



Essar Oil – Rosneft Deal

Minority Investors on difficult and slippery ground

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EXECUTIVE SUMMARY

- Minority investor should get anywhere between Rs 94 to Rs 125 per shares for the shares tendered in delisting offer at Rs. 262.80
- Remaining 2%+ shareholders must get exit offer at new price.
- SEBI must seek full disclosure of deal, related documents and evaluate price paid by Rosneft and others.
- SES is of the view that Mr. Ruia's statement equity value inbuilt in the deal is close to delisting price needs a thorough analysis, as SES finds that equity value at variance on the basis of March 2015 numbers.
- There is NO FDI, as all the money will be received offshore as all equity is held through Mauritius based companies.
- SES maintains that resolution pursuant to which delisting was done, could not have been acted as underlying reason advanced in Resolution had ceased to exist before delisting process began.

Background

Essar oil had delisted its shares post delisting offer made in December 2015. The Delisting offer was made to acquire a total of 142,489,858 shares held by public shareholders other than the promoters and it did not include shares underlying GDRs held with Depository/ Custodian BNY Mellon, numbering 951,463,854. In the delisting offer a total 100,942,248 shares were acquired by the promoters. Pre and post delisting offer equity structure is as under;

Category	Pre Offer		Post Offer	
	Number	%	Number	%
Promoters	35,67,14,647	24.59%	45,76,56,895	31.55%
Public	14,24,89,858	9.82%	4,15,47,610	2.86%
GDR Shares	95,14,63,854	65.59%	95,14,63,854	65.59%
Total	1,45,06,68,359	100.00%	1,45,06,68,359	100.00%

GDRs are also held by Promoters, therefore effectively promoters stake Pre offer was 90.18% and Post offer it is 97.14%. As per delisting provisions, under exit offer remaining shareholders had option to tender shares at delisting price, which was Rs 262.80

On 15th October 2016, Essar Energy Holdings Limited and Oil Bidco (Mauritius) Limited, the controlling shareholders of Essar Oil Limited (EOL) have entered into separate definitive agreements for the sale of 98% of EOL. Enterprise value USD 12.9 Billion or Rs 72,800 Crore for 98% equity

Points to note

- Although it is not clear whether this amount is Enterprise value or Equity Value. In all such deals the transaction value is generally taken as EV, and a hint of the same was dropped by Mr. Ruia in press conference.
- It is not clear what is the debt under consideration or what working capital changes adjustment will be made
- Applying normal practice in mergers and acquisitions, SES has constructed following picture of debt and working capital as on 31st March 2015 (Last available Annual Report)

Working Capital Rs Crores			
Current Assets		Current Liabilities	
Inventories	5,130	short term borrowings	10,069
trade Receivables	12,411	trade payables	18834
cash/ cash equivalent	2,045	other current liab	7,908
short term loans and advances	3,186	provisions	36
other current Assets	3,909	current portion of Long Term Loans	-1,816
other investments (long term)	3,090		
other	809		
Total CA	30,580	Total CL	35,031
		Net Working Capital	-4,451



The Total Debt in Books as on 31st March 2015 was as under

Debt	Rs Crore
long term	15,240
Other Long Term Liabilities	556
current portion of Long Term Loans	1,816
Total Debt	17,612

What is Equity value of the Deal?

In normal practice Equity value = EV-Debt (Long Term), with this equity value comes to Rs 55,188 Crore and even if one assumes that even working capital is also included in the deal price the value will be Rs 50,737 Crore (Rs 55,188- Rs 4,451 Crore) (PI See table below)

	Rs Crore
Total Value of the Deal	72,800
Less Debt	17,612
Equity Value-I	55,188
Working Capital	-4,451
Equity Value-II	50,737
Outstanding shares (crore)	145
98% of outstanding shares (142
Value/ Share-Equity Value-I (Rs/ Share)	388
Value/ Share-Equity Value-II (Rs/ Share)	357

From above it is seen that even if it is assumed that working capital is also included in enterprise value, the value of equity in worst case scenario comes to Rs 357/ share.

