Our Views

Minority Squeeze out – a necessary requirement for our corporates

The Indian capital markets provide attractive platform for corporates to raise capital and build their investor base. With well-established stock exchanges, a robust regulatory framework, and growing investor profile, India is becoming a preferred destination for companies to raise capital. In the last 3 years ~ 114 companies made initial public offering (IPO) in India, a significant increase compared to the previous years.

To access the Indian capital markets, companies must comply with regulations set out by various authorities, including SEBI, the Ministry of Corporate Affairs (MoCA), and the stock exchanges. This involves registration of companies with MoCA, following SEBI regulations for fundraising, and entering into listing agreements with stock exchanges. These requirements are essential for establishing a strong foundation for capital raising and maintaining transparency and accountability.

In recent years, SEBI has made significant changes to improve its regulations for IPOs to ease entry compliances, making it easier for companies to participate in the Indian market. However, the exit process for listed companies still poses a challenge. First the delisting of a company itself is cumbersome, however post a successful delisting minority squeeze out is almost impossible. After a successful delisting, the delisted company may still leave with a significant number of residual public shareholders holding an insignificant number of shares. A company can be delisted by buying out just 90% of its holding. This may result into some of minority shareholders left out despite the delisting. This creates ongoing compliance challenge and becomes expensive for the delisted companies.

Currently the only option available for a delisted company for minority squeeze out is to follow a capital reduction process. This is done with the approval of the NCLT. This option is expensive, time-consuming, and also very complex. Therefore, very few companies opt for this option.

A better option could be to follow the Minority Squeeze-out provisions governed by Section 236 of the Companies Act, 2013. While globally a similar provision is well accepted and followed, our law in this regard however is not very clear. The general interpretation is that the current construct of the Section 236 does not mandate minority shareholders to sell their shares, despite the majority shareholder making an offer.

While the time taken to list a company in India has reduced significantly, the exit process, particularly about minority squeeze-out, still has challenges. This needs to be addressed to create a more efficient and investor-friendly environment.

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Minority squeeze-out process in other countries is a far simpler for example, in the US, one can make a 100% buyout offer, whereas the Indian takeover code restricts acquisitions of shares beyond a certain limit. In the UK, the corporate can initiate statutory squeeze-out procedures if they already hold 90% or more of the target's shares. In Germany, a squeeze-out procedure can be initiated if the bidder holds at least 95% of all voting rights.

Therefore, our suggestion is that MoCA should clarify that the interpretation of Section 236 of the Companies Act is that the minority squeeze out is mandatory. This clarification will meet a big requirement of our corporates.

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