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M&A Lab

Digital Dominion: Blackstone's Bold Acquisition of R Systems

December 2023

Research

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**Blackstone's Bold Acquisition
of R Systems**

December 2023

DMS Code: 26482.2



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Summary of Regulation 5A of the Takeover Code

Prologue

This M&A Lab covers a distinctive deal involving consideration of Regulation 5A of Takeover Code which provides for a combined takeover and delisting of an Indian company whose shares are listed on a stock exchange. Such transactions involve unique requirements and considerations, but also provide a powerful weapon in the hands of acquirers to fundamentally alter the corporate nature of the target in a short time period.

Regulation 5A enables an acquirer to make an open offer for acquiring shares or voting rights or control of a listed target company and seek delisting of the target company by making a 'delisting offer'. The regulations enabling this transaction was first introduced in March 2015 in terms of an amendment to the existing Takeover Code which followed a revamp later in December 2021.

Blackstone's offer for acquiring the target Company is the first attempt at delisting a listed public limited company through a composite tender offer (i.e. open offer cum delisting offer) since the new Regulation 5A of the Takeover Code assumed its existing avatar.

While the deal was structured innovatively, complied with numerous regulatory requirements and filings and the shareholders provided overwhelming support at the time of voting, the number of shares required to be tendered was not met, ultimately leading to the failure of the delisting leg of the transaction. Ultimately, Blackstone was only able to acquire around 51% from the Promoters and the Promoter Group and the public shareholders with the target Company continuing with its listed status.

A study of this deal is worthwhile as it was a unique transaction given the first attempt as highlighted above and in the eyes of industry observers opens up many deal opportunities for various market participants with diverse objectives.

Glossary of Terms

Acquirer	BCP Asia II Topco II Pte. Ltd.
Board	Board of Directors of the Company
BSE	Bombay Stock Exchange
CCI	Competition Commission of India
CA 2013	Companies Act, 2013, as amended
Company	R Systems International Limited
Competition Act	Competition Act, 2002, as amended
Delisting Regulations	SEBI (Delisting of Equity Shares) Regulations, 2021, as amended
Delisting Offer	As the context may require, <ul style="list-style-type: none"> a) Conditional open offer cum delisting offer pursuant to Regulations 3(1), 4 and 5A of the Take-over Code b) Open offer cum delisting offer pursuant to Regulations 3(1), 4 and 5A of the Takeover Code
Delisting Offer Price	INR 246 per share; eventually increased to INR 262 per share
Detailed Public Statement / DPS	Detailed public statement dated November 22, 2022 issued by the Manager to the Offer for and on behalf of the Acquirer and the PAC
Draft Letter of Offer /DLOF	Draft letter of offer filed with the SEBI and Stock Exchanges by the Manager for and on behalf of the Acquirer and the PAC on November 16, 2022
EGM	Extra-ordinary General Meeting of the Company
Equity Shares	Fully paid up equity shares of the Company of face value of INR 1
FDI	Foreign Direct Investment
ICDR Regulations	SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, as amended
INR	Indian Rupees
ITA	Income Tax Act, 1961, as amended
Letter of Offer /LOF	Letter of Offer dated April 11, 2023 issued by the Manager for and on behalf of the Acquirer and the PAC to the Public Shareholders to acquire the Open Offer Shares
Listing Regulations	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended
Manager	Kotak Mahindra Capital Company Limited, the manager to the Offer
NRIs	Non-Resident Indians
NSE	National Stock Exchange of India Limited
Old Delisting Regulations	SEBI (Delisting of Equity Shares) Regulations, 2009, as amended

Glossary of Terms

Open Offer	Offer to acquire the Open Offer Shares
Open Offer Price	INR 245 per share (in the event the Delisting Offer fails)
Open Offer Shares	5,71,73,476 fully paid-up equity shares of face value of INR 1 each at a price of INR 262 per equity share, representing 48.33% of the voting Share Capital of the Company
PAC	Blackstone Capital Partners Asia II L.P.
Public Shareholders	Persons holding Equity Shares of the Company excluding the Sellers, the Acquirer and their persons acting in concert
Public Announcement/ PA	Public announcement made by the Acquirer and the PAC on November 16, 2022
ROC	Registrar of Companies
Sale Shares	6,11,29,969 Equity Shares representing 51.67% held by the Sellers and sold to the Acquirer pursuant to the Share Purchase Agreement
SEBI	Securities and Exchange Board of India
SCRR	Securities Contracts (Regulation) Rules, 1957, as amended
SEC	The U.S. Securities and Exchange Commission
SEC Act	The Securities Exchange Act of 1934
Sellers	Promoter and Promoter Group
Share Capital	INR 11,83,03,445 comprising of 11,83,03,445 Equity Shares of INR 1 each of the Company
Shares Tendering Circulars	Applicable SEBI circulars including, in particular <ul style="list-style-type: none"> i. SEBI circular bearing number CIR/CFD/POLICY/CELL/1/2015 dated April 13, 2015, as amended from time to time, read with ii. SEBI circular bearing number CFD/DCR2/CIR/P/2016/131 dated December 9, 2016, as amended from time to time, and iii. SEBI Circular bearing number SEBI/HO/CFD/DCR-III/CIR/P/2021/615 dated August 13, 2021
Share Purchase Agreement /SPA	The share purchase agreement dated November 16, 2022 between the Acquirer and the Sellers for acquisition by the Acquirer of 6,11,29,969 Equity Shares from the Sellers
SPA Amendment / Amendment Agreement	Amendment Agreement to the SPA dated March 21, 2023 entered into between the Acquirer and the Sellers
Stock Exchanges	Collectively, BSE and NSE
Takeover Code	SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011, as amended
Tendering Period	The period of 10 working days from April 21, 2023 to May 08, 2023 within which the Public Shareholders may tender their Equity Shares in acceptance of the Open Offer
Underlying Transaction	The transaction contemplated under the Share Purchase Agreement
USA	United States of America
USD	United States Dollar
Withdrawal Window	The period of 5 working days from May 11, 2023 to May 17, 2023 within which the Public Shareholders who previously tendered their Equity Shares during the Tendering Period have the option to withdraw their tendered Equity Shares.

Details of The Deal

A. Parties

Blackstone Group

Acquirer (BCP Asia II Topco II Pte. Ltd.): We understand that the Acquirer is a private limited company incorporated under the laws of Singapore and is engaged in the business of investment holding and related activities.¹ BCP Asia II Holdco II Pte. Ltd holds 100% of the Acquirer. We understand that the PAC is an indirect shareholder of and controls BCP Asia II Holdco II Pte. Ltd and the Acquirer.²

PAC (Blackstone Capital Partners Asia II L.P.): We understand that the PAC is an exempted limited partnership under the laws of Cayman Islands and is engaged in the business of investment holding and related activities.³ We understand that the PAC is an indirect shareholder of and controls the Acquirer. We also understand that the PAC has passive third party limited partners consisting of institutional investors such as university endowment funds, sovereign wealth funds, public pension plans, corporate pension plans, financial institutions and insurance companies.⁴

We understand that the PAC is controlled by its general partner, Blackstone Management Associates Asia II L.P. Further, the managing general partner of the Blackstone Management Associates Asia II L.P is BMA Asia II L.L.C which are both ultimately owned and controlled by Blackstone Inc. (“**Blackstone**”) which is a publicly listed on the New York Stock Exchange.⁵

Blackstone is one of the world’s leading investment firms. We understand that It’s total assets under management of USD 974.7 billion as of December 31, 2022 which includes investment vehicles focused on private equity, real estate, public debt and equity infrastructure, life sciences, growth equity, opportunistic, non-investment grade credit, real assets and secondary funds, all on a global basis.⁶ Blackstone has been an active long-term investor in India since 2006 through investments in private equity and real estate. A graphical representation of the holding structure of the Acquirer and the PAC is set below

1 Detailed Public Statement; Public Announcement; Pre-offer advertisement dated April 19, 2023.

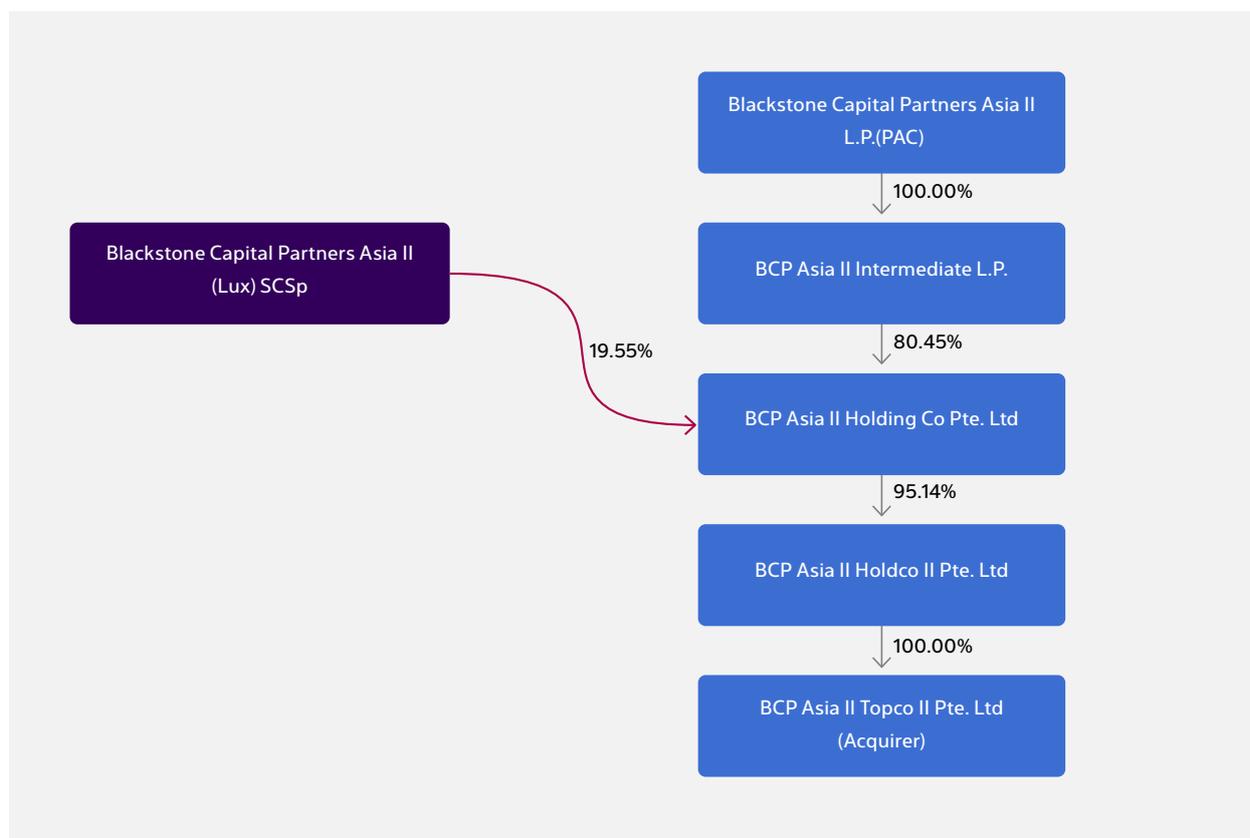
2 Ibid.

