

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1) AND 11 B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA 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 PRABHAT DAIRY LIMITED

BACKGROUND

1. Prabhat Dairy Limited (hereinafter referred to as “PDL”/ “Applicant”/ “the Company”), is a company incorporated under the Companies Act, 1956 on November 25, 1998, having its registered office at Gat no. 122, At Ranjankhol, Post Tilaknagar, Taluka Rahata, Ahmednagar, Maharashtra - 413720. The equity shares of the Applicant Company are listed on BSE Limited (hereinafter referred to as “BSE”) and National Stock Exchange of India (hereinafter referred to as “NSE”) (Collectively referred as “the stock exchanges”).
2. PDL vide its email dated October 07, 2020 requested Securities and Exchange Board of India (hereinafter referred to as “SEBI”) for relaxation of timelines by one month for filing of the final application as required in terms of regulation 8(1)(d) of SEBI (Delisting of Equity Shares) Regulations, 2009 (hereinafter referred to as “Delisting Regulations”). Subsequently, PDL vide its email dated October 19, 2020 forwarded scanned copy of its application dated October 14, 2020 requesting SEBI to exercise power vested under regulation 25A of the Delisting Regulations and thereby grant relaxation from the requirement to comply with the provision of regulation 8(1)(d) of the Delisting Regulations by granting an extension of six months to the special resolution passed by the shareholders for the delisting of the equity shares of the Company.
3. In support of the aforesaid application, PDL has, *inter alia*, submitted as under:
 - A. The delisting approval through postal ballot was obtained by the Company on October 14, 2019. As per regulation 8(1)(d) of Delisting Regulations, PDL is required to make the final application to the concerned stock exchanges within one year of passing the special resolution in the form specified by the concerned stock exchanges;
 - B. The Company had applied for in-principle approval of the stock exchanges in December, 2019 and the same remained pending on account of certain queries/concerns raised by the shareholders with regard to the delisting proposal;



- C. Further, due to nationwide lockdown from March 2020 the overall process of delisting got delayed;
- D. PDL received a notice in July 2020 from SEBI for forensic audit for the years 2018-19 and 2019-20. Due to the nationwide-lockdown, statutory audit process of the *Company* got delayed, in turn, delaying the forensic audit process, resultantly, PDL declared its audited financial results for the year 2019-20 on October 08, 2020;
- E. The *Company* aims to complete the forensic audit at the earliest and the delisting of the equity shares is in the interest of all public shareholders;
- F. In case the *Company* needs to obtain the shareholders' approval once again, it will further delay the process of delisting and the shareholders shall suffer more losses with the delay occasioned on account of getting the special approval afresh;
- G. Hence, the application dated October 14, 2020 (along with required fee) has been made requesting for extension of the period by six months, as mentioned above.
4. The relevant facts necessary to consider and dispose of the aforesaid application, in brief, are as under:
- A. On January 21, 2019, Board of Directors (BoD) of the *Company* passed a resolution approving the sale of its shareholding in its subsidiary called Sunfresh Agro Industries Private Limited (hereinafter referred to as "Sunfresh") to Tirumala Milk Products Private Limited (hereinafter referred to as "Tirumala") on terms and conditions contained in the share purchase agreement and business transfer agreement along with sale of dairy business undertaking of PDL by way of slump sale on a going concern basis on terms and conditions contained in business transfer agreement. On the same day, the *Company* informed the stock exchanges that it intends to share a substantial portion of the sale consideration with the shareholders after meeting the tax liability, transaction cost, etc.
- B. The aforesaid resolution got the approval by 92.25% of the shareholders of the *Company* present and voting in its extraordinary general meeting held on March 26, 2019 and the sale was concluded on April 10, 2019, which was disclosed to the stock exchanges.
- C. Subsequently, the promoters of the *Company* (having 50.10 % shareholding) showed their intention to buy the 49.90% shares of the minority public shareholders in order to provide an exit opportunity to the minority public shareholders of the *Company*. The aforesaid intention also indicated by disclosing the same to the stock exchanges on September 05, 2019. On September 10, 2019, BoD of the *Company* considered the delisting proposal. Subsequently, the requisite resolution was approved by 99.13% of the shareholders of the *Company* on October 14, 2019. Based on the aforesaid approval of the special resolution by the shareholders approving the proposal for delisting, a formal application was filed under regulation 8(1) of the Delisting Regulations with the stock exchanges in December 2019 for approval of the delisting of the *Company*.



