Securities Appellate Tribunal
Uniproducts (India) Ltd. vs Securities And Exchange Board Of ... on 20 August, 2008
Bench: N Sodhi, A Bhargava, U Bhattacharya
JUDGMENT N.K. Sodhi, J. (Presiding Officer)

1. Uniproducts (India) Ltd, the appellant before us, is a public limited company incorporated under the provisions of the Companies Act, 1956 and its shares are listed on the Bombay Stock Exchange. It has its manufacturing facilities at Noida in the State of Uttar Pradesh and Rewari in the State of Haryana. The company proposed to expand its Rewari plant and with a view to finance the expansion and diversification plan, it came out in February/March, 2007 with an issue of 45,25,254 equity shares of Rs. 10/- each for cash at a premium of Rs. 30/- (issue price of Rs. 40/-) per equity share aggregating to Rs. 1810.10 lacs on rights basis to the existing equity shareholders of the company in the ratio of one equity share for every one equity share held as on January 15, 2007. Before the letter of offer was issued to the equity shareholders of the company, it was sent to the Securities and Exchange Board of India (for short the Board) for its comments. This is the requirement of the Securities and Exchange Board of India (Disclosure & Investor Protection) Guidelines, 2000 (for short the DIP guidelines). The Board had no adverse comments to offer and the Rights issue was allowed to go through. It may be mentioned that the scrip of the appellant company was being traded in the market around Rs. 55 when it was offered to the existing shareholders at Rs. 40. The public shareholders were informed through this letter of offer that the promoters intended to subscribe to the full extent of their Rights entitlement in the issue either by themselves or through their relatives or companies controlled by them. The letter of offer further disclosed that the promoters intended to apply for additional equity shares in the Rights issue so that at least 90 per cent of the issue was subscribed and that this would not result in change of control of the management of the company and this would be done in compliance with all the relevant provisions of law including the listing agreement. The promoters of the company made it clear to the shareholders that other than meeting the requirements for expansion and diversification of the manufacturing activities of the company, there was no other purpose for the rights issue including any intention to delist the company. The promoters further gave an undertaking in the letter of offer stating that in case the subscription by them to the unsubscribed portion of the issue resulted in the public shareholding falling below the Permissible Minimum Level, then the promoter group would either make an offer for sale of their holding so that the public shareholding is raised to the permissible minimum level within a period of three months from the date of allotment or buy out the remaining shares from the public at the price of offer. They also undertook that this would be done in accordance with the provisions of the Securities and Exchange Board of India (Delisting of Securities) Guidelines, 2003 (for short the delisting guidelines).

2. It so happened that the response of the public shareholders to the Rights issue was disappointing for the company and the promoters had to exercise their option of subscribing to the unsubscribed portion of the issue. As a result, the shareholding of the promoters went up and the public shareholding went down to 15.65 per cent. In April 2007, the appellant company decided to buy out the remaining public shareholders at the price of the Rights issue, that is, Rs. 40 per share and to delist the shares of the company. On 3.5.2007 the appellant company conveyed this decision of delisting to the Board and the latter took the view that the companys decision was contradictory to

the following undertaking given by the company in the Letter of Offer relating to the Rights issue:

As such, other than meeting the requirements indicated in the section on Objects of the issue on page 17 of this Letter of Offer), there is no other intention/purpose for this Issue, including any intention to delist the Company, even if, as a result of allotment to the Promoters, in this Issue, the Promoters shareholding in the Company exceeds their current shareholding.

Thereafter, the matter remained under discussion and correspondence between the appellant company and the Board till 20.9.2007 when the latter gave to the former an opportunity of personal hearing. On a consideration of the submissions made by the appellant and the Letter of Offer, the Board held that certain disclosures in the Letter of Offer relating to the Rights issue were contrary and ambiguous and do not state the future intention of the company/promoters on the listing status of the securities clearly. It further concluded that the disclosures were not in conformity as per the spirit of the delisting guidelines. Accordingly, by its communication dated 25.2.2008, the Board informed the appellant that in case its promoters wish to delist the securities, the same may be done by following the procedure of reverse book building laid down under the Delisting Guidelines and not at the price at which the shares were offered in the Rights issue. It is against this communication that the present appeal has been filed.

3. The learned senior counsel for the appellant company submitted at the outset that the Boards impugned decision is based entirely on the apparent contradiction between the disclosure made by the company in the Letter of Offer that there was no intention of delisting the company and the subsequent decision of the company to go in for delisting. He argued that a simple reading of the relevant portion of paragraph 4 of the Letter of Offer should be enough to show that there was no such contradiction and that it had been made clear in the Letter of Offer that the company could opt for delisting, at its discretion, should the public shareholding fall below the permissible minimum level prescribed in the listing agreement after the Rights issue. We are in agreement with the learned senior counsel.

4. The relevant portion of paragraph 4 of the Letter of Offer is reproduced below:

The Promoters have confirmed that they along with their relatives and the companies controlled by the Promoters (together hereinafter referred to as Promoter Group in this clause) intend to subscribe to the full extent of their Rights Entitlement in the Issue. The Promoters reserves the right to subscribe to their Rights Entitlement in the Issue either by themselves, their relatives or a combination of entities controlled by them, including by subscribing for Equity shares for renunciation if any made within the promoters group to another person forming part of the Promoter group. The Promoters also intend to apply for additional Equity Shares in the Issue, such that at least 90% of the Issue is subscribed. As a result of this subscription and consequent allotment, the Promoters may acquire shares over and above their entitlement in the issue, which may result in an increase of the shareholding being above the current shareholding with the entitlement of Equity Shares under the Issue. This subscription and acquisition of additional Equity Shares by the Promoter, if any, will not result in change of control of the management of the Company and shall be exempt in terms of proviso to Regulation 3(1)(b)(ii) of the Takeover

Regulation. As such, other than meeting the requirements indicated in the section on Objects of the Issue on page 17 of this Letter of Offer), there is no other intention/purpose for this Issue, including any intention to delist the Company, even if, as a result of allotment to the Promoters, in this Issue, the Promoters shareholding in the Company exceeds their current shareholding. The Promoters intends to subscribe to such unsubscribed portion as per the relevant provisions of the law. Allotment to the Promoters of any unsubscribed portion, over and above their Rights entitlement shall be done in compliance with the provision of the Listing Agreement and other applicable laws prevailing at that time relating to continuous listing requirements.