3 Ibid.

4 Ibid.

5 Ibid.

6 Ibid.



The Acquirer clarified in various documents in connection with the transaction that no person is acting in concert with the Acquirer for the purposes of the Delisting Offer except the PAC⁷. Pursuant to the Underlying Transaction and the Delisting Offer, the Acquirer proposed to acquire sole control of the Company.

Company

The Company, incorporated in May 1993, is one of the leading providers of technology, artificial intelligence, analytics and knowledge services. The Company's technology offerings include product engineering, cloud enablement, QA testing, Internet of Things (IoT), and digital platforms and solutions.

The Company's Equity Shares are listed and traded in India on the NSE and BSE. The Company has approximately 26 subsidiaries and step-down subsidiaries as part of its group.

⁷ The Detailed Public Statement clarified that there are other deemed persons acting in concert with the Acquirer (within the meaning of Regulation 2(1)(q)(2) of the Takeover Code), and such deemed persons acting in concert are not acting in concert with the Acquirer for the purposes of the Delisting Offer for the purposes of Regulation 2(1)(q)(1) of the Takeover Code.

Shareholding of the Company as of September 30, 2022.

Name of Shareholder	Number of Shares	Shareholding %
Promoters and Promoter Group		
Mr. Satinder Singh Rekhi; Mrs. Harpreet Rekhi; The Satinder and Harpreet Rekhi Family Trust (Trustee: Satinder Singh Rekhi & Harpreet Rekhi); and Promoter Group.	6,11,29,969	51.67
Public Shareholders		
35,191 Public Shareholders	5,71,73,476 ⁸	48.33
Total	11,83,03,445	100.00

Promoters / Promoter Group

The following are the promoters of the Company:

1. Mr. Satinder Singh Rekhi;
2. Mrs. Harpreet Rekhi;
3. The Satinder and Harpreet Rekhi Family Trust (Trustee: Satinder Singh Rekhi & Harpreet Rekhi).

The following are the members of the promoter group of the Company:

1. Sartaj Singh Rekhi;
2. Ramneet Singh Rekhi;
3. Jagmohan Singh Walia;
4. Anita Behl;
5. Kuldeep Baldev Singh; and
6. Amrita Rekhi.

⁸ 4,20,38,395 aggregating to 35.53% was held by an NRI shareholder named Mr. Bhavook Tripathi.

B. Chronology of Events

November 16, 2022	<p>The Acquirer and the Sellers enter into Share Purchase Agreement for sale and purchase of the entire stake held by the Sellers in the Company.</p> <p>Public Announcement issued by the Manager for and on behalf of the Acquirer and the PAC for acquisition of upto 5,71,73,476 equity shares held by Public Shareholders.</p>
November 19, 2022	Appointment of PI & Associates, Practicing Company Secretaries, for carrying out due-diligence as required under Regulation 10 of Delisting Regulations.
November 23, 2022	Detailed Public Statement issued by Manager for and on behalf of the Acquirer and the PAC to the Public Shareholders.
November 25, 2022	<p>The Board approves inter alia the issuance of postal ballot notice seeking approval of the shareholders of the Company for 'Voluntary Delisting' of Equity Shares from NSE and BSE.</p> <p>Issue of the postal ballot notice dated November 25, 2022 by the Company, along with the relevant explanatory statement.</p>
November 30, 2022	Filing of Draft Letter of Offer with the SEBI and Stock Exchanges by the Manager for and on behalf of the Acquirer and the PAC.
December 02, 2022	E-voting commenced for approving the 'Voluntary Delisting' of Equity Shares of the Company from NSE and BSE.
December 31, 2022	E-voting ended for approving the 'Voluntary Delisting' of Equity Shares of the Company from NSE and BSE.
January 02, 2023	Disclosure by the Company of the results of the EGM; wherein the special resolution proposed in the Postal Ballot Notice dated November 25, 2022 regarding the voluntary delisting of the Equity Shares of the Company was approved by the members with requisite majority.
January 09, 2023	Approval from Commission for Protection of Competition of the Republic of Cyprus.
January 10, 2023	Approval from Australian Federal Competition Authority.
February 13, 2023	Approval from CCI for the proposed combination.
February 17, 2023	In-Principle Approval from Stock Exchanges for delisting of the Equity Shares of the Company from BSE and NSE.
March 10, 2023	Approval of the Romanian Commission for the examination of direct foreign investment.
March 21, 2023	<p>The Acquirer and the Sellers entered into SPA Amendment; wherein the parties to the SPA agreed to bifurcate the Sale Shares and revised the total consideration to be paid for the Sale Shares (discussed in further detail below).</p> <p>Corrigendum to Public Announcement issued by the Manager for and on behalf of the Acquirer and the PAC inter alia increasing the Delisting Offer Price for Public Shareholders to INR 262 per share (as opposed to the initial offer price of INR 246 per share).</p>
March 31, 2023	SEBI's observations letter on the Draft Letter of Offer filed on November 30, 2022.
April 05, 2023	Acquisition of Control by the Acquirer by way of voting arrangement under the Share Purchase Agreement.

Details of The Deal

April 21, 2023	Opening of the Tendering Period
May 8, 2023	Closure of the Tendering Period
May 9, 2023	Public announcement issued by the Manager for and on behalf of the Acquirer and the PAC, intimating the failure of the Delisting Offer as the total post Delisting Offer shareholding of the Acquirer did not exceed the delisting threshold of 90% of the voting Share Capital of the Company.
May 10, 2023	Acquisition by the Acquirer of the Sale Shares i.e. 6,11,29,969 from the Sellers. Board meeting of the Company for: <ul style="list-style-type: none"> a) Taking on record the acquisition of Sale Shares by the Acquirer; b) Taking on record the resignation of the existing directors; and c) Approving the appointment of Acquirer nominated directors and key managerial personnel.
May 11, 2023	Opening of the Withdrawal Window
May 17, 2023	Closure of the Withdrawal Window
May 22, 2023	Payment of consideration to the Public Shareholders for the acquisition by the Acquirer of 3,03,036 Equity Shares of the Company aggregating to 0.26% of the Share Capital, on account of number of shares tendered and accepted in the Open Offer.
May 26, 2023	Post offer advertisement issued by the Manager for and on behalf of the Acquirer and the PAC, intimating the post offer shareholding of the Acquirer and the PAC in the Company.
May 30, 2023	Board approval for appointment of Mr. Nitesh Bansal as Managing Director and Chief Executive Officer of the Company.

C. Deal Snapshot and Structure of Deal

Acquisition from Promoters and Promoter Group

Purchaser	Acquirer
Sellers	Promoters and Promoter Group
The Underlying	Acquisition of Sale Shares pursuant to the SPA
Mode of Acquisition	Through an off-market transaction
Purchase Price (Initial)	INR 245 per share for the Sale Shares
Purchase Price (Revised)	INR 244 per Equity Share for 2,86,80,145 Sale Shares INR 227 per Equity Share for 3,24,49,824 Sale Shares

Details of The Deal

Number of Sale Share Acquired	Sale Shares – i.e. 6,11,29,969 Equity Shares representing 51.67% of the Share Capital of the Company
Total Consideration	INR 1436,40,65,428
Mode of Funding	The Acquirer had received an equity commitment letter dated November 16, 2022, pursuant to which the PAC had undertaken to provide the Acquirer with the necessary finances to meet the payment obligations under the SPA and the Open Offer. The Acquirer also by way of letter dated November 16, 2022 confirmed that, based on the aforementioned, it has sufficient means and capability for the purpose of fulfilling its obligations under the SPA and the Open Offer and that it has firm arrangements for funds to fulfil the payment obligations under the SPA and the Open Offer. ⁹

Open Offer and Delisting Offer — Acquisition from Public Shareholders

Purchaser	Acquirer
Sellers	Public Shareholders
The Transaction	Acquisition of Shares from Public Shareholders and Delisting the Company
Mode of Acquisition	Through on-market closing under the Open Offer process
Initial Open Offer Price	INR 246 per Equity Share
Revised Open Offer Price	INR 262 per Equity Share in case Delisting Offer is successful. INR 245 per Equity Share in case Delisting Offer fails; this was the eventual Open Offer Price as the Delisting Offer failed.
Number of Sale Share actually acquired	3,03,036 Equity Shares representing 0.26% of the Share Capital pursuant to the Open Offer.
Total Consideration	INR 7,42,43,820
Mode of funding	The Acquirer had received an equity commitment letter dated November 16, 2022, pursuant to which the PAC had undertaken to provide the Acquirer with the necessary finances to meet the payment obligations under the SPA and the Open Offer. The Acquirer also by way of letter dated November 16, 2022 confirmed that, based on the aforementioned, it has sufficient means and capability for the purpose of fulfilling its obligations under the SPA and the Open Offer and that it has firm arrangements for funds to fulfil the payment obligations under the SPA and the Open Offer. ¹⁰

⁹ Letter of Offer dated April 11, 2023; Page No. 32.

¹⁰ Letter of Offer dated April 11, 2023; Page No. 32.

