

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

In the matter of application filed by Essar Energy Holdings Limited under regulation 25A of the SEBI (Delisting of Equity Shares) Regulations, 2009

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1. **Essar Energy Holdings Limited** (“the **applicant**” or “**promoter**”) made an application dated July 16, 2015 under regulation 25A of the SEBI (Delisting of Equity Shares) Regulations, 2009 (“the **Delisting Regulations**”) seeking relaxation of the time lines prescribed under regulations 8(1)(d), 10(1) and 12(1) of the Delisting Regulations and *inter alia* submitted the following:

- (a) Essar Oil Limited (“the Company”) was incorporated under the Companies Act, 1956. The equity shares of the Company are listed on the Bombay Stock Exchange Limited (“BSE”) and the National Stock Exchange of India Limited (“NSE”).
- (b) The promoter proposes to acquire 13,71,23,373 equity shares representing the balance 27.53% of the share capital of the Company (excluding 951463854 equity shares underlying GDRs) from the public shareholders.
- (c) The Board of Directors of the Company at their meeting held on June 22, 2014 approved the proposed delisting and that the shareholders of the Company had also approved (on August 06, 2014) by passing a special resolution in terms of regulation 8(1)(b) of the Delisting Regulations.
- (d) The Company filed applications with BSE and NSE seeking in-principle approval for the proposal. Though NSE had conveyed the in-principle approval on August 14, 2014, it had subsequently informed that SEBI had advised that the promoter should not proceed with the process.
- (e) While correspondence were exchanged with SEBI on the issue, the Delisting Regulations were amended with effect from March 24, 2015.
- (f) Thereafter, on July 02, 2015, the Company received a letter from SEBI addressed to the stock exchanges permitting the promoter to proceed with the proposed delisting in accordance with the Delisting Regulations.
- (g) The Company then received the in-principle approval from NSE on July 03, 2015 and from BSE on July 15, 2015.
- (h) The promoter had filed a letter dated July 10, 2015 stating that the delay in the delisting process was not on account of the promoter and as the approvals of the Board of Directors of the Company and

shareholders were obtained and floor price set prior to the amendments to the Delisting Regulations, it sought relief from SEBI to proceed under the Delisting Regulations prior to the amendments in March 24, 2015 and seeking extension of the deadline of August 5, 2015 under regulation 8(1)(d) of the Delisting Regulations.

(i) The promoter sought the following exemptions:

1. As per regulation 10(1) of the Delisting Regulations, the public announcement is required to be made within one working day from the receipt of the in-principle approval from the stock exchanges. Further, as per regulation 11(1), the promoter is required to deposit the consideration amount calculated on the basis of floor price and the number of equity shares held by the public shareholders in the designated escrow account before making the public announcement. However, there was a delay of 11 months in proceeding with the delisting proposal despite the public shareholders having approved on August 6, 2014. The promoter also understood that it had to revise the floor price as per regulation 8 of the Takeover Regulations, 2011 to the extent applicable. Though the revision was not warranted, the promoter in the interest of investors and to proceed with the delisting offer is agreeable to the revision. However, this will require it to arrange for additional funds. Accordingly, the promoter requested SEBI to relax the strict enforcement of regulation 10(1) and allow it to issue the public announcement within 6 weeks from the date of receipt of the in-principle approval from BSE being July 15, 2015.
2. Regulation 8(1)(d) of the Delisting Regulations stipulates that within one year of passing of the special resolution by the shareholders, the Company is required to make the final application for delisting to the stock exchanges. The promoter was supposed to file the same by August 5, 2015 considering that the shareholders approved the delisting proposal on August 4, 2014. However, they could not file the final application as the in-principle approval was obtained on July 15, 2015. Therefore, the promoter requires additional time to complete the financial and operational arrangements. Accordingly, the promoter requested that an extension of a period of 5 weeks from the date of issuance of public announcement in relation to the proposed delisting, to make the application for final approval under regulation 8(1)(d) of the Delisting Regulations.