- D. Meanwhile, taking cognizance of news items, SEBI directed BSE and NSE to independently conduct a critical analysis of the disclosures made by the *Company*. The outcome of the analysis was submitted vide its reports dated December 12, 2019 and January 3, 2020 by BSE and NSE, respectively, *inter alia*, advising SEBI to conduct a forensic audit of the *Company* stating further that the delisting application should be considered after the audit report. Pursuant to the above, SEBI asked certain information from the *Company* regarding the sale consideration of its subsidiary and the distribution of the sale consideration to its shareholders and on not being satisfied with the explanations furnished by the *Company*, SEBI decided to initiate forensic audit in this regard.
5. Accordingly, SEBI vide letter dated July 17, 2020 appointed Grant Thornton Bharat LLP (erstwhile Grant Thornton India LLP, hereinafter referred to as “**Grant Thornton/GT**”) as the forensic auditor to conduct the audit for financial years ending March 31, 2019 and March 31, 2020. Based on the preliminary report submitted by Grant Thornton on account of non-supply of the requisite documents by the *Company* and also considering the complaints received from the shareholders of the *Company*, SEBI issued certain direction vide an ex-parte ad interim order dated October 20, 2020 (“**Interim Order**”) while exercising its power under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992. Being aggrieved by the directions issued under the above mentioned Interim Order dated October 20, 2020, an appeal was preferred before Hon’ble Securities Appellate Tribunal (hereinafter referred to as “**SAT/Tribunal**”) and the Hon’ble Tribunal, having heard the parties vide its order dated November 09, 2020 (“**SAT Order**”) while quashing the aforesaid Interim Order has issued following directions:
- A. *The appellant no. 1 Company shall deposit a sum of Rs. 500 crore in a separate escrow account within 10 days from today, the details of which would be supplied to SEBI and to the stock exchanges.*
 - B. *The amount so deposited shall not be utilized by the appellants till the submission of the forensic report and the decision taken by the respondent on the distribution of the amount to the shareholders and/or the delisting application.*
 - C. *The appellants shall provide all the necessary information and documents relating to the sale, etc., and as asked by the forensic auditor in this regard which is depicted in the impugned order within ten days from today. SEBI will direct the forensic auditor to furnish the forensic report within four weeks from the date of the submission of the documents supplied by the appellants ascertaining the amount received from the sale and the amount distributable to the shareholders after meeting tax liability, indemnity, transaction cost, payment to advisors, etc.*
 - D. *Simultaneously, the respondent shall process the delisting application under the Delisting Regulations and SEBI (Substantial Acquisition of Shares and Takeover) Regulations 2011 and pass appropriate orders within six weeks from today.*
 - E. *Upon deposit of Rs. 500 crore, the demat accounts and bank accounts of appellant nos. 2 and 3 shall be defrozeed.*
 - F. *In the circumstances, there shall be no order as to costs. The urgency and other misc. applications are accordingly disposed of.*

6. From the above, it is observed that the Hon'ble Tribunal while directing *inter alia*, PDL to deposit INR 500 Crore in a separate escrow account has also directed SEBI to process the pending delisting application of the *Company*. Accordingly, the scope of the present proceedings is only confined to the consideration and disposal of the aforesaid application of PDL.

CONSIDERATION

7. Before I proceed with my consideration, I find it appropriate to quote the regulatory provisions relevant in the matter:

Delisting Regulations

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:*

.....

(d) within one year of passing the special resolution, make the final application to the concerned recognised stock exchange in the form specified by the recognised stock exchange: Provided that in pursuance of special resolution as referred to in clause (b), passed before the commencement of these regulations, final application shall be made within a period of one year from the date of passing of special resolution or six months from the commencement of these regulations, whichever is later.

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."

8. From the materials available on record, I note that PDL received a letter dated September 04, 2019 from the promoters and promoter group proposing to voluntarily delist the equity shares of the *Company* in accordance with the Delisting Regulations. The delisting approval from the public shareholders by way of a special resolution in terms of regulation 8(1)(d) of Delisting Regulations



through postal ballot was obtained by the *Company* on October 14, 2019. As per regulation 8(1)(d) of the Delisting Regulations, PDL is required to make the final application to the concerned stock exchanges within one year of passing the aforesaid special resolution, which fell on October 13, 2020.