Commercial and Financial Considerations

A. What was the rationale for proposing delisting the Company?

We understand that the following was the rationale for the proposed Delisting Offer:¹

1. It will provide all Public Shareholders an opportunity to exit from the Company and provide immediate liquidity;
2. It will enable the Acquirer to hold full ownership of the Company which in turn will provide enhanced operational and financial flexibility;
3. It will reduce dedicated management time to comply with requirements associated with continued listing which can then be directed on the business of the Company; and
4. It will enhance the Company's operational, financial and strategic flexibility including opportunities for corporate restructurings, acquisitions, exploring new financing structures including financial support from the Acquirer and PAC.

B. Overview of Delisting /Acquisition Process: How did Blackstone make an offer to acquire the Company and what events ensued?

SPA and Underlying Transaction: The Acquirer entered into the SPA with the Sellers for acquisition of the Sale Shares i.e. the entire shareholding held by the Sellers in the Company. The total consideration agreed in the Share Purchase Agreement for the proposed acquisition was a maximum of INR 1497,68,42,405 which effectively provided a per share price of INR 245.²

The Underlying Transaction (i.e., the purchase by the Acquirer of the Equity Shares from the Sellers) has been completed and the Acquirer has acquired the Sale Shares as envisaged under the Underlying Transaction. The consummation of the Underlying Transaction was agreed to be undertaken either as an off-market transaction or as an on-market transaction, subject to the terms and conditions of the SPA; however, the consummation of the Underlying Transaction took place through an off-market closing (***details of which have been provided below***).

Delisting Offer & Intention to Delist: The SPA entered into between the Acquirer and the Sellers triggered open offer requirements under the Takeover Code. Since the Acquirer proposed to acquire the entire shareholding from the Public Shareholders and intended to delist the Company, the Acquirer made the Public Announcement for Delisting Offer i.e. ***conditional open offer cum delisting offer*** pursuant to Regulations 3(1), 4 and 5A of the Takeover Code for acquisition of upto 5,71,73,476 Equity Shares i.e. the entire shareholding held by Public Shareholders representing 48.33% of the Share Capital.

¹ Detailed Public Statement dated November 22, 2022; page no. 3.

² Public Announcement dated November 16, 2022.

The total consideration for acquisition of the entire shareholding of the Public Shareholders was proposed at INR 1406,46,75,096, which provided an offer price per share of INR 246.³ Certain key aspects of the Public Announcement are noted below.

- i. **Conditional Offer:** The Delisting Offer to the Public Shareholders was **conditional** on the following events and in case the following events are not completed, the Acquirer and PAC were entitled to withdraw the Delisting Offer:⁴
 - i. shareholders of the Company adopting a resolution approving the proposed delisting of the Company;
 - ii. the Stock Exchanges providing their approvals for the proposed delisting of the Company;
 - iii. receiving certain specified approvals including approval from the CCI,
 - iv. other conditions precedent under the SPA being fulfilled by a specified date; and
 - v. valid tender in the Delisting Offer of at least 4,53,43,132 Equity Shares, representing 38.33% of the Share Capital (“**Minimum Tender Condition**”).

The actual number of shares that would be acquired by the Acquirer from the Sellers under the SPA was to be a function of the responses in the Delisting Offer including on whether the Minimum Tender Condition was met or was waived by the Acquirer. In case the Minimum Tender Condition was not met, the Acquirer and PAC retained the right to:

- a. not accept any Equity Shares tendered in the Delisting Offer and also not acquire any Equity Shares pursuant to the SPA, in which case the Acquirer would terminate the SPA and withdraw the Delisting Offer; or
- b. waive the Minimum Tender Condition, which may result in the following possibilities;

Waive the Minimum Tender Condition, at the Acquirer's sole discretion, in which case	If the Equity Shares tendered in the Delisting Offer are less than 26% of the Share Capital, then	If the Equity Shares tendered in the Delisting Offer exceed 26% of the Share Capital, then
<ol style="list-style-type: none"> a) Delisting Offer could be completed by acquiring 26% of the Share Capital of the Company i.e. 3,07,58,896 Equity Shares tendered in the Delisting Offer, and b) Undertake the Underlying Transaction. 	<ol style="list-style-type: none"> a) Acquirer will acquire all the Equity Shares tendered; and b) Undertake the Underlying Transaction. 	<ol style="list-style-type: none"> a) Acquirer shall acquire such Equity Shares validly tendered by the Public Shareholders on a proportionate basis representing 26% of the Share Capital; and b) Undertake the Underlying Transaction.

2. **Offer Price and Control Premium:** The floor price indicated in the Public Announcement was INR 245. The Delisting Offer was proposed to be made at an INR 1 premium over the floor price i.e. INR 246 per Equity Share i.e. the Delisting Offer Price (eventually increased to INR 262 per share).

³ Ibid.

⁴ Ibid.

3. **Voting Arrangement:** The Acquirer and the Seller had agreed in the SPA (and as provided above) that upon satisfaction of certain conditions precedent and upon Minimum Tender Condition being met or waived by the Acquirer, the Seller would transfer control of the Company (and thereby of all group companies) without actually transferring any shares to the Acquirer. The said arrangement could take place in any of the below ways (“**Acquirer Control Arrangements**”):
- the Sellers becoming obliged to vote all their Equity Shares as directed by the Acquirer;
 - the Acquirer having the right to direct the appointment or removal of any (i) key employee of any group company; and/or (ii) of any person as a director of any and all group companies, and the Sellers using all rights, powers, and facilities available to them to ensure that the Acquirer shall have such a right;
 - the Acquirer’s consent being required for approval or amendment of any business plan / budget by the group companies.
4. **Manner of Closing the Delisting Offer:** The consummation of the Delisting Offer (i.e. the purchase of the Equity Shares by the Acquirer from the Public Shareholders) was agreed to be undertaken either as an off-market transaction or as an on-market transaction as determined by the Acquirer at the appropriate time.

Voting on Postal Ballot Notice for ‘Voluntary Delisting’: The Promoters (and Promoter Group) and Public Shareholders voted in the following manner on the Delisting Offer:

Kind of Shareholder	Number of votes in favour	% of votes in favour	Number of votes against	% of votes against
Voting by Promoter and Promoter Group and Public Shareholders for the Special Resolution	103,220,494	98.39%	16,96,934 ⁵	1.61%

Amendment to Share Purchase Agreement: On March 21, 2023, the Acquirer and the Sellers entered into the SPA Amendment and altered the terms pertaining to:

- Purchase Consideration for Sale Shares:** The total consideration agreed in the SPA for the proposed acquisition was a maximum of INR 1497,68,42,405 which effectively provided a per share price of INR 245. The Acquirer and the Sellers agreed to bifurcate the Sale Shares as follows under the SPA Amendment:
 - INR 244 for 2,86,80,145 Equity Shares held by the Sellers; and
 - INR 227 for 3,24,49,824 Equity Shares held by the Sellers.

Accordingly, pursuant to the SPA Amendment, the total consideration for purchase of Sale Shares was agreed to be at INR 1436,40,65,428.

⁵ 96.21% of the Public Shareholders voted in favour of the Special Resolution.

Commercial and Financial Considerations

2. **Minimum Tender Condition:** The Acquirer under the SPA Amendment made certain amendments to the following aspects:
- Waived the Minimum Tender Condition;
 - Stated that “Sale Shares” to be acquired shall be a function of the responses to the Delisting Offer as follows:

If the number of Equity Shares validly tendered by Public Shareholders constitutes 38.33% of the Company, then

“Sale Shares” under the SPA, would be all the Equity Shares held by the Sellers.

If the number of the Equity Shares validly tendered by Public Shareholders constitute less than 38.33% of the Company, then

“Sale Shares” under the SPA, would be such Equity Shares that the Acquirer was willing to acquire.*

*However, such determination would have to ensure that the Sellers’s shareholding in the Company was 9.99% or less of the total voting rights in the Company.

Corrigendum to Public Announcement (Withdrawal of Conditions and Increase in Offer Price): On March 21, 2023, the Manager on and behalf of the Acquirer and the PAC issued a corrigendum to the PA, DPS, and the DLOF in connection with the Delisting Offer (“**Corrigendum**”) noting the following revisions to the Delisting Offer:

- a. **Waiver of Minimum Tender Condition:** The Corrigendum stated that the Acquirer and PAC have:
- Waived the Minimum Tender Condition (*i.e. valid tender in the Delisting Offer of at least 4,53,43,132 Equity Shares, representing 38.33% of the Share Capital*); and
 - Waived the right to withdraw the Delisting Offer (in case the minimum level of acceptance is not met).

In case the total shares tendered in the Delisting Offer are less than the Minimum Tender Condition threshold and the Delisting Offer fails then:

- the Public Shareholders would be entitled to withdraw any Equity Shares tendered under the Delisting Offer within 5 days from the date of announcement of failure of the Delisting Offer.
- To the extent of any tendered shares that have not been withdrawn within specified time from the failure of the Delisting Offer:

If the Equity Shares tendered in the Delisting Offer are 26% or higher of the Share Capital, then

The Acquirer shall complete the Delisting Offer by acquiring upto 3,07,58,896 Equity Shares representing 26% of the Share Capital at the Base Price of INR 245 per Equity Share.

If the Equity Shares tendered in the Delisting Offer are less than 26% of the Share Capital, then

the Acquirer will acquire all the Equity Shares tendered.

if the Equity Shares tendered in the Delisting Offer exceed 26% of the Share Capital, then

the Acquirer shall acquire such Equity Shares validly tendered by the Public Shareholders on a proportionate basis representing 26% of the Share Capital, at the Base Price of INR 245 per Equity Share.

b. Increase in Offer Price and the Offer Consideration: The Corrigendum also stated that the Offer Price i.e. the indicative price was increased from INR 246 to INR 262.

Accordingly, the total composite offer consideration also stood increased to INR 1497,94,50,712 and the Manager confirmed that the delta amount of INR 91,47,75,616 was deposited by the Acquirer in the escrow account.

Acquisition of Control by Acquirer: On April 05, 2023, the Company, the Promoters and Promoter Group and the Acquirer in terms of separate disclosures stated that the Acquirer has, pursuant to the SPA and the SPA Amendment, acquired control of the Company on and from April 05, 2023 (“**Change in Control**”) in accordance with Regulation 22 and other terms of Takeover Code. Control was acquired through a ‘voting arrangement’ under the SPA (as amended by the SPA Amendment). Pursuant to the Change in Control:

- a) the Acquirer has become the ‘promoter’ of the Company as defined in the ICDR Regulations; and
- b) the Acquirer Control Arrangement in favour of the Acquirer are in place with effect from April 05, 2023 i.e. the transfer of control of the Company to the Acquirer.

