

Ins and Outs of SEBI Takeover, Buyback and Delisting Regulations



CA. Arun Goenka





Evolution of SEBI

In 1988 SEBI was first established as a non-statutory body

On 30th January, 1992 the President promulgated SEBI ordinance

On 4th April, 1992. SEBI Act was passed

On 12th April 1992 SEBI became an autonomous body and was accorded statutory powers

It is interesting to note that SEBI Act was made applicable with a retrospective effect. It was passed on 4th April, 1992, but was deemed to have come in force on 30th January, 1992. (Section 1(3) of the SEBI Act, 1992.) This is because it was first promulgated as an ordinance when Parliament was not in session.



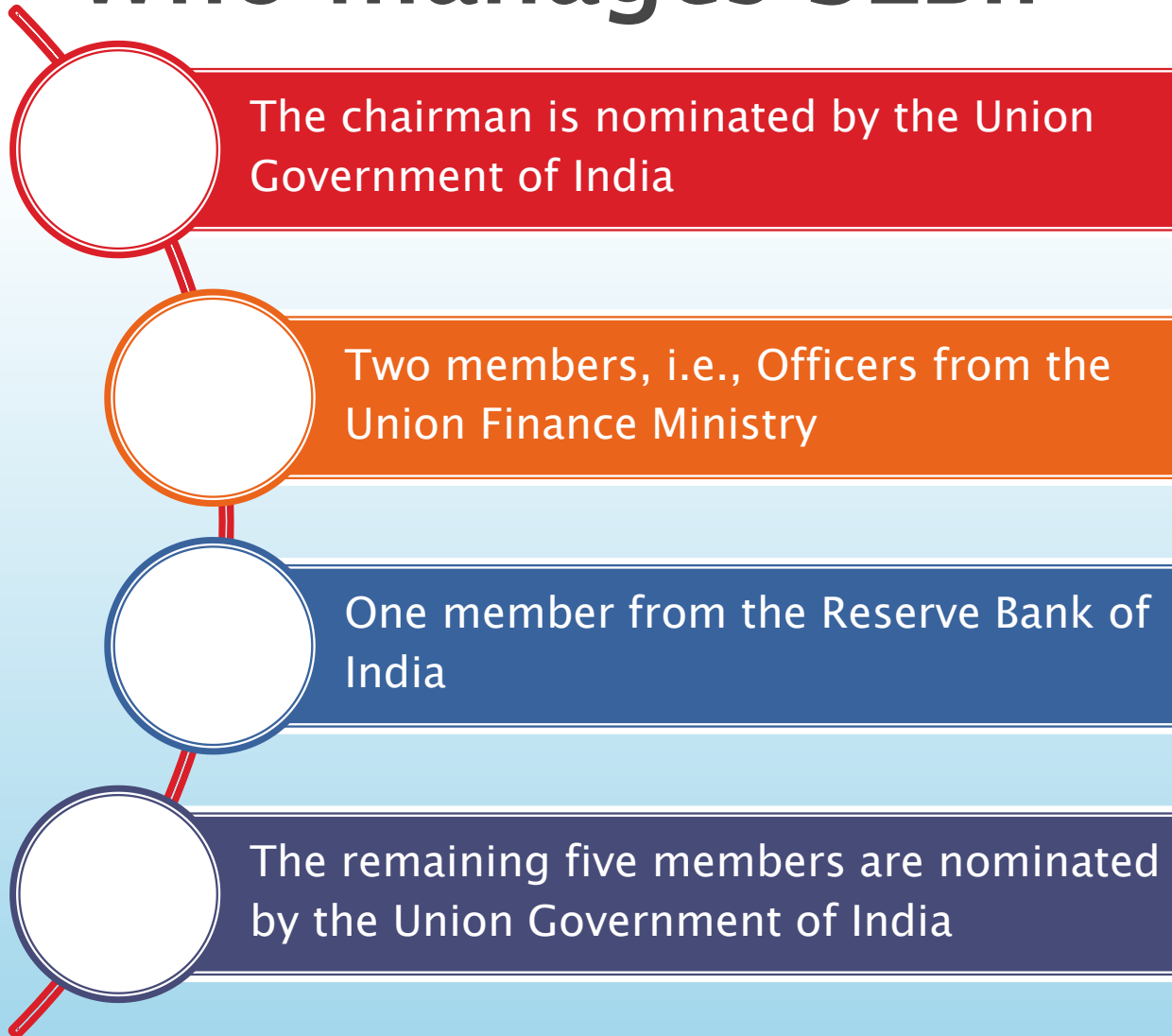
SEBI IS THE BEST

▶ PREAMBLE

"...to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto"



Who manages SEBI?