It is important to revisit SEBI order dated 6th November at this stage

SEBI order stated that

“Provided that, notwithstanding any delisting of equity shares of the Company, the promoter/s of the Company shall be responsible to pay the difference between the transaction price with Rosneft and the final delisting price to those shareholders whose shares were accepted in terms of the Delisting Regulations, if the former is higher. In this regard, the Company/its promoters shall, on finalization of the transaction with Rosneft, make a public notice, within a period of 10 days of such finalization, under intimation to SEBI, stating the details of the transaction including number of shares to be purchased by Rosneft and the consideration (including all heads under which the final consideration price is arrived at between the promoter/s and Rosneft) finalized with Rosneft”

As per this order the Company must pay differential amount to shareholders who tendered shares. The differential is worked out based on delisting price and intrinsic value of shares in the current deal. Although the order states that differential is payable to shareholders who tendered in delisting offer. However as per delisting Regulations Exit offer to remaining shareholders are allowed till one year after delisting at the same price. Therefore, even those shareholders who did not tender shares in delisting offer would be eligible for higher price.

The important question is, when the time limit of one year start and end? Or from the date of original delisting offer or from the revised date when revised price is announced and paid to shareholders, who tendered shares?

How much is payable to shareholders?



Value/ Share-Equity Value-I (Rs/ Share)	388
Value/ Share-Equity Value-II (Rs/ Share)	357
Delisting Price	263
Difference Case-I	125
Difference Case-II	94
Toptal Amount	
Shares	14,24,89,858
Amount Case-I Rs Crore	1,787
Amount Case-II Rs Crore	1,341

The Amount that is payable to shareholders is anywhere between Rs 1,341 Crore to Rs. 1,787 Crore. The million-dollar question? will the Promoters pay the amount?

While it will be difficult to predict what will happen in future? Will promoters act as white Knight and pay the amount as per SEBI Order, or will shareholders have to struggle? Or Regulator SEBI will intervene or shareholders require to fight themselves as class action suit?

If proceedings of news conference held today is to be taken as signs of things to come in future, SES is of the view that investors have a long struggle ahead for them.

Mr. Ruia, on a question about debt and equity value indicated that equity value was very much near to Delisting Price. At delisting Price of Rs 262.80 the Equity value comes to Rs 38,123 Crore. This value is Rs 12,613-17,064 Crore below the equity value calculated by SES based on March 2015 Annual Report. The equity value must have increase further based on accumulated profit.

The other important question that arises is, how come negotiated equity value has come to value as per delisting offer price? If it is anywhere near (which SES believes cannot be) one must admire market forces that it delisted at equity value of the company which was negotiated and consummated 10 months later.

ADVANCE TOWARDS ISSUE OF GLOBAL DEPOSITORY SHARES

Annual Report and Quarterly Results for Q3 2015-16 states as under

During the year, the Company has received ₹ 1,500.53 crore (USD 246.10 Million) as advance towards global depository shares from Essar Energy Holdings Limited (EEHL), a promoter company. The Company is in process of completing relevant formalities for allotment of the securities.

It is difficult to believe that formalities were not completed in almost 10 months or more. Further this statement did not find place in Delisting Offer Public Advertisement.

Is this deal biggest FDI in India?

This deal is projected by all the newspaper and the Company as biggest FDI in India. SES is of the opinion that this is biggest misnomer and misrepresentation of the fact.

- Entire promoter holding is held by promoters outside India
- Therefore, whatever amount is paid to promoters for equity will be paid abroad and nothing will move to India from this deal. Whether promoters out of this amount bring anything in future to India is a separate issue and not connected to this deal
- Debt will remain as it is unless new promoter pays the debt back to lenders.
- Therefore, there is absolutely no FDI in the deal, which is touted as biggest FDI deal.
- If tomorrow HUL buys out Colgate, will the consideration paid by UNILEVER UK to Colgate in US/UK be FDI? Certainly not and this deal is no different.



