WTM/GM/CFD/CMD1/46/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1) AND 11 B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 25A OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (DELISTING OF EQUITY SHARES) REGULATIONS, 2009.

IN THE MATTER OF DELISTING OF EQUITY SHARES OF VISHVA VISHAL ENGINEERING LTD.

Background -

1. Vishva Vishal Engineering Limited ("**VVEL**" / "**Applicant**" / "**the company**") is a public limited company incorporated in March 1985. Its equity shares got listed at BSE Ltd. ("**BSE**") during the financial year 1985-86.

2. Securities and Exchange Board of India ("**SEBI**") received an application dated May 05, 2020 ("**Application**") under Regulation 25A of the SEBI (Delisting of Equity Shares) Regulations, 2009 ("**Delisting Regulations**") from VVEL seeking exemption / relaxation from the requirements of complying with the minimum public shareholding norms ("**MPS norms**") and the dematerialization of promoters' shareholding, so as to enable the company to make an application for voluntary delisting and to follow the norms as provided under regulation 7 of the Delisting Regulations.

3. Vide the Application and subsequent submissions, the company has cited *inter alia* the following grounds for seeking the abovementioned exemptions:

(a) Since IPO in the year 1985-86, no further shares have been issued to the public.

(b) After the year 1994-95, there was no trading in the shares of the company on the stock exchange.

(c) From 1995-96, the paid-up capital of the company consists of 25 Lakh shares of Rs.10 each. There has been no increase in the same since then.

(d) In the year 2001, the total public shareholding of 4.44% held by 13 public shareholders was purchased by the promoter group. Since then, (i.e. from the year 2001-02), 100% holding of the company is with the promoters and promoter group companies.

(e) Since 19.05.2004, trading in the shares of the company has been suspended by the Stock Exchange (BSE) due to non-compliances of certain provisions of Listing Agreement.

(f) Prior to suspension of trading, the scrip was traded for only six days during 1994-95 and it was last traded on 31.12.1994.

(g) No investor complaint has ever been filed against the company.

(h) SEBI had passed an interim order dated 04.06.2013 (**Interim Order**) against 105 entities, including the company, for non-compliance of the MPS norms prescribed under Rule 19A of the SCRR. The company came to know about such rule only on receipt of the interim order. Pursuant to the interim order, the company vide letter dated 26.06.2013 had *inter alia* submitted to SEBI that it wished to opt for delisting. Subsequently, the company had initiated efforts to follow the procedure and process for delisting of shares from BSE. Accordingly, in response to letters dated 21.08.2013 and 06.09.2013 regarding compliance requirements under Clauses 35 and 41 respectively of the Listing Agreement, the company vide letters dated 03.10.2013 and 04.10.2013 *inter alia* intimated BSE that it had already opted for delisting. Further, during the personal hearing before SEBI on 10.08.2015 which was held pursuant to

passing of the interim order, the company had submitted before SEBI that it was not practically possible for the company to comply with the MPS norms through any of the different methods prescribed by SEBI and that it was desirous of delisting shares from BSE. It had further submitted that it had already initiated the process of delisting and appointed professionals to handle the matter.

(i) The company was regularly in communication with BSE for completing pending compliance requirements and filed requisite documents / certificates with it, apart from paying pending Annual listing fees up to FY 2015-16. It is pertinent to note that BSE vide Notice dated 25.10.2019 informed its members that no further action would be taken against certain entities, including the company, which had complied with the requirement of payment of outstanding annual listing fees and would continue to deal in Trade for Trade segment / under suspension.

(j) With regard to various methods for complying with the MPS requirements prescribed by SEBI *inter alia* vide Circular No. CIR/CFD/DIL/10/2010 dated 16.12.2010 and various subsequent amendments, the company submits that it is practically not viable for the company to comply with the MPS norms by any method prescribed by SEBI due to various reasons, such as (i) suspension of trading in the company's shares since 19.05.2004; (ii) absence of trading in the scrip since 13.12.1994; and (iii) absence of public's interest in acquiring the shares of the company in last many years.