As per SPA (as amended by SPA Amendment), the “Sale Shares” proposed to be acquired from the Sellers would be determined upon the conclusion of the tendering period and would range from:

- a) a minimum of 4,93,08,876 Equity Shares representing 41.68% of the Share Capital up to
- b) a maximum of 6,11,29,969 Equity Shares representing 51.67% of the Share Capital.

The Acquirer and PAC did not acquire any shares in the Company by then. However, from April 05, 2023 till the completion of transfer of shares to the Acquirer, it was agreed that the Sellers will continue to hold the Sale Shares and be classified as Promoter and member of the Promoter Group of the Company.

Letter of Offer: On April 11, 2023, the Acquirer issued the Letter of Offer to the Public Shareholders. In light of the Corrigendum, SPA Amendment and the Acquisition of Control, the Letter of Offer *inter alia* provided as follows:

- i. The Delisting Offer is not a conditional offer in terms of Regulation 19 of the Takeover Code and is not subject to any minimum level of acceptance.
- ii. The Delisting Offer is a fixed price delisting offer at INR 262 per Equity Share in accordance with Regulation 5A of the Takeover Code and therefore, the delisting price will not be determined through the reverse book building process as per Delisting Regulations.
- iii. The Offer Price for the Equity Shares that would be acquired from the Public Shareholders would be:
 - a) Base Price i.e., INR 245 per Equity Share., in case the Delisting Offer fails;
 - b) INR 262 per Equity Share, in case the Delisting Offer is successful (this price was subject to upward revision at the discretion of the Acquirer before the commencement of the Tendering Period).

Commercial and Financial Considerations

iv. The following was proposed to be the schedule of major activities.

Last date for upward revision of the Offer Price and/or the Offer Size	April 19, 2023
Date of publication of Offer opening public announcement, in the same Newspapers in which the DPS has been published	April 20, 2023
Date of commencement of the Tendering Period	April 21, 2023
Date of closure of the Tendering Period	May 8, 2023
Public announcement in case of failure of Delisting Offer	May 10, 2023
Last date for shareholders to withdraw the Equity Shares tendered under the Offer, in case of failure of Delisting Offer	May 17, 2023
Last date for payment of consideration/ return of unaccepted Equity Shares to Public Shareholders	May 22, 2023

v. In the event the Delisting Offer is unsuccessful:

- a) the Public Shareholders shall have a right to withdraw any Equity Shares tendered within 5 days from the date of announcement of failure;
- b) the Equity Shares will be acquired at the Base Price (i.e., INR 245 per Equity Share) as against the Offer Price of INR 262 per Equity Share;
- c) the Company would continue to be required to maintain at least 25% public shareholding in accordance with SCRR, on a continuous basis;
- d) complete the Underlying Transaction in accordance with the Takeover Code;
- e) the Sellers would be re-classified from promoter or promoter group to public category in terms of LODR Regulations;
- f) complete the Open Offer (earlier, Delisting Offer) as per below.

If the Equity Shares tendered in the Delisting Offer are 26% or higher of the Share Capital, then

The Acquirer shall complete the Delisting Offer by acquiring upto 3,07,58,896 Equity Shares representing 26% of the Share Capital at the Base Price of INR 245 per Equity Share

If the Equity Shares tendered in the Delisting Offer are less than 26% of the Share Capital, then

the Acquirer will acquire all the Equity Shares tendered, at the Base Price of INR 245 per Equity Share.

if the Equity Shares tendered in the Delisting Offer exceed 26% of the Share Capital, then

the Acquirer shall acquire such Equity Shares validly tendered by the Public Shareholders on a proportionate basis representing 26% of the Share Capital, at the Base Price of INR 245 per Equity Share.

vi. In the event the Delisting Offer is successful:

- a) the post Delisting Offer shareholding of the Acquirer, which comprises of the Equity Shares validly tendered /offered by the Public Shareholders in the Delisting Offer and the Equity Shares agreed to be acquired under the SPA from the Sellers, reaches 90% of the Share Capital;
- b) the Sellers will cease to own any shares in the Company;
- c) Reclassification of the Sellers from promoters to public shareholders, or reclassification of the Acquirer as the promoter of the Target Company will not be applicable;
- d) the Company will be delisted from the Stock Exchanges in accordance with the Delisting Regulations.

Committee of Independent Directors: The Committee of Independent Directors, on April 13, 2023 recommended that the Delisting Offer made to the Public Shareholders for the Offer Price of INR 262 per Equity Shares and the Base Price of INR 245:

- a) is in the interest of the Public Shareholders as it will provide all the Public Shareholders an opportunity to exit from the Company and providing immediate liquidity;
- b) is in accordance with applicable provisions of the Takeover Code;
- c) is in accordance with applicable provisions of the Delisting Regulations; and
- d) appears to be fair and reasonable.

On Market Closing: On April 20, 2023, in terms of the Pre-offer advertisement and corrigendum to the detailed public statement issued by the Manager, since the Acquirer acquired control of the Company in accordance with the Takeover Code, the Acquirer stated that it would implement the Delisting Offer through the stock exchange mechanism made available by the Stock Exchanges in the form of a separate window as provided under the Takeover Code.⁶

Failure of Delisting Offer (Tender Outcome): The Tendering Period for the Delisting Offer opened on April 21, 2023 and closed on May 08, 2023. For the Delisting Offer to be successful:

- a) a total of 4,53,43,132 (representing 38.33% of the Share Capital) was required to be tendered; however,
- b) only 1,35,49,804 Equity Shares (representing 11.45% of the Share Capital) were tendered by the Public Shareholders during the Tendering Period.

The Acquirer's shareholding post the Delisting Offer and completion of Underlying Transaction would have been 7,46,79,773 Equity Shares representing 63.13%. As the Delisting Offer was unsuccessful, the Acquirer provided a withdrawal window and any Public Shareholders that have tendered their Equity Shares but not withdrawn within the window period, were deemed to have agreed to sell their tendered shares at the Base Price i.e. INR 245 per Equity Share.

⁶ Takeover Code read with Chapter 4 of Master Circular for Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 dated February 16, 2023.

Commercial and Financial Considerations

Acquisition of Sale Shares by Acquirer: On May 10, 2023, the Acquirer acquired 6,11,29,969 Equity Shares from the Sellers constituting 51.67% of the Share Capital in the following manner:

No.	Name of Seller	Number of Shares	% Shareholding	Acquirer
1	Mr. Satinder Singh Rekhi	7,403,456	6.26	
2	Mrs. Harpreet Rekhi	5,099,389	4.31	
3	The Satinder and Harpreet Rekhi Family Trust	11,702,623	9.89	
4	Mr. Sartaj Singh Rekhi	18,676,248	15.79	
5	Mr. Ramneet Singh Rekhi	16,236,331	13.72	BCP Asia II Topco II Pte. Ltd.
6	Mr. Jagmohan Singh Walia	1,272,389	1.08	
7	Mrs. Amrita Rekhi	100	0.00	
8	Mrs. Kuldeep Baldev Singh	371,908	0.31	
9	Mrs. Anita Behl	367,525	0.31	

The above share transfers took place through an off-market closing. Acquirer has acquired:

- a) 2,86,80,145 Sale Shares at the price of INR 244 per Equity Share; and
- b) 3,24,49,824 Sale Shares at the price of INR 227 per Equity Share,

in aggregate representing 51.67% of the Share Capital.

Consequent to the transfer of Sale Shares and Change in Control the Sellers have ceased to be the promoters and members of the promoter group of the Company. Accordingly, the Company in its Board meeting on May 10, 2023:

- a) took on record the acquisition of Sale Shares by the Acquirer;
- b) approved the appointment of Mr. Amit Dalmia, Mr. Mukesh Mehta and Mr. Animesh Agrawal, as Non-Executive Directors of the Company with effect from May 10, 2023;
- c) took on record the resignation of Dr. Satinder Singh Rekhi from the position of Managing Director & Chief Executive Officer of the Company w.e.f. May 10, 2023;
- d) took on record the resignation of Lt. Gen. Baldev Singh (Retd.) and Mr. Avirag Jain from the position of Directors of the Company with effect from May 10, 2023.

Acquisition of Equity Shares (post-Tendering Period) by Acquirer: Out of the 1,35,49,804 Equity Shares (representing 11.45% of the Share Capital) that were tendered by the Public Shareholders during the Tendering Period, only 3,03,036 Equity Shares (representing 0.26% of the Share Capital) were accepted in the Offer after factoring withdrawal by Public Shareholders during the withdrawal window and technical rejections. The total consideration paid by the Acquirer for the accepted shares was INR 7,42,43,820 and the price paid by the Acquirer for acquisition of 3,03,036 Equity Shares from the Public Shareholders was INR 245.

Post-offer shareholding pattern of the Company is as follows:

Name of Shareholder	No. of Equity Shares	% of the Share Capital
Acquirer	6,14,33,005	51.93%
Public Shareholders	5,68,70,440	48.07%

C. How did Blackstone (propose to) fund the acquisition of the Sale Shares and the Delisting Offer?

BCP Asia II Holdco II Pte. Ltd. (“**Parent Company**”) and its wholly-owned subsidiary, the Acquirer entered into a facility agreement dated February 15, 2023 with inter alia DB International Trust (Singapore) Limited (“**Facility Agreement**”).

Pursuant to the Facility Agreement, required funds under a USD term loan facility was provided to the Acquirer by: (i) Bank Sinopac Co. Ltd, (ii) The Hongkong and Shanghai Banking Corporation Limited, GIFT City Branch, (iii) Investec Bank plc, (iv) Mashreqbank psc; and (v) Sumitomo Mitsui Banking Corporation, Singapore Branch. The purpose of the Facility Agreement was for the Acquirer to borrow funds at the offshore level to be utilised towards financing, directly or indirectly, in whole or in part, inter alia:

- i. the consideration payable by the Acquirer for the Sale Shares from the Sellers under the SPA;
- ii. the composite offer (delisting offer, open offer and, if applicable, exit offer) made by the Acquirer to the Public Shareholders; and
- iii. the costs that may be incurred by the Acquirer in the aforesaid acquisitions.