SEBI Act 1992 has empowered SEBI with



SEBI Going Overboard



- In 2017 SEBI declared 331 companies as “Shell Companies”.
- Put severe restrictions on their trading on stock exchanges.
- Prominent ones: J Kumar Infraprojects, Parsvnath Developers, Prakash Industries etc.
- In 2018 SEBI declared that 81.38% of all trade executed in the stock option segment of BSE between 1st April 2014 to 30th September 2015 as non-genuine.
- This lowers the image of our country’s regulatory frame work.





SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

- ▶ One of the most widely impactful & litigated Regulations of SEBI
- ▶ This is the Third version of such Regulation.
- ▶ Some of such litigations are going on for decades.
- ▶ Shri Rama Multi Tech, Golden Tobacco Ltd. were completed after delays of about 8–10 years and protracted litigation.



POLO HOTELS

Polo Hotels Open Offer was triggered in 1999 and is still pending.

The last more than 2 decades, the case with the same facts has travelled in all possible forums & Courts.

- ❑ SEBI –9 times
- ❑ NCLT –2 times
- ❑ Punjab and Haryana High Court– 2 times.
- ❑ Hon’ble SAT– 3 times,
- ❑ Hon’ble Supreme Court– 4 times,



POLO HOTELS

ORDERS PASSED BY SEBI

Date	Regulation Violated	Amount
1-Aug-03	Make a fresh Open Offer @ 23.75 with interest @ 15% from 16.11.99.	
28-Feb-19	Insider trading	2,00,000
28-Feb-19	Insider trading	8,00,000
3-Jun-19	Directions to deposit Rs. 11,94,40,359 for the Open Offer	11,94,40,359
17-Jul-19	Recovery/ Attachment proceedings No. 4631/2019 Abhey Ram Dahiya	8,37,559
29-Nov-19	Violation of Reg.3(2) & 10(6) of SAST 2011 Penalty on allotment of 88,88,889/- shares on 09.12.16	1,15,00,000
27-Feb-20	SEBI imposed a Penalty of 24 lakhs for non-compliance of its order dated 03.06.19	24,00,000
9-Mar-20	Disgorgement order	1,82,32,526



POLO HOTELS

ORDERS PASSED BY SAT

19-Apr-06	SAT order upholding SEBI order ("First SAT order")	
29-Aug-17	(SAT Appeal no. 205 of 2017), ("Second SAT Order") dismissed with cost Rs.50,000/-	
15-Feb-19	(Appeal no. 192 of 2018 and Misc. Applications no. 195 of 2018 and 205 of 2018), ("Third SAT Order") Cost 50,000	



POLO HOTELS

ORDERS PASSED BY SUPREME COURT

26-Nov-15	SC upheld the SEBI order. (Civil Appeal No. 2727 of 2006) First SC Order	
13-Jul-16	("Second Supreme Court Order") (Review Petition (C) No. 2361 of 2016), which dismissed the same vide an Order dated July 13, 2016 .	
02-Mar-17	("Third Supreme Court Order") (Curative Petition (C) No. 66 of 2017), which dismissed the same vide an Order dated March 2, 2017	
05-Apr-19	(Civil Appeal no. 2377 of 2019), dismissed ("Fourth Supreme Court Order"). Subsequent to the aforementioned, the Acquirers vide a letter dated April 16, 2019, informed SEBI that they had filed a Review Application before the Hon'ble Supreme Court.	



