

Edits & Columns

Reliance demerger as backdoor delisting

A delisting on this scale, in terms of value and number of shareholders, is scandalous

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In the past few weeks, we have been witnessing a curious phenomenon, where the demerger of Reliance has led to an effective delisting of a significant part of the company. On January 18, a special trading session was held to determine the price of the demerged Reliance Industries.

It established that the demerged company was worth a little over three quarters of the undivided company. By implication, the four companies that were demerged out of Reliance Industries collectively accounted for about a quarter of the value of the undivided company. Reliance Industries (or rather the three quarters that continue under that corporate umbrella) continues to be a listed company, but the four companies that were demerged out of it are yet to be listed. On January 18, therefore, about a quarter of Reliance Industries (representing a value of over \$7 billion) was effectively delisted.

What does the effective delisting of this quarter of Reliance Industries mean? First, millions of shareholders in these companies cannot trade these shares. Second, it means the corporate governance provisions of Clause 49 on independent directors and investor protection do not apply to these companies. Third, these companies are under no obligation to provide the continuing material event disclosures to the exchange that a listed company is required to. Suddenly, a company with a million shareholders is subject only to the disclosure and governance regime that applies to a mom-and-pop company with a dozen shareholders. It is possible the demerged companies may have the good sense to voluntarily comply, at least partly, with the listed company regulations, but there is no legal obligation to do so.

A delisting on this scale, both in terms of value and in number of shareholders, is absolutely scandalous. India does have stringent delisting guidelines which ensure that even when a small company with a handful of external shareholders is delisted, the interests of public shareholders are fully protected. Not only is the consent of the shareholders required by special resolution, but the promoters are also required to determine an exit price by book building and buy out any shareholder who wants to tender at this price. Obviously, nothing of this kind has happened in this very large-scale delisting, that has happened almost by default.

The problem has arisen because the exchanges and the regulator have examined the listing of the demerged companies through the framework that governs initial public offerings (IPOs),

- **Delisting means millions of shareholders of these cos can't trade their shares**
- **It also means Clause 49's**

rather than the framework of the delisting guidelines. This is clearly a mistake. In an IPO, the public is being invited to put money into the company. The Sebi Disclosure and Investor Protection Guidelines are designed to ensure that companies can initiate this process only after a rigorous process that includes a detailed offering memorandum or prospectus. The situation in a demerger or delisting is the opposite, because the public has already put in its money and the regulator's priority is to ensure the company does not slip away from the clutches of the listing regulations. The IPO guidelines are designed to make it difficult for a company to list. The delisting guidelines are designed to make it difficult for a company to delist. The demerger is best seen from the latter perspective.

provisions on corporate governance aren't applicable
• And these cos aren't obliged to provide continuing material event disclosures

The regulatory framework for demergers needs to be overhauled drastically. The offering memorandums of the demerged companies should form part of the scheme of the arrangement presented to the shareholders. These must be examined by the regulators and Sebi to decide if the demerged companies will be listed. If not, the demerger should be permitted only if the promoters of the undivided company comply with the delisting guidelines. Had this framework been in place, the shares of the four demerged companies of Reliance would also have traded on when-issued basis on January 18, and they would have been listed and traded on January 25. The demerged companies, as well as the continuing part of Reliance, would have traded on no-delivery basis from January 18-25. Derivative contracts on some demerged companies would also have started trading on January 18.

It is still not too late to set things right. Section 392(1)(b) of the Companies Act and Section 11B of the Sebi Act give high courts and Sebi ample powers to ensure either a listing of the demerged companies or compliance with delisting guidelines.

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