The Acquirer holds 6,14,33,005 Equity Shares in the Company aggregating to 51.93%. While, the Parent Company does not directly hold any Equity Shares in the Company, the Parent Company holds 100% of the share capital of the Acquirer. Pursuant to the Facility Agreement and a Singapore debenture dated April 28, 2023, the Parent Company pledged its entire shareholding in the Acquirer in favour of DB International Trust (Singapore) Limited (acting as a security agent on behalf of the lenders mentioned above) for securing the funds under the Facility Agreement.⁷

⁷ Disclosure by the Acquirer to the Stock Exchanges on May 19, 2023.

While the Acquirer has not created any pledge or encumbrance on the Equity Shares of the Company, an indirect encumbrance would be created by virtue of the pledge by the Parent Company of the shares of the Acquirer and such a pledge would be within the meaning of an “encumbrance” as defined in the Takeover Code and the encumbrance was also disclosed to the Stock Exchanges.⁸

D. What does the Deal mean for the Company and Blackstone?

A cursory look at Blackstone’s portfolio in India, provides an insight into Blackstone’s positive outlook on the Indian market’s potential for growth and profitability. In fact, while the world was seeing an economic slowdown, deals in India remained largely unaffected due to its large domestic market and large export opportunity.⁹ It is in this backdrop that Blackstone has strategized its investments in India. This is especially true in sectors over which India has a competitive global advantage such as software services. In the midst of mass layoffs, hiring freeze and cost-cutting that affected IT sector globally, Blackstone seems to be playing the long game, by choosing to invest in the Company, which is involved in the business of IT services and IT enabled services.

The timing for this deal appears to be justified on two grounds:

1. leveraging the situation whereby IT companies, due to the general trend in the industry (low funds, increasing costs) are available on favourable terms.
2. Relatively high levels of dry powder with on PE balance sheets from funds raised during the global liquidity glut.

Blackstone’s interest in the target Company might have been motivated by two main factors: (a) strong customer base with good turnaround potential; and (b) industry expertise. The Company since its inception in 1993, has been a leading provider of digital information technology services, specializing in product engineering, and serving over 250 customers in technology, media, telecom, and financial services sectors, globally.¹⁰ The Company employs over 4,400 people across 18 delivery centers in North America, Europe, Asia Pacific, and India.¹¹ The Company’s revenue for the last 12 months, as of September 30, 2022, was INR 1,445 crore (~USD 189 million), registering a 36% year on year growth.¹²

Similarly, the Company will also benefit by having an investor like Blackstone in its management whose net asset value was estimated to be USD 974.7 billion as of December 31, 2022.¹³ This deal would enable the Company to have access to Blackstone’s scale, expertise, and global track record in the IT services. To illustrate what this deal means to the Company, it is worth noting that the share price of Company escalated by 15.68% to Rs 271.15 apiece on BSE by just the announcement of the deal on November 17, 2022.¹⁴ Post the deal, the stock price of the Company rose to a 52 week high of INR 544.¹⁵

8 Ibid.

9 <https://www.cnbc.com/2023/01/27/india-is-a-true-bright-spot-in-the-midst-of-a-global-downturn-top-execs.html>.

10 Ibid.

11 Ibid.

12 Ibid.

13 Para 4, Page 31, Letter of Offer dated April 11, 2023.

14 https://www.business-standard.com/article/news-cm/r-systems-spurts-after-blackstone-buys-major-stake-122111700657_1.html.

15 <https://www.bseindia.com/stock-share-price/r-systems-international-ltd/rsystemint/532735/>.

Legal and Regulatory Considerations

A. What is an Open Offer and what triggered the Open Offer under the Takeover Code in the present transaction?

The Takeover Code stipulates that the open offer requirement would be triggered in the following cases:

- i. acquiring shares or voting rights entitling the acquirer (and any persons acting in concert with it) to exercise 25% or more voting rights in the target company;¹
- ii. acquisition by an acquirer (who together with any persons acting in concert with it) already holds 25% or more but less than 75% of the share capital in the target company, acquires additional shares or voting rights entitling the acquirer (and any persons acting in concert with it) to exercise more than 5% of voting rights in a financial year;²
- iii. acquiring control over a target company, directly or indirectly³ (irrespective of any acquisition/ holding of shares or voting rights in the target company).

The open offer for acquiring shares to be made by the acquirer (and persons acting in concert with him) under Regulation 3 and 4 of the Takeover Code is required to be for at least 26%⁴ of total shares of the target company. The said open offer is made to the shareholders of the target company, inviting them to sell their shares at a particular price. The purpose of an open offer is to provide an exit option to the target company's shareholders on account of a change in control or substantial acquisition of shares.⁵

The Acquirer did not hold any shares in the Company prior to signing the SPA. Pursuant to the SPA entered into between the Acquirer and the Sellers, the open offer requirements under the Takeover Code were triggered as the SPA contemplated the proposed acquisition by Acquirer of: (i) more than 25% of the Share Capital; and (ii) control over the Company.

B. Why and how was Acquirer's intention to delist the Company post the consummation of the Underlying Transaction relevant in the context of Takeover Code?

Regulation 5A of the Takeover Code permits an acquirer making an open offer for acquiring shares or voting rights or control of a target company in terms of Regulations 3(i), 4 or 5, to **simultaneously** seek delisting of the target company by making a 'delisting offer'.

1 Regulation 3(1) of the Takeover Code.

2 Regulation 3(2) of the Takeover Code.

3 Regulation 4 of the Takeover Code.

4 Regulation 7(1) of the Takeover Code.

5 Jayshree P. Upadhyay; What is an open offer and how is it priced, dated August 24, 2022, available at: <https://www.livemint.com/market/stock-market-news/what-is-an-open-offer-and-how-is-it-priced-11661326203597.html>.

However, the Acquirer would be required to declare its intention to delist the said target company at the time of:⁶

- a) making such public announcement of an open offer, as well as
- b) at the time of making the detailed public statement.

In the context of the deal, pursuant to the Underlying Transaction and the Delisting Offer, the Acquirer proposed to acquire at least 90% of the Share Capital of the Company and also acquire sole control of the Company. The Public Announcement and the Detailed Public Statement expressly stated the Acquirer's intention to delist the Company pursuant to the Delisting Offer.

C. Why is an acquisition under Regulation 5A of Takeover Code different or significant in comparison to other modes of delisting under Delisting Regulations?

Delisting Regulations: The Delisting Regulations were notified in June 2021 and replaced the Old Delisting Regulations. The Delisting Regulations enable an 'acquirer'⁷ to delist the equity shares of a company from all the stock exchanges after according an exit opportunity to all the public shareholders holding equity shares of the company.

The Delisting Regulations broadly contemplate two kinds of delisting of equity shares — (i) Voluntary Delisting; and (ii) Compulsory Delisting. Two kinds of acquirers can initiate a Voluntary Delisting of a listed entity—(i) an 'acquirer' under Regulation 5A of the Takeover Code, or (ii) a constituent of the 'promoter' or 'promoter group' of the target company.

In case the Voluntary Delisting is proposed to be made from all stock exchanges where the company's equity shares are listed, then there are certain specified eligibility criteria, approvals (Board, shareholders, statutory etc.), procedure for providing an exit opportunity to the public shareholders.

Most importantly the price discovery of the delisting under these regulations were required to be undertaken by way of a reverse book building process.

Regulation 5A of the Takeover Code: A revised Regulation 5A of the Takeover Code was introduced pursuant to an amendment to the Takeover Code on December 06, 2021. Regulation 5A specifies (as mentioned in the forgoing response) that in the event an acquirer is making an open offer for **acquiring** shares or voting rights or control of a target company in terms of Regulation 3(1), 4 or 5 of the Takeover Code, such an acquirer may also simultaneously seek delisting of the target company by making a 'delisting offer'.

⁶ A subsequent declaration of delisting for the purpose of the delisting offer proposed to be made under Regulation 5A(1) shall not suffice.

⁷ Regulation 2(1)(b) of the Delisting Regulations.
"acquirer" includes a person –

- i) who decides to make an offer for delisting of equity shares of the company along with the persons acting in concert in accordance with Regulation 5A of the Takeover Regulations as amended from time to time; or
- ii) who is the promoter or part of the promoter group along with the persons acting in concert.

The acquirer is required ensure the open offer price for the ‘delisting offer’ is determined in accordance with Regulation 8 of the Takeover Code. The public announcements would have to indicate the ‘open offer price’ and the ‘indicative price’ for the delisting offer. An ‘indicative price’ is the most critical element in the success of a delisting offer and is the price at which the public shareholders are offered or ‘enticed’ into according approval for the delisting offer and consequently to tender their equity shares in the delisting offer. The indicative price is required to be:

- a) higher than the ‘open offer price’; and
- b) not less than the book value of the company.⁸

It is the price which includes a suitable ‘control premium’ which is reflective of the price that the acquirer is willing to pay to the public shareholders in exchange for their inclination and actual tender of their equity shares in the tendering process. An acquirer typically retains the right to increase the indicative price prior to the commencement of the tendering period.⁹ A brief summary of Regulation 5A of the Takeover Code has been included in **Annexure 1** of this report, which sets out details of the eligibility criteria, conditions, approvals, procedure etc.

While the requirement of ‘indicative price’ is applicable in case of a Voluntary Delisting by ‘promoter’ or ‘promoter group’ of the target company as well, the reason why Regulation 5A is significant is that it enables even a non-shareholder to propose an open offer cum delisting offer which ensures that the takeover and the delisting can run simultaneously and not sequentially.

D. How was the Offer Price and the Control Premium derived? Are the Offer Price and Control Premium in compliance with the Takeover Code?

A discussion on this subject has to be understood in 3 parts —

- ‘Open Offer Price’ calculated under the Takeover Code;
- ‘Indicative Price’ proposed by the Acquirer;
- Relevance of ‘discovered price’ as per reverse book building process to a delisting offer under Regulation 5A of the Takeover Code.

‘Offer Price’ calculated under the Takeover Code.

A reference to ‘open offer price’ or ‘floor price’ is a reference to the price of the equity shares determined as per Regulations 8(1) and 8(2) of the Takeover Code.