9. As noted above that PDL was required to strictly comply with the directions issued by the Hon'ble Tribunal, however, the completion of forensic audit exercise has not been achieved, on account of non-furnishing of requisite information by the *Company* to the auditor i.e. Grant Thornton, so as to enable them to conclude the Forensic Audit Report in terms of the directions given in SAT Order.
10. As per the submissions made by the *Company* in its application, the *Company* had applied for in-principle approval of its delisting proposal to the stock exchanges in December, 2019. However, certain queries/concerns were raised by the shareholders with regard to the said delisting proposal and subsequently, due to nationwide lockdown from March 2020 the overall process of delisting got hampered and consequently the entire process got delayed, hence, the final application required to be filed in terms of regulation 8(1) (d) of the Delisting Regulations could not be done within the prescribed timeline.
11. It has also been submitted that PDL received a notice in July 2020 from SEBI directing for forensic audit for the financial years 2018-19 and 2019-20, whereas due to the imposition of nationwide-lockdown, statutory audit process of the *Company* got delayed which has impacted the forensic audit process. For the reasons stated above, the *Company* declared its audited financial results for the year 2019-20 on October 08, 2020. The *Company* claims that it aims to complete the forensic audit at the earliest and also process the delisting of the equity shares, which is in the interest of all minority public shareholders as evident from the support it got while passing the special resolution.
12. The *Company* has further urged that the pandemic of COVID 19 coupled with the ongoing exercise of conducting forensic audit for two financial years has substantially delayed the process of delisting. Such unforeseen and unexpected circumstances have largely occasioned the delay in completing the exercise within the timeline as provided under regulation 8(1) (d) of the Delisting Regulations and thereby deprived shareholders from enjoying the benefit of delisting. In the circumstances, any further delay by directing the *Company* to approach the shareholders again to seek the requisite approval afresh would result in further delaying the process of delisting and thereby would not be in the best interest of the shareholders as the exit opportunity to be given to the minority public shareholders shall get even more delayed and they may suffer more losses with the said delay. Hence, the *Company* has sought exemption under regulation 25A of the Delisting Regulation from the requirement to comply with the provisions of regulation 8(1)(d), which provides that the *Company* shall make the final application to the concerned the stock exchange within one year of passing of the special resolution by the shareholders approving the proposal of delisting of the *Company* and grant extension of 6 months to the special resolution by the shareholders approving the proposal of delisting.
13. In the extant case, I find that the Applicant *Company* is essentially seeking an extension of 6 months to the validity and effect of the special resolution passed on October 14, 2019 for the purpose of delisting of the *Company* so as to complete the delisting process, which was approved by the majority



of the shareholders indicating their interest of delisting the equity shares of the *Company*. I can also appreciate the challenges posed by the imposition of nationwide lockdown on account of the pandemic of COVID-19. Further, the process of forensic audit is yet to complete. Based on the materials on records and the facts of the case, I observe that completion of forensic audit (primarily delayed by not providing the requisite information and documents to the forensic auditor) and the outcome of the same appears to have an impact on the interest of the public shareholders. Since, the process of forensic audit is in progress and incomplete, it would be in the interest of the minority public shareholders of the PDL that forensic audit is completed before the stock exchanges consider the final application for delisting.

ORDER

14. In view of the aforesaid circumstances and observations, I am therefore inclined to relax the strict enforcement of the conditions prescribed under regulation 8(1)(d) of the Delisting Regulations, as requested by PDL so as to facilitate voluntary delisting of the equity shares of the Applicant *Company* and therefore, having considered the above, I 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, hereby grant relaxation to the *Company* i.e. Prabhat Dairy Limited, from the requirement to comply with the provisions of regulation 8(1)(d) of Delisting Regulations by granting an extension of 6 months to the special resolution passed for the delisting of the *Company* i.e. till April 13, 2021 (upon expiry of which, the *Company* shall be required to ensure compliance of all the relevant provisions of Delisting Regulations), subject to compliance with certain conditions as directed below:
- The *Company* shall extend full cooperation and shall provide all the requisite information and documents to the forensic auditor within 10 working days from the date of this order and subsequent information/details as may be required by the forensic auditor on a timely basis, in order to ensure expeditious completion of the forensic audit at the earliest;
 - The stock exchanges shall process the delisting application of the *Company* in accordance with Delisting Regulations for which the *Company* shall provide all information/details as and when required by the stock exchanges in this regard.
15. Copy of this order shall also be served to BSE and NSE for information and necessary action.
16. The application dated October 14, 2020 along with related communication is accordingly disposed of.



S. K. Mohanty
S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

DATE: December 21, 2020

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