- SES does not have any tax expertise and cannot comment on taxation issues. However, if there is any capital gain tax What will be tax implication of this deal on promoters? Will Rosneft and others asked to deduct taxes or will it be another Vodafone?

SES is of the view that money would be seen only by promoters and no one, including bankers who have been waiting holding their breath.

Was delisting offer in accordance with the law?

The issue was debated and discussed in detail in SES report on Delisting. SES reiterates that the delisting was not in accordance with law. SES once again recapitulates the issue

1. Shareholders' approval not valid any more due to rationale provided earlier no longer being pursued by Promoters.
2. Shareholding pattern indicates violation of Minimum Public Shareholding Norm of Securities Contract (Regulation) Act, 1956 /Rules (SCRR).
3. Essar Oil not eligible to delist with its current equity structure due to not meeting minimum public shareholding norm
4. GDRs cannot be excluded from promoter shareholding.
5. Regulations prohibit delisting with outstanding Convertible Instruments, GDRs being convertible to equity are outstanding.
6. Benefits of Rosneft deal are not known. If the future potential of the Company is not good why promoters will put money on delisting and why Rosneft will stick its neck out. If the potential is not good why promoters would agree to pay same price as Rosneft will pay which is almost double the prevailing floor price?
7. Company violating Regulation 5 of Delisting Regulations as it has not disclosed that rationale provided earlier for delisting is no longer valid.

SES is of the opinion that if Delisting was not allowed the acquirers would have been asked to make an open offer and the open offer price would have been based on deal price. By delisting, the Company has avoided transparency as would be expected of a listed Company and investors have lost a chance to get fair price. Although market Regulator SEBI had passed an order for the Promoters to pay the same price to shareholders as they would get from Rosneft. However, as the Company is no longer listed it would escape close scrutiny of SEBI, Stock Exchanges, Analysts and investors.

DELISTING REGULATIONS PROHIBIT DELISTING WITH OUTSTANDING CONVERTIBLE INSTRUMENTS

SES is of the view that with the current structure of equity, according to Regulations delisting is not permissible. Regulation 4 of Delisting Regulations reads as under:

Delisting not permissible in certain circumstances and conditions for delisting

4. (1) No company shall apply for and no recognised stock exchange shall permit delisting of equity shares of a company,-

(d) If any instruments issued by the company, which are convertible into the same class of equity shares that are sought to be delisted, are outstanding.

It is a debatable point whether GDRs are convertible instruments or not. The fact is that GDRs are tradeable and may represent more or less than one underlying equity share. The other fact is that GDRs are not equity shares also unless the same are exchanged or converted into shares. Therefore, there is a process for transforming GDRs into shares. What is this process called? Conversion or exchange? In that case the issue will be what is meant by word "Convertible" in Delisting Regulations?

Delisting Regulations do not define the word "Convertible", in the definitions clause a mention is made that any word not defined but used in the regulation have the same meaning as defined in SEBI Act 1992, Companies Act, 2013 and SCRA. None of these Regulations define the word "Convertible", however SEBI ICDR Regulations does define the same as:



2(1)(k) “convertible security” means a security which is **convertible into or exchangeable with equity shares** of the issuer at a later date, with or without the option of the holder of the security and includes convertible debt instrument and convertible preference shares;

Therefore, in light of the above, SES is of the view that GDRs are instruments and are convertible/ exchangeable into equity shares thus covered under the definition of Convertible Security. The Company has 951+ million GDRs outstanding. If the law is followed Essar Oil cannot delist till any GDRs are outstanding. And there is no way Promoters of Essar would opt for conversion of GDRs into shares. As the moment they do the same, Essar would be sitting in violation of minimum public shareholding norm, as a result Promoters of Essar would be required to sell 225 million shares to public. And they would be allowed to bring delisting proposal only six months after they comply with the minimum public shareholding norm.

Another issue is to examine the case where these GDRs were held by investors other than Promoters. Would the Company be allowed to delist? What would happen to these GDRs? What will be the underlying? Unlisted shares? This goes against the basic genus of GDRs. Here just because GDRs are held by promoters there cannot be a different interpretation of the Law.



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