

AstraZeneca: Delisting by hook or by crook

Exchanges, as the first line of control, should be able to find and act on such irregularities

COMMENT

LOKESHVARA SK

IL Research Bureau

The Securities and Exchange Board of India's order passed on Tuesday against AstraZeneca Pharma India reflects the urgency of its parent, AstraZeneca Pharmaceuticals AB, Sweden, to own the entire stake in its Indian subsidiary.

Exploiting loopholes

This is not the first instance of a pharma multinational exploiting loopholes in Indian regulations to get their local company delisted. SBI had similarly received complaints in the delisting process of Presentius Kabi where investors had reported that few institutional investors had cornered most of the shares in the company's offer-for-sale with the intent of smoothing the passage of the compa-

ny's subsequent delisting.

The desire to retain as much of the profit — from a subsidiary located in a promising market — as possible, could be the reason why these MNCs are acting in this manner. But that is no excuse for using methods that are against the interest of minority investors.

Gaming the system

The modus operandi in the AstraZeneca OFS is similar to that employed in Presentius Kabi. Almost 94 per cent of the shares offered by the Swedish parent in the OFS of AstraZeneca, held in May 2013, were cornered by six foreign institutional investors and sub-accounts.

All these investors were associated with one entity — Elliott Advisors (HK).

The order also goes on to describe how the six FILs gained the OFS process to their advantage. All the six FILs initially made offers close to the floor price of the offer

that was ₹490. This would have made other retail investors, who typically see the bidding details put out by exchanges to determine their bid price, place their bids at lower levels.

Towards the close of the trading day, these six investors revised their bids higher, close to ₹620, thus ensuring that they were allotted most of the offered shares. It is clearly a well laid out strategy that was also executed very skillfully.

The Elliott Group of investors who bagged the shares in the OFS then went on to vote in favour of delisting in the special resolution through the postal ballot thus ensuring that the dissenting retail investors did not stall the offer.

What next

The primary motive behind stipulating that the minimum shareholding be 25 per cent in listed companies is to ensure that more retail investors participate in equity markets, thus increasing volumes and depth.

But when a handful of institutional players corner these shares, this end is not being served.

With so much evidence of misdoings in the OFS that eventually led to the ratification of the delisting process, the regulator can take the company to task directly instead of passing the baton of responsibility to the bourses

In its recent amendment to the OFS rules, SEBI had laid down that 10 per cent of the shares offered through OFS be reserved for retail investors (subscribing for less than ₹2 lakh worth of shares). This proportion needs to be increased to at least 30 per cent of the OFS. There should also be a mechanism for companies to report to the regulator about investors who have been allotted shares in the OFS. This will ensure that episodes of this kind do not recur.

Voting woes

If we consider the voting pattern in the special resolution, 130 of the public shareholders voted for the resolution while 330 were against

the delisting. Since the percentage of shares held was considered for judging, if the number complies with SEBI guidelines (number of votes cast by public holders in favour of the resolution should be at least two times those in dissent), the resolution was considered as passed. It is obvious that the company has acted against the interest of the minority shareholders. The minority shareholders had rejected the delisting offer in 2010 and have done so again this year.

Another question that needs to be raised is why the exchanges are not able to spot irregularities in bidding such as the one seen in AstraZeneca's OFS. They are the first line of control and should be able to find and act on such instances without waiting for the regulator to alert them.

SEBI has asked the exchanges to monitor the delisting offer. But with so much evidence of misdoings in the OFS that eventually led to the ratification of the delisting process, the regulator can take the company to task directly instead of passing the baton of responsibility to the exchanges.