3. Regulation 12(1) of the Delisting Regulations mandates that the letter of offer should be dispatched to the public shareholders not later than 2 working days from the date of public announcement. The registrar has stated certain constraints on the number of letters that could be printed and dispatched in a day. The Company has 285241 shareholders as on June 30, 2015 and therefore from a logistical perspective, the dispatch to such large number of shareholders cannot be done in two days. Accordingly, the promoter requested for relaxation from strict applicability of regulation 12(1) of the Delisting Regulations (requirement of dispatching the letters of offer to public shareholders within 2 working days from the date of issuance of public announcement) and allow the promoter to complete dispatch of letters of offer within 5 working days of issuance of the public announcement.

2. Thereafter, the promoter, vide letter dated September 01, 2015, requested SEBI to grant exemptions as sought vide their letter dated July 16, 2015 and grant -

- (a) A period of two months from the date of approval to file the final delisting application with the stock exchanges; and
- (b) A period of five days from the date of public announcement for dispatching the letters of offer to the public shareholders of the Company (regulation 12(1) of the Delisting regulations).

3. Regulation 25A(4) provides that SEBI 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. Though the promoter has not been afforded an opportunity of personal hearing, I am of the opinion that it is not necessary as it has made sufficient representations in its communication to SEBI with respect to its request under regulation 25A of the Delisting Regulations.

4. I have considered the application dated July 16, 2015 and letter dated September 01, 2015 of the promoter. The promoter has submitted that it was supposed to file the final application by August 05, 2015 and that it was not able to do so as it obtained in-principle approval only on July 15, 2015. The promoter has requested for relaxation of timelines to complete activities pertaining to its proposed delisting as it requires additional time to arrange for funds towards consideration amount calculated as per the amended provisions

of the Delisting Regulations and deposit in the designated escrow before making the public announcement and also for other operational arrangements. In this regard, I note that -

- (a) On August 14, 2014, SEBI received a complaint from a shareholder of the Company alleging *inter-alia*, “...*tactics being used by the promoters of the company to deny important public information about the company to its own shareholders which otherwise is public information and thereby depriving them to take an informed decision about their investments...*” **and** suspecting that “...*the promoters intends to delist the company from stock exchanges, we suspect some of the public shareholders may be acting in concert with the promoters and to hide their identities such tactic is being used...*”.
- (b) For examination of the concerns raised in the aforesaid complaint, SEBI, vide email dated August 22, 2014, advised the Stock Exchanges not to grant delisting permission to the Company, pending further directions from SEBI. SEBI examined the capital structure and no legal infirmities were observed.
- (c) Subsequently, SEBI received further complaints, wherein, *inter-alia*, it was alleged that:
  - (i) Promoters of the Company have entered into an agreement with OJSC Roseneft Oil Limited (“Roseneft” - a Russian oil company) to sell 49% of their stake in the Company. As per a statement filed with BSE, the said agreement was non-binding and was silent on financial details including the price at which the deal was finalized. SEBI was requested to ensure that the deal price with Roseneft was disclosed in the delisting offer documents. Further, the price offered in the delisting offer should be fair price rather than the price as per pricing formulae and that price for delisting is equivalent to deal price with Roseneft.
  - (ii) Another complaint was received by SEBI raising concerns relating to certain financial transactions carried out by the Company in its books of accounts, which were not reflected in the Balance Sheet affecting the interest of minority shareholders.
- (d) The above complaints were referred to the Company/promoter for their comments. The Company denied allegations pertaining to operational and financial statements made by it and *inter alia* stated that the financial statements for the year ended March 2015 were prepared in accordance with the applicable laws and in conformity with the accounting norms generally accepted in India and that it

did not commit any misrepresentation. As regards the proposed stake-sale to Rosneft, the promoter *inter alia* stated that currently there was no agreement between the parties on key terms of the proposed transaction including price and that with a view to ensure that adequate information is provided to the shareholders, it would provide relevant updates in respect of the progress of the proposed transaction with Rosneft in the public announcement and letter of offer.

5. The promoters have *inter alia* undertaken that in the event that the final price per share, if any, received by the promoters, on successful completion of the proposed transaction, from Rosneft within one year from the completion of the proposed delisting is higher than the final delisting price arrived at in accordance with the Delisting Regulations, then the promoters are willing to pay the difference between the transaction price (with Rosneft) and the price arrived at in the reverse book building to the public shareholders of the Company who tender their shares to the promoters in accordance with the Delisting Regulations. However, in the interest of shareholders, it would be not desirable to put any time limit in the undertaking.