What is substantial

The Takeover Regulations get triggered when the acquisition of shares or voting rights of a listed company, crosses the given thresholds and becomes substantial or when a company is being taken over. Substantiality of acquisition of shares needs to be determined contextually. Acquisition is deemed as **substantial** when it exceeds:

- I) for the purpose of acquisition triggering open offer
 - (i) 25% or more, shares / voting rights of a company or
 - (ii) for the existing promoters, acquisition of more than 5% in a given financial year,
- II) For the purpose of disclosure:
 - (i) acquisition of 5% or more, shares/voting rights of company at initial stage and
 - (ii) any subsequent change in shareholding, by more than 2%,

The provisions of SAST 2011 are attracted upon any kind of direct or indirect acquisition of:

- a. shares or
- b. voting rights or
- c. control over a target company

Takeover of Control without acquiring shares

- ▶ **Regulation 4 of SAST 2021**
- ▶ ***Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.***

Thus if a control is acquired over a company without acquiring shares, even then, as per regulations; Open offer is triggered. However, in reality till date there has been no case where such an Open offer is enforced. There are numerous examples of companies being sold –lock, stock and barrel at a price much higher than the present market cap of the company, yet no Open offer is enforced.

Takeover of many Companies have been successful in bye-passing the takeover regulations.

- ▶ To take a holistic view, lets examine arguments on both sides:

Bypassing Takeover Regulations

- ▶ Many large companies with hundreds of Crores of Rupees transaction were successful in by-passing this regulation by simple structuring the transaction as slump sale.
- ▶ Some initial such names are:
- ▶ Orchid Chemicals(a company with a market capitalisation of approximately Rs. 1500 Crs. (15th December 2009) was taken over for \$400 Million (approx. Rs. 1860 crs.),
- ▶ Abbott (USD 3.72 Billion)
- ▶ Gwalior Chemicals (GEECEE) (in June 2009 Euro 82.4 Million)
- ▶ ZICOM. In January 21, 2013, Zicom sold its electronic security system business for Rs 224.7 crore. to Schneider Electric India.



CASE STUDY :Orchid

1. Orchid, a company with a market cap of Rs.1500 Crs. was taken over at a value exceeding its market cap i.e. Rs.1860 Crs., and the same was not considered as a takeover by SEBI in terms of the 1997 Regulations,
2. A purchase of 15% (1997 Regulation) of the shares in the same company (amounting to Rs. 225 Crs.) would have triggered a takeover in terms of the Regulations.



Company sold – lock, stock and barrel.

Arguments in favour of not triggering open offer:

- ▶ In cases where a promoter is ceding control to an acquirer, the promoter is exiting at a negotiated price. The Regulations kick-in, to protect the minority shareholders, and require that if a majority shareholder is taking an exit, same opportunity should be given to the minority shareholders at the same price.
- ▶ It is not the promoter selling his company, but it is the company selling its assets

Arguments for exempting Takeover through asset sale method :

- (i) The promoter/majority shareholder is not actually getting an exit; he is sitting in the same boat as the minority shareholders.
- (ii) In a share sale by the promoter, the rationale accorded to the invocation of an open offer is that the minority shareholder's consent was not taken by the promoter prior to such sale, hence an exit opportunity, on equal terms as that accorded to the promoter must be given to the minority shareholders. However, in the asset sale model, the minority shareholder's consent was obtained through an EGM and thus they were a part of the decision-making.
- (iii) The company continues to remain listed (even though its liquidity and value may go down).

Arguments for not exempting Takeover through asset sale method :



- When Regulation states acquisition of control over a company, why an acquisition of a substantial part or whole of a company's assets is not considered as "acquisition of control"
- What constitutes a company?
 - is it merely the boardroom or
 - does it include the place where the real business is done?
- If this loophole is not looked into, it may lead to an abundance of dud or khoka companies listed on the stock exchanges whose substratum is lost. .
- It appears to be foolhardy for US pharma major Mylan Laboratories Inc. to takeover Hyderabad-based Matrix Laboratories Ltd. (in 2006, in the biggest M&A deal as on date) and announce an open offer and later another delisting offer when an easy escape route such as the aforementioned was available. By adopting such route, Mylan would have been saved from the rigours of open offer and a subsequent delisting offer.