(k) Due to the above reasons, the company is not in a position to reduce the promoters' shareholding from 100% to 75% to comply with the MPS norms. Further, the promoters intend to voluntarily delist the company in accordance with the provisions of Delisting Regulations without being subjected to penal consequences as applicable in case of compulsory delisting.

(l) The MPS norms were introduced in SCRR on 04.06.2010. However, as on 03.06.2010, the promoters' shareholding in the company was already 100%, which shows that the breach of the MPS norms by the company did not take place subsequent to incorporation of the said norms in SCRR in 2010.

(m) The company had declared its intention to delist its shares immediately after the issuance of the interim order and has taken various steps in this regard, post issuance of confirmatory order dated December 2015 (**Confirmatory Order**) by SEBI. In this regard, as on date, the company has complied with all the pending compliances with BSE, as pointed out by it, barring non-compliance with MPS norms.

(n) Considering all the above mentioned facts and circumstances in totality, there is no useful purpose for the company to remain listed. Hence, the promoters of the company may be permitted to voluntarily delist its shares by following the procedure provided under regulation 7 of the Delisting Regulations, without being subjected to penal consequences which apply to compulsory delisting.

(o) Since the company has nil public shareholding, the grant of relaxations from SEBI shall not adversely impact the investors' interest.

Consideration

4. Before proceeding to decide the issue at hand, I deem it important to briefly delve into the history of MPS norms. It is understood that prior to September 1993, Rule 19(2)(b) of the Securities Contract (Regulations) Rules, 1957 **("SCRR")** required a minimum public offer of 60% of the issued capital of a company for getting itself listed on a stock exchange and such requirement was reduced to 25% by amendment done on September 20, 1993 with the object of encouraging the listing of a large number of companies to broaden the market. The requirement to have abovementioned minimum public float (both pre-revised

and revised one) was only an initial listing condition and thereafter, the promoters could gradually buy it out from the public, subject to other compliances. Thereafter, for the first time, SEBI, vide its circular dated 2nd May 2001, directed stock exchanges to amend Clause 40A of the listing agreement to provide that the company shall maintain, on a continuous basis, the minimum level of non-promoter holding at the level of public shareholding as required at the time of listing. Further, Section 21A was inserted in SCRA w.e.f. October 12, 2004, which authorized a recognised stock exchange to delist the securities in appropriate cases. Subsequently, the Delisting Regulations, 2009 was brought into force w.e.f. June 10, 2009 containing provisions in Regulation 22 (Compulsory Delisting by a stock exchange) which read with Rule 21 of SCRR (Delisting of securities) empowers a stock exchange to compulsorily delist a listed company for the non-compliance with MPS requirements. Regulation 24 of the Delisting Regulation provides that as a result of such compulsory delisting the company, its promoters and whole-time directors and the companies promoted by any of them shall not access the securities market or seek listing for a period of 10 years from the date of delisting. Subsequently, the Government of India, vide notifications dated June 4, 2010 and August 9, 2010 amended SCRR to insert Rule 19A which mandated that all listed companies ought to achieve and maintain MPS of 25% of each class or kind of equity shares or debentures convertible into equity shares issued by such companies. It further provided that the companies whose public shareholding was less than 25% of each class or kind of equity shares or debentures convertible into equity shares issued by such companies were required to comply with this continuous MPS requirement within a period of three years from the date of amendment i.e. June 03, 2013. Further, Rule 19A (2) of SCRR provides for a 12-month period to a company to bring back its public shareholding to 25% if it falls below 25% from the date of such fall. Along with insertion of Rule 19A in the

SCRR, Clause 40A of the Listing Agreement was also amended in June 2010 whereby the listed companies were made to agree to continuously comply with the MPS mandate.

