Our Views

How to smoothen the disinvestment process for a listed PSU

Any public disinvestment program by construct is a public process. While the bidding is confidential, the process is very public. Most activities are known in the public domain either directly or through leaks. Though in case of unlisted PSUs such as Air India, this may not cause much concern, for a listed PSU there is a need to follow the regulatory framework for a listed company which requires an open offer to be made. Anticipation of such an offer may lead to market speculation and a resultant affected higher market price.

Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011; widely known as the Takeover code, provides a plausible mechanism for public / minority shareholders to exit from a listed company in case there is a change in majority ownership, change in control, indirect change in shareholding / beneficial ownership, etc. The regulations also provide for a pricing mechanism to determine the offer price to be offered to the public shareholders. The pricing formula considers both – the price of the underlying transaction which triggered the open offer and recent trading levels of the stock itself.

Unlike a private transaction, disinvestment of public sector units is a very long drawn process with multiple approvals required across the transaction lifecycle. A typical disinvestment of a PSU goes through various steps like submission of the disinvestment proposal within the government, grant of approval by the government, selection of transaction advisors and other advisors, invitation of expression of interest, shortlisting of eligible bidders, providing data-room access for due diligence purposes, submission of bids and announcement of successful bidder. Progress at each stage of such transactions is available in the public domain either through public announcements made by the government, the various ministries, the company or through media coverage. As a result, by the time an agreement is reached between a potential buyer and the government, market price of the company undergoes significant changes and is usually inflated. All this leads to high cost of open offer since the offer price is a function of recent trading history of the underlying stock. Worse is that it leads to speculative activities in the market.

Therefore, disinvestment of a listed PSU by the government is a situation which warrants special attention under the Takeover Code and certain relaxations should be worked out in this regard.

In certain special situations, the Takeover Code provides for an exempt from the mandatory open offer requirement, some of them are, inter se transfer amongst qualifying persons, acquisition pursuant to a scheme, acquisition made under delisting regulations and acquisitions made under IBC / SARFAESI / debt restructuring, etc. Similarly, in my opinion, disinvestment of a listed PSU should be treated as differently. There can be two possible solutions to such concerns – first, disinvestment of listed PSUs should be granted an exemption under the Takeover Code with no mandatory open offer requirement for such transactions; second, the pricing formula should be modified such that the offer price for public is less speculative and that could be equal to the price being paid by the buyer to the government to acquire the underlying shares.

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I do understand that a full exemption to PSUs from the open offer requirement may not be appropriate as there are genuine shareholders who may like an option to exit incase of the change in the management. Also, it may impact the overall interest of the market to invest in PSUs. Therefore, keeping in mind the spirit of the takeover code, the provision for open offer should continue. However, a relook at the pricing guideline is certainly required. It will go a long way in facilitating strategic sale of a listed PSU by the Government. In fact, if the offer price for public is equal to the price being paid by the buyer to the government, there would be less speculative price rise and there will be more likelihood of the transaction happening at an unaffected market price.

Post the success of Air India disinvestment, the government is now rightly on the path of the strategic sale of other listed companies. It is indeed an appropriate time for the government and SEBI to reflect on this aspect of the disinvestment process and to ensure an equitable realization from the sale for all shareholders.

https://economictimes.indiatimes.com/markets/stocks/news/how-to-smoothen-the-disinvestment-process-for-a-listed-psu/articleshow/88129546.cms

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