Frequently Traded Shares

REGULATION 2(1)

2. (1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions and variations shall be construed accordingly,—

Regulation 2(1)(j):

2(1) (j) “frequently traded shares” means shares of a target company, in which the traded turnover on any stock exchange during the twelve calendar months preceding the calendar month in which the public announcement [is required to be made under these regulations], is at least ten per cent of the total number of shares of such class of the target company:

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



Frequently Traded Shares

COMMENTS:

The meaning of frequently traded shares as per the Regulations has been a contentious issue. An adverse interpretation of the term may lead to disastrous consequences, and the same has resulted in a significant amount of litigation. The key points to be noted here are:

- ❖ Traded turnover;
- ❖ On any stock exchange;
- ❖ During twelve calendar months;
- ❖ 12 months to be counted from the preceding month of PA;
- ❖ W.e.f. 11th September 2018 the actual date of PA is not relevant, but the trigger date is material with the words 'required to be made' replacing 'is made'.



Frequently Traded Shares

Traded turnover: is often different and higher than the actual number of shares bought in any scrip. For example, as per NSE's records, : as on 7 April 2020 (EOD), the traded and deliverable quantity of securities of Hindustan Unilever Limited was as follows:

- ❖ Quantity Traded: 85,10,183
- ❖ Deliverable Quantity (gross across client level): 45,12,676
- ❖ % of Deliverable Quantity to Traded Quantity: 53.03 %
- ❖ The actual purchase of shares where the buyers/investors took delivery was 45,12,676 whereas the traded turnover was almost twice that figure. The difference in the quantity was accounted for by the trader/speculators who routinely bought and sold shares on the same day merely for a token profit without any intention of investing in them. For such purposes, the term 'traded turnover' is relevant.

Frequently Traded Shares



On any stock exchange: there are two main stock exchanges in India – BSE and NSE. The trading turnover of both the stock exchanges cannot be combined. Frequency needs have to be tested w.r.t. the trading turnover on only one of the exchanges, and the exchange on which it is higher is considered. For example, if for any scrip of the target company, the trading turnover on NSE is 9% of the capital whereas on BSE it is 8%, it would still be treated as infrequently traded shares because in any one exchange the traded turnover is less than 10% although the combined turnover is as high as 17%. Similarly, in the Draft Letter of Offer for Accelya Solutions India Limited dated 7th January 2020, it was stated that the traded turnover on BSE was 1.29% and on NSE it was 9.09% of the total equity. The turnover of BSE and NSE taken together would account for more than 10%, however, since it did not exceed 10% of the total equity on any exchange individually, it was taken as an infrequently traded share. This is a very tough yardstick to be satisfied and thus needs to be relooked. Either the combined turnover of both the exchanges should be taken into account or the 10% benchmark should be reduced. Under the 1997 Regulations the threshold was 5% of total equity during a 6 months period. Under the current Regulations, a very high percentage of the listed companies may fall under the category of infrequently traded, due to the high threshold.



Frequently Traded Shares

During twelve calendar months: for the purpose of the Regulations, the number of days in a month or number of trading days in a month is not relevant. The month of February (28 days) has the same weightage as the month of August (31 days) or the month of April, which typically has the maximum trading holidays. In the year 2020, in April there were 4 trading holidays whereas there were no trading holidays in the months of January, June, July, August, and September. Thus total number of trading days may be significantly different on two different blocks of period of “twelve calendar months”.

W.e.f. 11th September 2018: for calculating if the shares are frequently traded or not, the actual date of PA is no longer relevant, due to the replacement of the words “is made” by “required to be made.”

The Takeover Code is an evolving piece of legislation, and SEBI makes necessary changes thereto based on the cases reviewed by it over time. The change to “required to be made” is quite fair to all concerned parties and removes chances of manipulation by either party – the acquirer or the investors. While the date on which PA “is made” is easy to plan, it is not so easy to plan the date on which it is “required to be made.” When the acquisition is being negotiated and the agreement is signed, it is not in the hands of acquirer alone to dictate the date of signing of the agreement.

Frequently Traded Shares



Whenever the shares are deemed as infrequently traded, it leads to a dispute in the valuation of the price of each share. Such disputes arose in the case of Accelya, as well as in the acquisition of Federal Mogul Goetze (India) Ltd. by Tenneco Inc., wherein the valuation given by the acquirer in the offer document, upon objection by the shareholders was revised by an independent valuer and upheld by the SAT and the Supreme Court. In the offer document, the acquirer had submitted a valuation of Rs.400 per share. Shareholders were of the view that this valuation was incorrect. SEBI appointed an independent valuer – Hari Bhakti, who valued the shares at Rs. 608.46. Valuation done by SEBI appointed valuer was upheld by SAT and Supreme Court even though it was approximately 50% higher.