Regulation 8(2) of the Takeover Code requires determination of whether the Company’s Equity Shares are frequently traded and Regulation 2(1)(j) of the Takeover Code prescribes the mechanism to determine whether or not the shares of a target company are frequently traded.

⁸ Computed in accordance with Regulation 22(5) of the Delisting Regulations.

⁹ Proviso to Regulation 5A(2)(a) of the Takeover Code.

Legal and Regulatory Considerations

Upon analysis of the traded turnover data of the 12 months prior to the Detailed Public Statement, it can be verified that the Equity Shares of the Company were frequently traded on NSE in accordance with Regulation 2(i)(j) of the Takeover Code.

The calculation in connection with the Delisting Offer as per Regulation 8(2) of the Takeover Code is as follows:

No.	Details	Price in INR (per share)
1.	The highest negotiated price per Equity Share of the Target Company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer i.e. the price per Equity Share under the SPA	245 (Prior to SPA Amendment) 244 (Post SPA Amendment)
2.	The volume-weighted average price paid or payable per Equity Share for acquisitions, whether by the Acquirer or by any person acting in concert with him, during the 52 weeks immediately preceding the date of the public announcement.	N.A.
3.	The highest price paid or payable per Equity Share for any acquisition, whether by the Acquirer or by any person acting in concert with him, during 26 weeks immediately preceding the date of the public announcement.	N.A.
4.	The volume-weighted average market price per Equity Share for a period of 60 trading days immediately preceding the date of the PA as traded on NSE, being the stock exchange where the maximum volume of trading in the shares of the Target Company is recorded during such period, provided such shares are frequently traded.	237.97
5.	Where the shares are not frequently traded, the price determined by the Acquirer and the Manager to the Offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies	N.A.
6.	The per share value computed under Regulation 8(5) of Takeover Code, if applicable.	N.A.

While the initial ‘floor price’ proposed by the Acquirer was INR 245, the Acquirer, in terms of the SPA Amendment, revised the ‘floor price’ to INR 244 per Equity Share.

‘Indicative Price’ proposed by the Acquirer

The acquirer is required to provide an “indicative price” in respect of a ‘delisting offer’ which is required to be higher than the ‘open offer price’. The ‘indicative price’ is required to include a suitable premium reflecting the price that the acquirer is willing to pay for the ‘delisting offer’ with full disclosures of the rationale and justification for the indicative price so determined that can also be revised upwards by the acquirer before the start of the tendering period which shall be duly disclosed to the shareholders.

The indicative price is required to be:

- a) higher than the 'open offer price'; and
- b) not less than the book value of the company¹⁰

The Delisting Offer is intended to provide an exit opportunity to the Public Shareholders, in light of the proposed change in control of the Company. The 'indicative price' / 'offer price' initially stated by the Acquirer was INR 246 i.e. at an INR 1 premium over the floor price. Subsequently, on March 31, 2023, in terms of the Corrigendum, the Offer Price i.e. the 'indicative price' was increased from INR 246 to INR 262. As indicated in an earlier section, the Acquirer is entitled to increase the 'offer price' anytime before the start of the tendering period and disclosed to the shareholders.

The revised 'offer price' was justified by the Acquirer by stating that:

- a) it is higher than the 'floor price' (the revised 'floor price' i.e. INR 245);
- b) it represented a premium of 12.25% to the average of the closing price of the Equity Shares on NSE during the 6 months period preceding the date of Public Announcement.
- c) it represented a premium of 10.10% to the volume-weighted average market price per Equity Share for a period of 60 trading days on NSE, immediately preceding the date of Public Announcement.
- d) the 'offer price' of INR 262 factors the appropriate and suitable control premium that the Acquirer is willing to pay for the delisting of the Company.
- e) the 'offer price' of INR 262 was more than the book value¹¹ of the Equity Shares as computed in accordance with the explanation to Regulation 22(5) of the Delisting Regulations.

Accordingly, the 'offer price' for the Equity Shares that would be acquired from the Public Shareholders would either be:

- a) Base Price i.e., INR 245 per Equity Share., in case the Minimum Tender Condition is not met (and therefore, the Delisting Offer fails);
- b) INR 262 per Equity Share, in case the Minimum Tender Condition is met (and therefore, the Delisting Offer is successful).

In the scenario of the Deal, since the Minimum Tender Condition was not met, the Equity Shares tendered / offered by the Public Shareholders in the delisting offer were acquired at the 'floor price' of INR 245 each in accordance with Regulation 5A(2)(b) of the Takeover Code.

Relevance of 'discovered price' as per Reverse Book Building Process to a delisting offer under Regulation 5A of the Takeover Code.

The price determined through the reverse book building process¹² i.e. the discovered price is crucial in the delisting process undertaken pursuant to the Delisting Regulations. Based on the various bids received in the tender process, the discovered price would be the price at which the acquirer's shareholding reaches

¹⁰ Book value computation is on the basis of higher of the consolidated and standalone financial statements of the company as per the latest quarterly financials filed by the company on the SEs as on the date of public announcement for counter-offer.

¹¹ As certified by S.V. Shah & Associates, (FRN: 139517W) in its Certificate dated November 16, 2022; updated with certificate dated April 06, 2023.

¹² Process is specified in Schedule II of the Delisting Regulations and disclosed in the Detailed Public Statement.

the threshold of 90% in the company as required for the success of the delisting offer as per Regulation 21(a) of the Delisting Regulations. The acquirer can then set the offer price (indicative price) higher than the discovered price if it deems fit.

Since the Delisting Offer is made in accordance with Regulation 5A of Takeover Code, the price determination through the reverse book building process specified under the Delisting Regulations is not applicable in case of an open offer made pursuant to Regulation 5A of the Takeover Code.

Under the Regulation 5A of the Takeover Code, the acquirer is entitled to propose a fixed 'indicative price' pursuant to which the shares from the public shareholders would be acquired. Further, depending on the response to the 'delisting offer', if the acquirer is in a position:

- i. to reach 90% of the total issued shares, then all shareholders who tender their shares shall be paid the '*indicative price*';
- ii. where the acquirer would not be able to meet the 90% threshold, then all shareholders who tender their shares shall be paid the '*open offer price*'.

E. Why was the Delisting Offer Price increased?

Pursuant to the Corrigendum, the Acquirer increased the Delisting Offer Price i.e. the indicative price from INR 246 to INR 262. Regulation 5A(2)(a) of the Takeover Code entitles an Acquirer to increase the 'offer price' anytime before the start of the tendering period and disclose to the shareholders.

The obvious reason for increase in the Offer Price was to ensure certainty in the success of the Delisting Offer and to elicit the Public Shareholders who voted in favour of the delisting proposal in December 2022–January 2023 to remain interested and actually tender their Equity Shares during the Tendering Period.

F. Why was the Promoter and Promoter Group's shareholding agreed to be retained at less than 9.99% in case the Delisting fails?

In terms of the SPA Amendment, the Sellers agreed that in case the number of the Equity Shares validly tendered by Public Shareholders constitute less than 38.33% of the share capital of the Company i.e. the Acquirer doesn't acquire 90% shareholding required for success of the Delisting Offer, then the Sellers' collective shareholding in the Company was agreed to be maintained at 9.99% or less of the total voting rights in the Company.

While the reason for the Acquirer to ensure the Sellers are collectively at 9.99% or below may largely be commercial in nature, the argument from a legal standpoint seems to be for the Acquirer to stifle or pre-empt the Sellers from making an application for oppression and mismanagement of the Company.¹³

¹³ The qualifying criteria for making an application for oppression and mismanagement of a company under Section 244 of the CA 2013 is that the applicant must: (i) hold not less than 1/10th of the company's issued share capital; or (b) not less than 100 members or 1/10th of the total members, whichever is less.

G. What are possible reasons for failure of the Delisting Offer?

For the Delisting Offer to be successful, the Acquirer is required to acquire at least 90% of the total issued share capital of the Company. However, only 11.45% of Public Shareholders tendered their Equity Shares in the Tendering Period. On an analysis of most attempts at delisting, the success of a delisting offer is contingent on the interest elicited by an acquirer and the actual tendering in the offer by the public shareholder. Although the Acquirer had increased its Offer Price for the Public Shareholders to INR 262 from the initially offered price of INR 246, and the shareholders had approved the delisting proposal with requisite majority. However, despite the above, when it came to the Tendering Period, the Public Shareholders did not tender sufficient % of Equity Shares to make the Delisting Offer a success.

As noted earlier in this document, a single individual Public Shareholder held 4,20,38,395 aggregating to 35.53%. The participation by this single individual Public Shareholder (coupled with the other Public Shareholders holding ~11.45% in the Company) could have altered the fate of the Delisting Offer.

H. Discussion on 'Acquisition Financing' at an offshore level and pledge of shares of the Acquirer by the Parent Company

The Delisting Regulations require the entire proposed consideration to be kept in an escrow account prior to the commencement of the open offer process. Considering the price and the number of public shareholders involved, the sheer scale at which the acquisition takes place inevitably makes delisting a very expensive affair.

In respect of an acquirer acquiring shares of another entity, the banks in India are not permitted to finance the acquisition of equity shares. Further, Indian banks and other Indian financial institutions cannot provide finance to an offshore entity to acquire shares of an Indian company. However, for an entity such as the Acquirer, which is an offshore entity, the possibility of securing off shore financing to fund such an acquisition increase as the offshore entity may secure financing from international banks, international capital markets, financial institutions and offshore debt funds. However, such acquisition finance cannot be secured by a pledge on shares of the Indian target, charge on assets of the Indian target or guarantees from the Indian target due to restrictions under various regulations of the Foreign Exchange Management Act, 1999.

Typically, therefore, the offshore acquirer which acquires shares of an Indian target company through foreign direct investment route would raise debt from offshore lenders in the form of loans to finance the proposed acquisition. Such loans are typically secured by the assets and shares of the offshore acquirer (as opposed to the shares of the Indian entity and any other Indian asset).