5. Having briefly looked into the history of the MPS norms, I note from the records that the Applicant has been listed on BSE since 1985-86 pursuant to an Initial Public Offer ("**IPO**"). Thereafter, the promoters and their associates went on acquiring shares from the open market and they had acquired 100% the equity shares of the company by the year 2001-02. Accordingly, as per the submissions made by the company in the application, there is no public shareholding in the company since 2001-02. Further, I note from the company's submissions that there has been no trading in the scrip of the company since December 1994. Thus, the company has remained non-compliant with the MPS norms at all times after June 03, 2013 (i.e. the timeline prescribed for complying with the MPS norms under Rule 19A of the SCRR).

6. Having observed as above, now the moot question to be decided is whether as a consequence of non-compliance with the MPS norms, the company should be delisted voluntarily or compulsorily under the Delisting Regulations. While the voluntary delisting would not entail penal consequences for the company and its directors, the compulsory delisting would subject them to such penal consequences. In this regard, I note that the thrust of the Delisting Regulations in cases of delisting, whether voluntary or compulsory, is the protection of the interest of the public investors of those companies where the promoters are seeking to delist. The protection is ensured by laying down procedures to arrive at a fair exit offer price, participation of public shareholders in the process of passing the resolution, keeping the offer open for stipulated period etc. In other words, since the scope of the Delisting Regulations is to take care of the public investors, in my opinion, enforcing the provisions of compulsory delisting on a company which reached

100% promoter shareholding prior to June, 2009 (i.e. before the commencement of the Delisting Regulations which introduced provisions for compulsory delisting) and which is willing to delist voluntarily does not appeal to logic.

7. I note from the records that the Applicant is one of the 105 companies against which the interim order dated June 04, 2013 was passed for non-compliance of the interim order. I further note that while passing the confirmatory orders against many such companies, including the Applicant company, SEBI had confirmed its directions by observing *inter alia* that these companies had not taken concrete steps for voluntary delisting even after expressing their willingness to do so. Thus, I observe that after the said interim order, SEBI was still willing to consider permitting the companies to delist voluntarily in suitable cases.

8. In view of the above facts and circumstances and observations, I am of the opinion that no purpose would be served to retain the company as a listed entity, as it does not have any public shareholder. Since that company had reached 100% promoter shareholding as early as in 2001-02 and it is willing to voluntarily delist itself, it does not appear proper to enforce compulsory delisting of the company under the Delisting Regulations. I am therefore inclined to relax the conditions that are standing in the way of voluntary delisting of the applicant company.

Order

9. For the aforesaid reasons, in the interest of the securities market and the investors and in exercise of powers under sections 11(1) and 11B of the SEBI Act,1992 read with Regulation 25A of the SEBI (Delisting of Equity Shares) Regulations, 2009, I hereby grant exemption to the company from requirement to comply with the MPS norms and permit

the applicant company i.e. Vishva Vishal Engineering Limited, to delist, subject to the following conditions:

a. The company shall issue a public announcement in at least one English national daily with wide circulation, one Hindi national daily with wide circulation and one regional language newspaper of the region where the concerned recognized stock exchange, i.e. BSE, is located, disclosing, inter-alia, that the company is 100% promoter held and is seeking delisting from BSE, pursuant to this order, within a period of one month from this order.

b. The company shall approach the Stock Exchange for guidance and the exchange shall do the needful to allow the company to get delisted.

c. The exercise of delisting shall be completed within a period of 6 months from the date of this order.

d. Upon the company getting delisted in accordance with this order, the directions against the company, its directors and promoters, as contained in the Interim Order read with the Confirmatory Order, shall stand vacated automatically without any further order.

e. The delisting will be subject to the restrictions contained in regulation 30(1) (a) of the Delisting Regulations.

10. Further, for the purpose of delisting as permitted above, the company is hereby granted exemption from the requirement of 100% dematerialization of promoters' shareholding as mandated under Regulation 31(2) of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015..

11. Copy of this order shall also be served to BSE for information and necessary action.

12. The Application dated May 05, 2020 along with related correspondence stands disposed of accordingly.

G. MAHALINGAM

PLACE: MUMBAI **WHOLE TIME MEMBER**

DATE: November 12, 2020 **SECURITIES AND EXCHANGE BOARD OF INDIA**