Interpretation of definition

The importance of context in interpreting the definition has been emphasized. In the matter of Xchanging Solutions Limited, the Title “unless the context otherwise requires” had been relied upon to provide a different meaning to a term other than the meaning as per the term’s definition under the Regulations. The SEBI order dated 20.01.2020 stated:

“ ‘frequently traded shares’ in Regulation 2(1)(j) of SAST Regulations, has to be interpreted having regard to the context, to mean that the frequency of trading in shares of the target company has to be determined with reference to the date on which the PA is required to be made, as clarified vide the amendment dated September 11, 2018.”

It must be highlighted here that the public announcement (PA) was required to be made on May 30, 2016, however the PA was actually made on November 17, 2017. The regulation 2(1)(j), prior to its amendment in 2019, provided that the reference date for calculation of offer price shall be the date on which the PA was made. However, SEBI passed an order overriding the definition given under the Regulations by relying on the phrase “unless the context otherwise requires”.

This, however, negated the “well-settled principle of law that where wordings of the statute are absolutely clear and unambiguous resort to different principles of interpretation may not be resorted to...”



Acquirer

Regulation 2(1)(a)

(a) “acquirer” means any person who, directly or indirectly, *acquires or agrees to acquire* whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company;

COMMENTS:

“Acquirer” refers to the person whereas “acquisition” refers to the action taken by the acquirer. Acquisition, as defined here is prospective in nature, and not restricted to the act of actual acquisition. As soon as the first step in the process of acquisition is taken, i.e. as soon as someone has agreed to acquire, the acquisition is supposed to have taken place, triggering an open offer, in terms of the Regulations. Irrespective of whether the actual acquisition takes place or not, the open offer must be completed.



Case study– Acquirer. Even when no acquisition took place

There are several cases where actual acquisition did not take place, yet a mere agreement to acquire was considered enough to trigger an open offer.

a. In the case of Dish TV, on 12.4.18 an open offer was triggered and had to be complied with because the promoter had placed with his broker an order to purchase 500 Lakhs shares. These shares were not actually acquired, but by placing the purchase order, the Acquirer agreed to acquire more than 5% shares in one Financial Year, hence open offer was triggered.

b. A Share purchase agreement for sale of entire shareholding held by Gateway Distriparks Ltd. in Snowman Logistics Ltd. to Adani Logistics Limited was signed on December 27, 2019. PA was issued on December 27, 2019. Open offer was made and completed but the actual purchase transaction was called off.

In the matter of OCL India Ltd., it was decided by the SAT that an acquisition for the purpose of this provision shall have to be active acquisition and a passive acquisition shall not trigger the Regulations. In this case promoters' holding increased from 62.56% to 75% of the issued share capital, due to a buy back offer by the company, in which the promoters did not participate.

Takeover of IDBI Bank by LIC India (2018)



The Regulations become applicable on the date of agreeing to acquire and not the actual date of acquisition.

An Open offer was announced on December 18 2018, by LIC India for its acquisition of IDBI Bank (a government company), through 51% preferential allotment. On October 4, 2018, the board of directors of IDBI bank approved to allot shares to LIC and on the same day LIC announced the Open Offer clearly stating that the open offer had been triggered on the same date as the date on which the board of directors granted approval for the allotment. It must be noted that even though LIC's board of directors had previously decided to acquire the shares, that did not trigger an open offer because as on that date, there existed merely a desire or expression of interest to acquire and the same did not amount to an agreement to acquire. Further the allotment was subject to the shareholders resolution and outcome of a writ petition before the Delhi High Court.



Takeover of Mindtree by L&T (2019)

This provision that is aimed to protect the interest of minority shareholders was misused by L&T Ltd. in the takeover of Mindtree. Unlike the previous Takeover code 1997, under the new code there is no provision of voluntary open offer by an outsider. Under the old code one could have announced open offer for acquisition of voting rights and control without actually triggering the offer by acquiring or agreeing to acquire shares beyond the threshold limit. For example, Pramod Jain and J.P. Financial announced the open offer for Golden Tobacco with less than 10% shares. No such liberty has been provided by the 2011 Regulations. As per the 2011 Regulations, only those persons who already hold or have acquired or agreed to acquire 26% or more shares can announce an open offer.