I. Evaluation of Various Aspects of the Delisting Offer by the Acquirer

1. **Eligibility Considerations:** The Company became a listed entity in April 2006 and has no convertible instruments outstanding at the time of the Delisting Offer. The Acquirer had also confirmed in the Public Announcement that it has not sold any Equity Shares during 6 months prior to the Public Announcement. The Acquirer has also confirmed in the Public Announcement that it has not engaged or employed in any deceptive or manipulative practices and other requirements as stated in Regulation 4(5) of the Delisting Regulations.
2. **Exit Opportunity to Public Shareholders:** The Acquirer has proposed to delist the Equity Shares of the Company from all the Stock Exchanges. As per Regulation 7 of the Delisting Regulations, an exit opportunity is required to be provided by the acquirer to all the public shareholders in case a company proposes to delist its equity shares from all stock exchanges. The process and requirements of the exit opportunity has been provided under Chapter IV of the Delisting Regulations.
3. **Minimum Tender Requirement:** The Delisting Regulations prescribe¹⁴ that in case the minimum number of shares tendered or offered by the Public Shareholders in the delisting offer is not at least 90% of the total issued shares of that class or in case the Acquirer rejects the price discovered through the reverse book building process, then the Delisting Offer would be considered to have failed.

Accordingly, in order for the Delisting Offer to be deemed successful, Minimum Tender Condition was required to be met i.e. valid tender by the Public Shareholders of at least 4,53,43,132 Equity Shares representing 38.33% of the Share Capital. Upon consummation of the Delisting Offer and the Underlying Transaction, the Acquirer would have acquired an aggregate of 10,64,73,101 Equity Shares representing 90%¹⁵ of the Share Capital.

4. **Offer Price and Control Premium:** The prime object of the Acquirer for the Delisting Offer was the substantial acquisition of Equity Shares and voting rights accompanied by control over the management of the Company and delisting of the Company from the Stock Exchanges. The open offer under Regulation 3(r) and 4 of the Takeover Code was triggered pursuant to the Share Purchase Agreement. Pursuant to the Delisting Offer, the Acquirer proposed to delist the Company in accordance with Regulation 5A of the Takeover Code and the Delisting Regulations. We have dealt with this aspect in greater detail the question (c) below.
5. **Financing Arrangements:** The total funding requirement for the Delisting Offer, assuming full acceptance was INR 1406,46,75,096¹⁶ i.e. the Composite Offer Consideration. By way of security for performance of its obligations, the Acquirer also opened an escrow account and made a cash deposit of the Composite Offer Consideration in the escrow account in cash, being 100% of the total consideration payable to the Public Shareholders under the Delisting Offer, assuming full acceptance.
6. **Tendering of Shares:**

On-market Closing — The Detailed Public Statement confirmed that if and upon the Acquirer acquiring control over the Company in accordance with the Takeover Code, the Acquirer would implement the Delisting Offer through the SE mechanism made available by the stock exchanges in the form of a separate window as provided under the Takeover Code and the Shares Tendering Circulars.

¹⁴ Regulation 23 read with 21 of the Delisting Regulations.

¹⁵ Acquisition of 6,11,29,969 Equity Shares representing 51.67% under the Minimum Tender Condition 4,53,43,132 Equity Shares, representing 38.33%.

¹⁶ 5,71,73,476 Equity Shares at a price per share of INR 246.

Off-market Closing — If the Acquirer has not acquired control over the Company, the Acquirer will acquire Equity Shares tendered by the Public Shareholders through the ‘off-market’ route.

7. **Voting on Postal Ballot Notice for ‘Voluntary Delisting’:** The Delisting Regulations specifies that the authorisation of the shareholders by way of a special resolution is required and the concerned listed entity can act on such authorisation only if the votes cast by the public shareholders in favour of the proposal are at least 2 times the number of votes cast by the public shareholders against it.

Since Promoter and the Promoter Group have executed the Share Purchase Agreement with the Acquirer, they are interested in the said special resolution. As noted in the earlier paragraphs, the table indicates as follows and as also confirmed by the Scrutinizer’s Report:¹⁷

- a) Special Resolution for ‘Voluntary Delisting’ has been passed with the requisite majority the Delisting Regulations and the CA 2013 on December 31, 2022; and
- b) The number of votes cast by the Public Shareholders in favour of the Special Resolution are more than 2 times the votes cast by the Public Shareholders against the said Special Resolution.

J. What were the post-closing obligations of the Sellers?

1. The Sellers have agreed to be bound by certain non-compete and non-solicit obligations set out in the SPA with no separate consideration payable for undertaking such obligation. No further details in this respect are available in the public domain.
2. The erstwhile Promoter, Mr. Satinder Singh Rekhi, was contemplated to have a new role as an as a non-executive advisor to the Company under Blackstone’s ownership.
3. Pursuant to the consummation of the Underlying Transaction, the Acquirer acquired sole control over the Company. Further, since the Delisting Offer was unsuccessful, the Company remains listed on the Stock Exchanges, the Sellers would be required to re-classify themselves from ‘promoter or promoter group’ to ‘public’ category, subject to receipt of necessary approvals required in terms of the LODR Regulations.

However, if the Delisting Offer had been successful, neither the Sellers nor the Acquirer would have had to undertake any reclassification exercise as the Company would have successfully delisted.

K. Why was the approval of stock exchanges required?

Regulation 12 of the Delisting Regulations require an application to be made to the Stock Exchanges within 15 days from passing the special resolution by the Shareholders (or receipt of any other statutory or regulatory approval, whichever is later), seeking approval of the stock exchanges for the proposed delisting of the equity shares.

The Company received the in-principle approval of the Stock Exchanges for the Delisting Offer on February 17, 2023.

¹⁷ Dated January 02, 2023 from DPV Associates.

L. Why was the approval of CCI required?

Since this transaction pertains to the acquisition of up to 100% shareholding in the Company by the Acquirer through:

- i. acquisition of up to 51.67% of the Share Capital by the Acquirer from the Sellers; and
- ii. acquisition of additional Equity Shares pursuant to a composite offer (i.e., open offer combined with a delisting offer) by the Acquirer under the Takeover Code and the Delisting Regulations (collectively, the “**Proposed Combination**”).

Accordingly, the Acquirer applied for an approval from the CCI in accordance with Section 6(2) of the Competition Act, 2002 on November 28, 2022.¹⁸ The Acquirer, with a view to assist the CCI, proposed the relevant market definition based on the overlapping business activities of the Parties may be the market for ‘IT and ITeS in India’ (“**Broad Relevant Market**”).

Horizontal Overlap:

While, the Acquirer does not directly engage in the provision of the overlapping products/services, certain portfolio companies of Blackstone (“**Blackstone Portfolios**”) are engaged in businesses that are horizontally overlapping with the business of the Company in India. Additionally, the Blackstone Portfolios and the Company (including its subsidiaries) have presence in the following segments: (i) Consulting Services; (ii) Application Implementation Services; (iii) Application Managed Services; and (iv) BPO Services (collectively, the “**Narrow Segments**”).

Accordingly, for the purpose of the competition assessment, the Broad Relevant Market and the Narrow Segments have been considered by the Acquirer.

Vertical Overlap:

With regard to vertical relationship, the Acquirer has stated that there are no existing vertical relationships between Blackstone Portfolios and the Company (including its subsidiaries). However, given the nature of the IT and ITeS market, any potential vertical linkages between the affiliates of the Acquirer and the Company (including its subsidiaries), would be in the ordinary course of business.

In addition to the above, the Acquirer submitted that there are certain existing supply arrangements between the affiliates of the Acquirer and the Company (including its subsidiaries) in the financial year 2021: (i) the Company provided consulting services to an affiliate of one of Blackstone Portfolios; and (ii) the Company provided IT services to an affiliate of one of Blackstone Portfolios.

¹⁸ Summary of the notice filed by the Acquirer and the CCI Order, available at: <https://cci.gov.in/combination/orders-section31>. In order to access the same, please click on the above link and enter ‘BCP Asia II Topco II Pte. Ltd.’ in the search text box. The web page will then reflect the summary of the notice filed by the Acquirer on November 28, 2022 and the Order of the CCI dated February 13, 2022.

Assessment by the CCI

The CCI observed that the combined market share of the parties to the Proposed Combination in each of the Broad Relevant Market and Narrow Segments are insignificant to raise any competition concerns in India. Moreover, the Company earns its revenue primarily from North America, Europe, and South East Asian countries, and the revenue generated in India constitutes 0-5% of the consolidated revenue of the Company.

Further, as regards the existing supply arrangement between the Company and affiliates of Blackstone Portfolios, the CCI noted that this forms a miniscule portion of the Company's revenue.

Considering the above-mentioned factors and reasons, the CCI approved the Proposed Combination in terms of its order dated February 13, 2023. Since there are multiple overseas subsidiaries of the Company, similar approvals from an antitrust perspective were procured by the Acquirer, from (i) Commission for the Protection of Competition of the Republic of Cyprus; (ii) Austrian Federal Competition Authority; and (iii) Romanian Commission for the examination of direct foreign investment (CEISD).

M. Why was the grant of no-action and/or exemptive relief from U.S. Securities and Exchange Commission required?

From a US law perspective, if (a) 50% or less of a foreign company's outstanding voting securities are held by U.S. residents; or (b) more than 50% of the foreign company's outstanding voting securities are held by U.S. residents and none of the three circumstances in a 'Business Contacts Test' applies¹⁹, then such a foreign company will qualify as a 'foreign private issuer'. Further, in case a foreign company qualifies as a 'foreign private issuer' then such a foreign company is not required to be subject to the same registration and disclosure requirements applicable to domestic U.S. entities.²⁰

In accordance with the Takeover Code and the Delisting Regulations, the Delisting Offer by the Acquirer and the PAC has to be made to all the Public Shareholders of the Company (which includes those shareholders resident in the U.S.) and the Delisting Offer has to be made on equal terms.

Since most members of the Promoters and Promoter Group and a few Public Shareholders holding sizable portions of the Company were residents of USA, the Acquirer and the PAC had submitted a letter to the SEC dated April 11, 2022²¹ ("SEC Letter") requesting the SEC to grant an exemption under Rules 14e-1(a) and 14e-1(b) of the SEC Act and to confirm that the SEC will not take enforcement action in respect of Rule 14e-1(c) under the SEC Act, in connection with the Delisting Offer.

19 Securities Act Rule 405 and Exchange Act Rule 3b-4.

20 <https://www.sec.gov/divisions/corpfin/internat/foreign-private-issuers-overview.shtml>.