The Promoter group undertakes that in case the subscription by the Promoter group to the unsubscribed portion results in the public shareholding falling below the Permissible Minimum Level as specified in the listing condition agreement, then the promoter group shall make an offer for sale of their holding so that the public shareholding is raised to the permissible minimum level within a period of 3 months from the date of allotment in the proposed issue in the manner as per Sub clause 17.1 and 17.2 of SEBI (Delisting of Securities) Guidelines, 2003 or as per any Amendment thereto or buy out the remaining shares at the price of offer and shall take appropriate steps in accordance with SEBI (Delisting of Securities) Guidelines, 2003 or any amendment thereto, to get the Company delisted.

A perusal of the statements made in paragraph 4 of the Letter of Offer, as quoted above, cannot be expected to leave any doubt in the mind of any shareholder that under a certain situation the appellant company was leaving it open for itself to decide on delisting. It will be seen that the promoters of the appellant company had made it known to the public shareholders that they (promoters) would subscribe to the unsubscribed portion of the Rights issue and if, in that event, the public shareholding fell below the minimum level prescribed in the listing agreement, the promoters would either offer for sale their holding so as to raise the public shareholding to the permissible minimum level in the manner prescribed in Clauses 17(1) and 17(2) of the delisting guidelines or, in the alternative, buy out the remaining shares at the price of offer and take appropriate steps in accordance with the delisting guidelines to get the company delisted. There is no gainsaying the fact that response to the Rights issue was poor and the promoters subscribed to the unsubscribed portion. This reduced the public shareholding below the minimum prescribed level. In such an eventuality, the promoters had the option to get the company delisted in accordance with the delisting guidelines which option they have exercised. We cannot, therefore, accept the contention that the decision of the promoters to delist the company was contrary to the intention expressed in the letter of offer.

5. We are also of the considered opinion that the Board while permitting the promoters of the appellant company to delist, could not direct them to follow the procedure of reverse book building laid down under the Delisting Guidelines. We say so in view of the provisions of Clause 17(1) of the delisting guidelines. This clause with its provisos reads as under:

Delisting pursuant to rights issue

17. (1) In case of rights issue, allotment to the promoters or the persons in control of the management shall be allowed even if they subscribe to unsubscribed portion which may result in public shareholding falling below the permissible minimum level:

Provided that the adequate disclosures have been made in the offer document to that effect: Provided further that they agree to buy out the remaining holders at the price of rights issue or make an offer for sale to bring the public shareholding at the level specified in the listing conditions or listing agreement to remain listed.

2. ...

It will be seen that Clause 17(1) deals with delisting pursuant to a Rights issue. It specifically provides that in case of delisting of a company pursuant to a Rights issue, as in the case before us, the price to be paid to the public shareholders for acquiring their shares is the price of rights issue. In view of this provision it was not open to the Board to ask the appellant company not to go in for delisting on the basis of the Rights issue price but to do so at the price to be discovered through the reverse book building process. This is clearly impermissible. The Board having taken the view that the disclosures made in the Letter of Offer were contrary and ambiguous, we really wonder why it did not point out the so called contradictions and the ambiguity at the time when it first vetted the same Letter of Offer before the opening of the Rights issue. It is common case of the parties that this Letter of Offer was sent to the Board through merchant banker for its vetting when the appellant company came out with the Rights issue. It is also not in dispute before us that the same was allowed to go through and no adverse comments were offered by the Board.

6. Dr. Mrs Poornima Advani, the learned Counsel for the respondent placed reliance on paragraph 6.2 of the DIP guidelines to contend that the disclosures made in the Letter of Offer were not true and adequate and the investors could not make an informed decision on the basis of those disclosures. She strenuously urged that the promoters made contradictory disclosures regarding the delisting of the company. Since the argument is based on paragraph 6.2 of the DIP guidelines, it will be useful to refer to that provision at this stage. It reads as under:

The prospectus shall contain all material information which shall be true and adequate so as to enable the investors to make informed decision on the investments in the issue. We have carefully perused paragraph 4 of the Letter of Offer which has been reproduced in the earlier part of our order and cannot agree with the learned Counsel in this regard. No information, much less material information, has been withheld from the investors and the disclosures made are true and adequate. We have already held that there is no contradiction in the Letter of Offer regarding the intention of the promoters to delist the company. In this view of the matter, it cannot be said that investors could not make an informed decision on the investments in the Rights issue.

7. We repeatedly asked the learned Counsel for the Board as to how, in the facts and circumstances of this case, the Board could envisage the delisting of purchase of shares at a price to be decided in terms of the reverse book building process instead of the price of Rights issue which has been specifically provided in the delisting guidelines. She stated that even this decision stemmed from

paragraph 6.2 of the DIP guidelines. We do not think that the said paragraph provides any rationale for such an action.

For the view that we have taken, the impugned decision of the Board can not be sustained. In the result, the appeal is allowed and the impugned order set aside. There is no order as to costs.