L&T in its hostile bid to acquire Mindtree, misused regulation 2(1)(a) and regulation 2(1)(b), which defines acquisition as 'acquiring or agreeing to acquire'. L&T incorrectly stated that they had placed an order for acquisition of certain number of shares thereby triggering an open offer. The author and the Small Investors' Welfare Association wrote several letters to SEBI, pointing out the several wrong doings by the acquirer—L&T.



Definition – immediate relative

Regulation 2(1)(I)

(I) “immediate relative” means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse;

COMMENTS:

“immediate relative”; spouse means a husband of a woman or a wife of a man. A person can be referred to as a spouse only till such time as their marriage is valid. The term ‘any’ before ‘spouse’ includes situations wherein a person has more than one spouse.

“Child of such person or of the spouse” may be difficult to establish. For, example, Peter Mukerjea and Indrani M Mukerjea, both of who married multiple times and the paternity of the child Sheena Bora was hidden from the husband; or N.D. Tiwari who never acknowledged that Rohit Shekhar Sharma (Tiwari) was his son outside the wedlock. It seems that even an illegitimate child will be considered “immediate relative”, since nonetheless he/she is the child of such a person or of the spouse. However, the status of a child born to a spouse from previous marriage remains unclear.



Definition– offer period

Regulation 2(1)(p)

“offer period”: is an important milestone in the process of a takeover. Several restrictions and code of conduct are placed upon all the relevant parties (be it the acquirer or the target company) and remain applicable for the entire life of the offer period. Under the 1997 Regulations, offer period was prolonged till the date when the formalities relating to the offer were completed but under the 2011 Regulations, it has been curtailed till the date of payment to the shareholders.

CASE LAW

In the matter of Punrasar Holdings (P) Ltd. v. SEBI, before the SAT, it was contended by the appellant that the word ‘between’ in the definition signifies that it does not start from the date of execution of the share purchase agreement, but from the day immediately following that day, else the wording would have been ‘from the date’ and not ‘between’ the date.

The SAT held that “according to the calendar that we follow, the date would commence from the midnight and, therefore, the bar will commence from the midnight of the day when the memorandum of understanding is signed and the same would continue till the end of the day at midnight on which the offer formalities are completed.”



*SECURITIES AND EXCHANGE BOARD OF INDIA
(DELISTING OF EQUITY SHARES) REGULATIONS, 2021*

DELISTING

VOLUNTARY:

Voluntary Delisting is mainly resorted to by Multinational Companies (MNC) although there are some Indian promoters also who got their shares delisted--Manjushree Technopack Ltd , Essar Oil etc. The objective of such delisting is generally given as follows:

- ❖ To obtain full ownership of Equity Shares of the Company,
- ❖ To get operational flexibility to support the Company's business
- ❖ To take care of future financing needs of the company.
- ❖ To reduce the expense for the maintenance of listing and investor relations
- ❖ To save management bandwidth which can be redirected to the Company's business.



Compulsory Delisting

COMPULSORY:

India's biggest stock exchange in terms of total listed companies BSE (Bombay Stock Exchange) has delisted as many as 222 companies from its platform with effect from, 4 July 2018.

- ❖ The promoters of these delisted companies will be required to purchase the shares from the public shareholders as per the fair value determined by the independent valuer appointed by the exchange
- ❖ The delisted company, its whole-time directors, promoters and group companies shall be debarred from accessing the securities market for a period of 10 years from the date of compulsory delisting,
- ❖ Till the time promoters of these companies provide an exit option to the public shareholders in terms of the value determined by the valuer, there shall be no transfer of equity shares by the company, by way of sale, pledge, etc,
- ❖ the equity shares and corporate benefits thereof held by the promoters/promoter group will remain frozen.
- ❖ The promoters and whole-time directors of the Company shall not be eligible to become directors of any listed company,

Comparative chart showing unique features of Takeover, Buy Back and Delisting



Particulars	Takeover	Buy back	Delisting
Trigger	Mandatory Legal compliance for Takeover of any listed company by way of acquisition of shares or management control	Voluntary decision by the Board	Generally Promoters' voluntary decision but in some cases compulsory by SE as a punitive measure.