21 SEC Incoming Letter dated April 11, 2022, available at: <https://www.sec.gov/files/r-systems-international-ltd-incoming-letter-041123.pdf>.

The rationale behind filing the SEC Letter was to seek an exemptive relief that would permit the below which is otherwise not permitted under the US laws:

- i. the Delisting Offer to remain open for a fixed period of 10 working days in compliance with the Takeover Code read with the Delisting Regulations, which is in conflict with Rule 14e-1(a) of the SEC Act; and
- ii. the Acquirer to reduce the 'offer price' in accordance with the process prescribed under Indian law and practice in the event the Minimum Tender Condition²² was not satisfied without extending the fixed 10 working day tendering period described in clause (i), which conflicts with Rule 14e-1(b) of the SEC Act.

In the absence of the exemption and no action relief from the SEC, the U.S. shareholders would have been unable to tender their shares in the Delisting Offer, and the Acquirer would have been unable to exclude the U.S. shareholders or offer different terms to the U.S. shareholders, in order to comply with the Takeover Code and the Delisting Regulations.

Further, the no-action relief would permit: (i) payments to tendering public shareholders in the Delisting Offer, or the return of shares tendered pursuant to the Delisting Offer in the event that the Delisting Offer is terminated or withdrawn, within 10 working days in compliance with the Takeover Code read with the Delisting Regulations, which is in conflict with Rule 14e-1(c) of the SEC Act; and (ii) payments to shareholders exercising their Exit Put Right²³ to be made by the Acquirer within 20 working days after a shareholder validly exercises such right, which is in conflict with Rule 14e-1(c) of the SEC Act.

In order to illustrate the conflict between the Indian laws and the SEC Act, in terms of Rule 14e-1(a) of the SEC Act,:

“... no person who makes a tender offer shall... hold such tender offer open for less than twenty business days from the date such tender offer is first published or sent to security holders”

In terms of the provisions of the Takeover Code, an open offer must remain open for acceptance for a fixed period of 10 working days, which cannot be reduced or increased. Accordingly, the Acquirer is prohibited under the Indian laws from holding the Delisting Offer to stay open for more than 10 working days.

Further, the U.S. shareholders cannot be excluded from the Delisting Offer or be offered different terms from those offered to non-U.S. shareholders. Hence, in the absence of the exemptive relief, the Acquirer would either be violating the requirements of the Takeover Code or violating the requirements of Rule 14e-1(a) under the SEC Act.

²² At least 4,53,43,132 shares or approximately 38.33% of the voting share capital of the Company.

²³ Under the Delisting Regulations, after the Company is delisted following final approval from the Stock Exchanges, the Acquirer must provide an exit opportunity to the non-tendering shareholders of the Company for a period of one year from the date of delisting of the Company (“Exit Window Period”). During the Exit Window Period, the remaining shareholders of the Company may put their shares to the Acquirer at the same price as in the Open Offer and the Acquirer must immediately accept such tendered shares (“Exit Put Right”).

In light of the above, the Acquirer requested the SEC to grant exemptive relief with respect to: (a) the 20-business day minimum tender offer period requirement set forth in Rule 14e-1(a); and (b) the requirement to extend the tendering period due to material changes in the offer terms set forth in Rule 14e-1(b). Further, the Acquirer requested the SEC to not take any enforcement action relating to the prompt payment and return requirements set forth in Rule 14e-1(c) in respect of the shares tendered in the Delisting Offer and the shares put to the Acquirer during the Exit Window Period.²⁴

SEC pursuant to its letter dated April 11, 2023²⁵ and Exemption Order dated April 11, 2023²⁶, (i) granted an exemption to the Acquirer under Rule 14e-1(a) and (b) of the SEC Act; and confirmed that (ii) the SEC will not recommend enforcement action under Rule 14e-1(c) of the SEC Act, if the Acquirer pays for or returns tendered shares (including shares tendered during the Exit Window Period) in accordance with the Indian laws.

²⁴ Ibid to 5.

²⁵ Available at: <https://www.sec.gov/corpfin/r-systems-international-ltd-041123>.

²⁶ Available at: <https://www.sec.gov/files/r-systems-international-ltd-final-order-041123.pdf>.

Tax Considerations

A. What are the tax implications arising out of the Deal?

It may be noted that the Acquirer and PAC are not persons resident in India as per the regulations of the Foreign Exchange Management Act, 1999. The Public Shareholders whose Equity Shares have been validly tendered and accepted may be subject to applicable capital gains tax and securities transaction tax applicable to the Equity Shares accepted in the open offer.

The rate of tax on capital gain in India would depend on: (i) whether the capital gains are short-term capital gains or long-term capital gains; (ii) whether the target company is a public listed company, public unlisted company or a private company; (iii) whether the transaction has taken place on the floor of the Stock Exchange or by way of a private arrangement; and (iv) whether the seller is a resident or a non-resident for tax purposes. Further, in respect of a cross-border share sale, the relevant Double Taxation Avoidance Agreement would determine whether capital gains are taxable in India or in the other country or both.

The table below sets out the rates at which capital gains are taxable under the ITA for different forms of share sales:

	Short-Term Capital Gains	Long-Term Capital Gains	
		Resident shareholder	Non-resident shareholder or foreign company
Sale of listed equity shares on the floor of the Stock Exchanges (Securities Transaction Tax paid)	15% ¹	10% ² without indexation or foreign exchange fluctuation benefit	10% ³ without foreign exchange fluctuation benefit

1 Section 111A of the ITA.

2 Section 112A of the ITA.

3 Section 112A of the ITA.

Epilogue

In India, control deals have boomed since the pandemic receded.

Blackstone's composite offer for R Systems would be the first time that an acquirer had proposed a delisting pursuant to the relatively new Regulation 5A of the Takeover Code. While this deal did not feature a successful delisting leg, it demonstrated the flexibility provided by this option.

The delisting option available within the scope of a composite offer, not only provides some relaxation in terms of time and compliance costs but also provides for a second attempt at delisting within a year of the open offer's completion if the initial delisting offer fails. One can expect further changes being brought about by SEBI to streamline the process of acquisition through a composite offer taking note of the fact that balance must be achieved so that all parties – acquirer, target company and public shareholders, benefit from the transaction. Recently, SEBI released a consultation paper in August 2023 with a proposal for permitting a 'fixed price' delisting option (as compared to the reverse book building process currently provided for promoters/promoter group) and therefore, amendments in this regard may be expected in due course.

Annexure I

Summary of Regulation 5A of the Takeover Code

- i. An acquirer making an open offer for acquiring shares or voting rights or control of a target company in terms of Regulation 3(1), 4 or 5 of the Takeover Code, is entitled to seek delisting of the target company by making a 'delisting offer'. However, the Acquirer would be required to declare its intention to delist the said target company at the time of:¹
 - a) making such public announcement of an open offer, as well as
 - b) at the time of making the detailed public statement.
2. Eligibility Conditions. The acquirer:
 - i. must not acquire joint control of the target company along with an existing promoter / person in control.
 - ii. should not have, in the preceding 2 years from the date of public announcement, been:
 - a) a promoter / promoter group / person(s) in control, or
 - b) directly / indirectly associated with the promoter or any person(s) in control, or
 - c) a person(s) holding more than 25% shares or voting rights.
3. Pricing-related Conditions
 - i. The acquirer is required ensure the 'open offer price' for the 'delisting offer' is determined in accordance with Regulation 8 of the Takeover Code. The public announcements and the letter of offer would have to state the 'open offer price' and the 'indicative price' for the delisting offer.
 - ii. The 'indicative price' is required to include a suitable premium reflecting the price that the acquirer is willing to pay for the 'delisting offer' with full disclosures of the rationale and justification for the indicative price so determined that can also be revised upwards by the acquirer before the start of the tendering period which shall be duly disclosed to the shareholders. The indicative price is required to be:
 - a) **higher** than the 'open offer price'; and
 - b) **not less than** the book value of the company.²
 - iii. In case the response to the 'delisting offer' puts the acquirer in a position:
 - a) to reach 90% of the total issued shares, then all shareholders who tender their shares shall be paid the '**indicative price**';
 - b) where the acquirer would not be able to meet the 90% threshold, then all shareholders who tender their shares shall be paid the '**open offer price**'.

¹ A subsequent declaration of delisting for the purpose of the delisting offer proposed to be made under Regulation 5A(1) shall not suffice.

² Computed in accordance with Regulation 22(5) of the Delisting Regulations.

- iv. In case the 'delisting offer' made under Regulation 5A is not successful on account of either of the following reasons, the acquirer shall, make an announcement of such failure and proceed with completing of the open offer:
 - a) non-receipt of the prior approval of shareholders; or
 - b) non-receipt of the prior in-principle approval of the relevant stock exchange; or
 - c) the 90% threshold is not achieved.
- v. Where a competing offer is made in relation to the 'delisting offer', then the acquirer:
 - a) shall not be entitled to delist the target company;
 - b) shall not be liable to pay interest on account of delay due to the competing offer, to the shareholders; and
 - c) shall comply with Takeover Code and make necessary announcements in this regard.
- vi. The shareholders who have tendered shares in acceptance of the 'delisting offer' are entitled to withdraw such shares tendered, within 5 working days from the date of the announcement of failure of the 'delisting offer'.
- vii. Where the target company fails to get delisted pursuant to a 'delisting offer' but results in the shareholding of the acquirer exceeding the maximum permissible non-public shareholding threshold (i.e. 75% shareholding):
 - a) the acquirer may undertake a further attempt to delist the target company in accordance with the Delisting Regulations during the 12 months from the date of completion of the open offer.
 - b) such further delisting attempt shall be successful subject to the following conditions:
 - i. the delisting threshold of 90% shareholding, is met; and
 - ii. 50% of the residual public shareholding is acquired.
 - c) In case the further delisting attempt fails, the acquirer is required to ensure compliance of the minimum public shareholding requirement (25% public shareholding) of the target company under the SCRR, 1957 within 12 months period referred above.
 - d) the floor price for a further delisting attempt is required be higher of the following:
 - i. the indicative price offered under the first delisting attempt;
 - ii. the floor price determined under the Delisting Regulations as on the relevant date of the subsequent attempt; and
 - iii. the book value of the company as per explanation to Regulation 22(5) of the Delisting Regulations.

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