6. In view of the foregoing, I note that -

- a. The Company has already completed the procedure of taking approval of its Board of Directors and shareholders for the delisting offer;
- b. As regards floor price, the promoters have agreed to revise the floor price in accordance with the amended regulations (the requirements of the floor price has undergone change and the promoters have agreed to revise the floor price upwards);
- c. Additionally, the promoters have also undertaken to pay the difference between the transaction price with Rosneft and the price discovered under the Delisting Regulations;
- d. Further, Stock Exchanges have been advised that the Company would be required to comply with the amended requirements under Delisting Regulations.
- e. As regards the allegation with respect to the financial transactions, the issue appears to relate to the correctness of balance sheet. I note that SEBI has sought explanation from the Company and there is *prima facie* nothing to substantiate the charges. However, I am of the opinion that as far as adherence to the accounting standards is concerned, ICAI is the appropriate authority. It will be desirable that ICAI looks into the matter. Accordingly, SEBI shall refer the complaint to ICAI for necessary action, if any.

7. I also note that the complaints apprehend that the interests of minority shareholders may be affected and they might be deprived of a possible better payout that the promoters may receive. However, the public shareholders have the benefit of both the reverse book building process available to them under the Delisting Regulations and any possible higher price paid by Roseneft to the promoters in terms of the undertaking given by the promoters.

8. In view of the above, it would be in the interest of the investors and securities market, to grant extension of time lines specified under regulation 8(1)(d), 10(1) and 12(1) of the Delisting Regulations. Accordingly, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 and regulation 25A(4) of the SEBI (Delisting of Equity Shares) Regulations, 2009, hereby grant the following exemption/relaxation :

- (a) The promoter shall expeditiously make the public announcement and specifically mention therein and in the letters of offer that (i) the floor price shall be in accordance with the amended Delisting Regulations and (ii) that in case the price offered/paid by Roseneft is higher than the discovered price arrived at in the reverse book building, the difference in price shall be paid to the shareholders who tender their shares to the promoters in accordance with the Delisting Regulations in the proposed delisting offer;
- (b) The promoter/Company/concerned intermediary shall dispatch the letters of offer with respect to the proposed delisting offer within a period of 5 working days from the date of publication of the public announcement; and
- (c) The promoters/Company shall make the final application for delisting within a period of two months from the date of this Order.

Provided that, notwithstanding any delisting of equity shares of the Company, the promoter/s of the Company shall be responsible to pay the difference between the transaction price with Roseneft and the final delisting price to those shareholders whose shares were accepted in terms of the Delisting Regulations, if the former is higher. In this regard, the Company/its promoters shall, on finalization of the transaction with Roseneft, make a public notice, within a period of 10 days of such finalization, under intimation to SEBI, stating the details of the transaction including number of shares to be purchased by Roseneft and the consideration (*including all heads under which the final consideration price is arrived at between the promoter/s and Roseneft*) finalized with Roseneft:

- i. In case the public notice is made after the delisting and during the period mentioned in regulation 21 of the Delisting Regulations, the promoters shall,
  - (a) within two months of such notice, pay the difference (*between the price finalized with Rosneft and the final delisting price, if the former is higher*) to those shareholders whose shares are already tendered and accepted under regulations 20 and 21 and
  - (b) pay to those shareholders who tender shares after the public notice, the final delisting price along with the difference within a period of two months.
- ii. In case the public notice is made after the period mentioned in regulation 21, the promoters shall, pay the difference to those shareholders whose shares were accepted (*in terms of regulation 20 and 21 of the Delisting Regulations*), within a period of two months from such notice.

9. This Order is issued under regulation 25A of the Delisting Regulations only with respect to relaxation to timelines as ordered above and does not absolve or exempt the Company, its promoters and directors and others concerned from complying with any other law or condone lapses/violations, if any, of other law administered by SEBI.

10. This Order shall come into force with immediate effect.

11. Accordingly, the application dated July 16, 2015 of the promoter and its letter dated September 01, 2015 are disposed off.

**PRASHANT SARAN**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**Date: November 06, 2015**

**Place: Mumbai**