Comparative chart showing unique features of Takeover, Buy Back and Delisting

Particulars	Takeover	Buy back	Delisting
Price	<p>Detailed formula is given in Reg.8. In short, taking the date of PA. as reference point, it is the highest of</p> <ul style="list-style-type: none"> (a) negotiated price (b) Weighted average price paid in past 52 weeks (c) highest price paid in past 26 weeks (d) Weighted average market price for 60 trading days <p>But if the shares are infrequently traded, then as per valuation parameters – book Value, comparable trading multiples etc.</p>	<p>The Offer price is generally slightly higher than the CMP at the time of Offer. In some recent cases The price was substantially higher- Just Dial Offer price 800, CMP 450-500, Dhanuka OP 550, CMP 450, Techno Electric OP 410, CMP 260</p>	<p>Although a floor price is worked out as per a similar formula as in the case of Takeover (but now the reference date has been changed to the date of intimation to the SE, instead of PA date)</p> <p>In all practical terms, Price is determined through a Reverse Book Building (RBB) Process. The highest price at which the minimum required number (Such no. of share that will take the promoters' holding to minimum 90%) of shares for making the offer successful, are offered, is the discovered price.</p>



Comparative chart showing unique features of Takeover, Buy Back and Delisting

Particulars	Takeover	Buy back	Delisting
Participation	<p>Anyone can participate till the offer is Open, technically one can participate even in street name.</p> <p>Only Acquirers, Promoters and parties to the contract cannot participate</p>	<p>In case of Open market purchase, anyone can participate, till the offer is on. However Promoters cannot participate</p> <p>In case of Tender Method only those investors who were shareholders as on the Record date, can only participate.</p>	<p>Anyone can participate till the offer is Open, technically one can participate even in street name.</p>



Comparative chart showing unique features of Takeover, Buy Back and Delisting

Particulars	Takeover	Buy back	Delisting
Attraction for Investors	Beneficial to investors as Takeover improves the market capitalisation of the target company. The Acquirer has to share a part of the 'Control Premium' with small shareholders as well.	Benefit to investors can be calculated by a complex matrix of premium pricing of the offer, level of participation, Post offer price of the shares. Post Buy Back, technically it should improve the fundamental price of the shares since the bought back shares are extinguished and improve the Operating ratios.	This is most risky of the 3 types of offers. It may Bust or Boom. If the offer is accepted at discovered price one may gain substantial premium, but if this is rejected everyone loses. The risk here is twofold - (a) Minimum required no. of shares will be received or not (b) the discovered price will be acceptable or not
Litigation and delays	Maximum	Not much regulatory hurdle	Not much regulatory hurdle



Comparative chart showing unique features of Takeover, Buy Back and Delisting

Particulars	Takeover	Buy back	Delisting
Recommendation for Investors	Must try	<p>Small investors Must try. In the recent past such offers have given about 8-10 return in about 2-4 months time. Of course in some cases like Mphasis, DB Corp, Jagran etc. there have been losses. (Small investors have been defined as one holding shares whose market value is less than 2 lakhs as on the record date)</p>	<p>Avoid. This is now a game of nerves. One may get Bumper profit or may just make a bumper loss. The recent case of LINDE is an example. Floor Price 428.50 Discovered Price 2025- Rejected. CMP(14.02.19) 430. One Month Hi Lo 787.45 (15.01.19) to a Lo of 418 on 05.02.19</p>



