unable to contact the vast majority of the

public shareholders and the Applicant may not be in a position to comply with the requirement under regulation 27 (3) (d) of Delisting Regulations, 2009.

8. I note that the *Company* is in financial distress and has reported losses in the past few years. The *Company* has been suffering from losses due to overall poor market conditions in the Tea industry and also on account of its small size of production. The net worth of the *Company* has fully eroded and the book value per share is valued as negative INR 76.06/- per equity share. The *Company* is in need of capital infusion due to its net worth being negative, so as to continue and survive as a going concern. However, if the *Company* attempts to raise capital by way of Rights/Preferential Issue, it would be highly unlikely that public shareholders or new investors would be interested to acquire *Company's* equity shares given the financial performance and negligible growth prospects.
  
9. In order to undertake delisting under the relaxed framework provided in regulation 27 of Delisting Regulations, 2009, a company has to meet all the criteria specified therein, including that of the paid-up share capital and net worth. I note that the purpose of the relaxed framework for delisting provided in regulation 27 of the Delisting Regulations, 2009 is to enable small companies having lesser public shareholding to get delisted with minimum procedural formalities while ensuring adequate protection of the rights of public shareholders. In this regard, I note that at the time of filing the Application, the *Company* is compliant of MPS requirement of 25% public shareholding all the time in terms of rule 19A of Securities Contract Regulation Rules, 1957. Further, it is noted that VC Corporate (Merchant Banker appointed by the *Company* for delisting purpose) vide email dated April 22, 2021 has confirmed to SEBI that the *Company* has complied with regulation 8(1E) (a) of the Delisting Regulations, 2009 which mandates that the trading carried out by any of the acquirer or promoter or promoter group entity or their related entities is in compliance with the applicable provisions of securities laws. The aforesaid shows that the *Company* and its directors/promoters have been in compliance of various securities laws and due to *bona fide* and genuine reasons as discussed above, want to take recourse to voluntary delisting of its equity shares and provide an exit opportunity to its public shareholders. In this regard, it is also observed that the *Company* has undertaken to safeguard the interest of the residual public shareholders by stating that the promoters will accept the shares tendered by any public shareholder of the *Company* for a period up to two years from the date of delisting and shall provide the exit to those shareholders who wish to tender his/her shares at any point of time after the delisting of the equity shares.

## **ORDER**

10. In view of the above, considering the facts and circumstances attending to the matter in totality, wherein the applicant is seen to have made repeated efforts to reach out to the



shareholders and despite having made efforts, the Applicant has not been able to contact a majority of the public shareholders, permitting the *Company* to follow the available applicable mode of delisting provided in regulation 27 of the Delisting Regulations with adequate safeguards, would serve the ends of justice and would be in the interest of all stakeholders concerned. I deem this a fit case to relax the strict requirement of compliances required under regulation 27 (3) (d) of the Delisting Regulations, 2009.

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 25A of the SEBI (Delisting of Equity Shares) Regulations, 2009, I find it appropriate to grant the Applicant relaxation from the applicability of regulation 27(3) (d) of the SEBI (Delisting of Equity Shares) Regulations, 2009, subject to the following conditions:
- (a) The Applicant shall ensure compliance with regulation 27(3)(c). Additionally, the Applicant shall cause to publish newspaper advertisement in one national newspaper in English and in newspapers in local vernacular in each state where its public shareholders are residing, as per the address contained in its records, announcing its delisting proposal within 30 days of this Order, and at least 10 days before the letter is sent to the public shareholders seeking their consent for the delisting proposal.
  - (b) The offer price shall be paid to tendering shareholders as provided in regulation 27(3)(f).
  - (c) As undertaken by the Applicant, pursuant to delisting of its equity shares, the promoters shall continue to accept shares tendered by any remaining public shareholder holding such equity shares, for up to a period of two years from the date of delisting, at the same price at which the earlier acceptance of shares was made and in a manner that provides bank record of payment.
  - (d) Subject to the above, the Applicant shall comply with all other conditions, including those pertaining to determination of the offer price, stipulated in Chapter VII of the SEBI (Delisting of Equity Shares) Regulations, 2009.
12. The Application dated January 20, 2021 along with related communications are accordingly disposed of.

-Sd-

**DATE: May 24, 2021**

**PLACE: Mumbai**

**SK MOHANTY**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**