Sebi rule may bar warrant issue to outside investors

By Rajesh Abraham Sep 04 2011 , Mumbai

Sterling Holiday Resorts (India), last month, approved Rs 120 crore fund mop-up through issuance of convertible share warrants to a group of investors, including Rakesh Jhunjhunwala and a private equity fund, at Rs 75 a share against the then traded price of Rs 111.50 apiece.

l Pipavav Shipyard board will meet on September 6 to consider convertible share warrants.

If Indian securities regulator has its way, the trend of listed companies issuing convertible share warrants to private equity and other investors in small companies will soon come to a halt.
The Securities and Exchange Board of India (Sebi), which released a concept paper on alternate investment funds (AIF) in India early last month, said private investments in public equity (PIPE) could invest only by way of equity shares. “There is no flexibility to use any other ‘equity-linked’ instrument. Such restriction will severely limit structural alternatives,” Siddharth Shah of Nishith Desai Associates, a law firm, said in a note on the issue.
Sebi had invited comments on the AIF regulations from all stakeholders, including investors and public till August 30.
Experts said of late a large percentage of investments by private equity funds in listed companies have been done through convertible share warrants. If Sebi goes ahead with the restriction on equity-linked investments, all PIPE investments would come only through the direct equity route.
Asked about Sebi’s concerns over investments through equity-linked instruments, chairman UK Sinha said in a recent interview that the regulator wanted transparency and disclosure from companies. Also, the instrument has to be a legally valid one, he said. Sinha said the draft regulations on AIF were issued after discussions in the forum of regulators in India. “There are people using some sort of structured products, which are neither debt nor equity, and nobody is regulating that. That is not a happy situation. It has to be a legally valid instrument. These regulations are based on the thinking even in the international sphere,” he said. However, Sinha added that the regulations would be finalised only after going through the comments from the stakeholders.
According to Nishith Desai Associates, if the draft regulations are accepted in full, private equity funds would be allowed to invest only in unlisted companies and unlisted debt. “This restriction seems to disregard the fact that a private equity strategy would include investment into listed equities or listed debt too,” the law firm pointed out.
Deloitte Touche Tohmatsu, in its note on the matter, said Sebi’s attempt was to make a clear distinction among various types of private pooled investment vehicles of institutional or sophisticated investors, which will allow government and the regulator to tailor-make concessions or relaxations, which may be desirable for individual kinds of funds such as VCF or SME funds.
“These concessions/relaxations will be tied to investment restrictions for special funds, and funds like PE, PIPE or strategic fund may not be allowed to avail such concessions,” Deloitte said.

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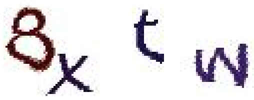

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