Comparative chart showing unique features of Takeover, Buy Back and Delisting

Particulars	Takeover	Buy back	Delisting
Recent Changes	<p>Last Amended 31.12.18</p> <p>Since enactment there have been 14 amendments in the SAST 2011. 11 of such changes are direct and 3 have not been direct but through changes in ancillary regulations e.g.</p> <ul style="list-style-type: none"> ❖ October 8, 2013 by the SEBI (Listing of Specified Securities on Institutional Trading Platform) Regulations, 2013 vide No. LAD-NRO/GN/2013-14/28/6720. 	<p>Last Amended 06.03.17.</p> <p>There are 2 key changes:</p> <ol style="list-style-type: none"> a. buyback period is -- the period between the date of board of directors' resolution or declaration of results of the postal ballot for special resolution, and b. the date of payment to shareholders c. make a public announcement within 2 days of results of the postal ballot for Special Resolution/ Resolution of board of directors 	<p>Last Amended 14.11.18</p> <p>To Curb the volatilities in share price and unfair price manipulation 2 key amendments were made,</p> <ol style="list-style-type: none"> (a) Floor price will be determined w.r.t. the date prior to the date when the SE is intimated and (b) counter offer- few shareholders' quoting an unrealistic price was resulting in the failure of the offer and heavy losses to the investors. SEBI has now given an option to the Acquirer to make a counter offer-within 2 days of the discovery of the price, at not less than the book value



Comparative chart showing unique features of Takeover, Buy Back and Delisting

Particulars	Takeover	Buy back	Delisting
Recent Changes	<ul style="list-style-type: none"> ❖ May 23, 2014 by the SEBI (Payment of Fees) (Amendment) Regulations, 2014 vide Notification No. LAD-NRO/GN/2014-15/03/1089. ❖ March 6, 2017 by SEBI (Payment of Fees and Mode of Payment) (Amendment) Regulations, 2017 vide No. SEBI/LAD/NRO/GN/2016-17/037 read with notification dated March 29, 2017 vide No. SEBI/LAD/NRO/GN/2016-17/38. 		



Comparative chart showing unique features of Takeover, Buy Back and Delisting

Particulars	Takeover	Buy back	Delisting
Size of offer	26% of the Capital as of tenth working day from the closure of the tendering period	<p>Size -not to exceed 25% of the paid-up capital and free reserves. (Section 68(2)(c) of the Companies Act, 2013)</p> <p>The Debt: Equity Ratio should be less than 2:1.</p> <p>If the size of the Offer is more than 10%, of the Capital & Free Reserves, Special Resolution is required to be passed.</p> <p>Buy-back should be funded from Paid up Capital and Free reserves.</p> <p>We recall that recently SEBI rejected the Buy Back proposal from one of the most respected co. L & T, because of the concerns that the offer is not entirely funded by own resources/ high Debt.</p>	<p>The entire Public Holding.</p> <p>Conditions for Success: Minimum such No. of shares must be acquired, that will take the Promoters' holding to 90% or beyond.</p>



Counter Offer

Delisting offer can fail even when sufficient number of shares have been tendered in the offer to make it possible for the promoter to cross the threshold of 90%, but the discovered price is very high. In such a situation w.e.f. 14.11.2018, SEBI had introduced the method of counter offer by promoters. (Incidentally this was first suggested by me on *30 May 2014*). Now the acquirer/promoter has an additional option to give a counter offer as per the Regulations. This counter offer can be given at a price which is lower than the discovered price but not lower than either (a) Floor price or (b) Book Value



Counter Offer DFM Foods

Currently, we are witnessing the first such counter

Company	DFM Foods Ltd.
Offer Type	Delisting
Floor Price [Reg.20(2)]	263.80
Discovered Price [Reg.20(1)]	525
Counter Offer Price[Reg.22(4)]	467
Book Value [Reg.22(5)]	25.90
	Certified by NBT & Co.



Counter Offer

- The investors shall now have the option of either accepting the counter price or rejecting it.
- Those investors who had tendered their shares in the original delisting offer but do not want to sell their shares at the counter offer price, shall have the liberty of withdrawing their shares.
- Shareholders who had not participated in the original offer can now participate.
- It is open to anyone to buy the shares from the open market and tender them in the offer.



Counter Offer

No one can miss the legendary case of VEDANTA Ltd.

In 2020, after the Delisting offer was announced by Mr. Anil Agarwal, Vedanta write-off of ₹17,132 crore on impairment of assets in oil and gas, copper and iron ore businesses.

This is believed to be done for lowering the Book value of the shares so as to be able to give a Counter offer at a lower price. However, that situation never arose. In the case of Vedanta delisting offer, the minimum threshold was not reached and the delisting failed at the first stage itself.

THANK

YOU



CA. Arun Goenka

 siren bajao@gmail.com
[@arungoenka99](#)