

Review Article

Overview of Buyback: Various Aspects

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A B S T R A C T

Offer buybacks have become a typical occasion in the money related markets around the world. In an offer buyback program, the organization conveys the abundance income among the investors by method for repurchasing its own offers, by and large including some hidden costs. Among the different explanations behind doing as such, the most noticeable is the way that the organization needs to show to the investors that it has tremendous trust in itself. In India share buybacks were presented in 1998 and has gotten consideration of every single significant organization. From that point forward there has been a spate of declaration of offer buybacks. This paper looks at experimentally the declaration time frame value response and whether the executives is acting to the greatest advantage of non-offering investors when it takes part in focused offer buyback. A thorough rundown of all the monetary parameters was considered with the end goal of examination and the information was gathered through online databases. A pattern investigation was performed on different parameters like offer costs of these organizations during and post buyback period. Different execution measures were additionally used to reach inference with respect to their patterns from pre buyback to post buyback period. The examination set up that for the Indian corporate, the drawn out favourable circumstances of offer buyback are not satisfactory. Buyback process is commonly used to improve the shareholding of advertisers of the organization, and so as to confer momentary additions for the financial specialists. The examination likewise calls attention to that buyback standards ought to be made increasingly rigid for Indian setting, if the organizations are to have a drawn out view. At long last, the investigation sets down potential bearings in which further research should be possible on this point.

Keywords: Buyback, Investment, Financing, Shareholding Pattern

Overview

Buyback is a mechanism that enables the company to approach the existing shareholders to repurchase/buyback the shares they hold of the company. Compared to developed nations, buybacks is relatively a fresh idea in India and came simultaneously with introduction of buyback in other emerging markets. It was indeed a huge shift in corporate law because it gave Indian companies another window to restructure their capital requirements, allowing

them to use capital more effectively.

List of company buyback in 2020-04-13

- Indiabulls Real Estate drops 5% as share buyback fails to lift sentiment
- Motilal Oswal board okays Rs 150 crore share buyback plan
- Sun Pharma announces Rs 1,700 crore share buyback
- Aster DM Healthcare surges 6% ahead of board

- meet on share buyback
- Sterlite Technologies approves buyback of shares up to Rs 145 crore
- Emami buyback size likely to be Rs 900-1,000 crore



Financial Aspect

Financing Aspects of Buy-Back

Finance is the nerve centre for the business activities and success is more depending on the better and efficient management of funds and finance. In order to buy-back of shares and securities in large numbers, the company needs huge amounts of capital and funds which may be mobilized through one or more of the sources viz.

- Internal sources

Advertisements

- Sufficient cash position
- Selling of temporary investment with the least possible loss
- Raising of working capital needs
- Raising cash by issuing fixed deposits
- Raising by issue of debentures and loan bonds
- Cash credit from commercial banks
- Overdraft from commercial banks etc.

Legal Aspect

Provisions of buyback under companies act, 2013:-

S.68 of Companies Act deals with Buyback of Shares by company. This section corresponds to section 77A (Power of company to purchase its own securities) of the 1956 Act with no changes except that the definition of free reserve has been modified and the penalty provisions has been enhanced. Unlike the provisions of section 67 which prohibits a company to buy-back its own shares unless reduction of capital is effected, this section dilutes this general prohibition and allows a company whether public or private, to purchase its own shares or other specified securities out of following sources according to Section 68(1) of the Companies Act, 2013:- a) Its free reserves; or b) The securities premium account; or c) The proceeds of any shares or other specified securities. However, buy-back of any kind of shares or securities shall not be made out of

the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Power of Company to Purchase Its Own Securities

Buy-Back of Shares or Other Securities

Unless stated otherwise, the following norms shall be complied with by the private companies and unlisted public companies for buy-back of their securities.

The explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 shall contain the following disclosures, namely;

- the date of the board meeting at which the proposal for buy-back was approved by the board of directors of the company
 - the objective of the buy-back
 - the class of shares or other securities intended to be purchased under the buy-back
 - the number of securities that the company proposes to buy-back
 - the method to be adopted for the buy-back
 - the price at which the buy-back of shares or other securities shall be made
 - the basis of arriving at the buy-back price
 - the maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed
 - the time-limit for the completion of buy-back
1. the aggregate shareholding of the promoters and of the directors of the promoter, where the promoter is a company and of the directors and key managerial personnel as on the date of the notice convening the general meeting.
 2. the aggregate number of equity shares purchased or sold by persons mentioned in sub-clause (i) during a period of twelve months preceding the date of the board meeting at which the buy-back was approved and from that date till the date of notice convening the general meeting.
 3. the maximum and minimum price at which purchases and sales referred to in sub-clause (ii) were made along with the relevant date.
- if the persons mentioned in sub-clause (i) of clause (j) intend to tender their shares for buy-back
1. the quantum of shares proposed to be tendered.
 2. the details of their transactions and their holdings for the last twelve months prior to the date of the board meeting at which the buy-back was approved including information of number of shares acquired, the price and the date of acquisition.

- a confirmation that there are no defaults subsisting in repayment of deposits, interest payment thereon, redemption of debentures or payment of interest thereon or redemption of preference shares or payment of dividend due to any shareholder, or repayment of any term loans or interest payable thereon to any financial institution or banking company
 - a confirmation that the Board of directors have made a full enquiry into the affairs and prospects of the company and that they have formed the opinion
1. That immediately following the date on which the general meeting is convened there shall be no grounds on which the company could be found unable to pay its debts.
 2. As regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company shall be able to meet its liabilities as and when they fall due and shall not be rendered insolvent within a period of one year from that date.
 3. The directors have taken into account the liabilities (including prospective and contingent liabilities), as if the company were being wound up under the provisions of the Companies Act, 2013.
- a report addressed to the Board of directors by the company's auditors stating that
1. They have inquired into the company's state of affairs. the amount of the permissible capital payment for the securities in question is in their view properly determined.
 2. That the audited accounts on the basis of which calculation with reference to buy back is done is not more than six months old from the date of offer document.

"Provided that where the audited accounts are more than six months old, the calculations with reference to buy back shall be on the basis of un-audited accounts not older than six months from the date of offer document which are subjected to limited review by the auditors of the company".¹

- the Board of directors have formed the opinion as specified in clause (m) on reasonable grounds and that the company, having regard to its state of affairs, shall not be rendered insolvent within a period of one year from that date.
1. The company which has been authorized by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a letter of offer in Form No. SH.8, along with the fee.

Provided that such letter of offer shall be dated and signed

on behalf of the Board of directors of the company by not less than two directors of the company, one of whom shall be the managing director, where there is one.

1. The company shall file with the Registrar, along with the letter of offer, and in case of a listed company with the Registrar and the Securities and Exchange Board, a declaration of solvency in Form No. SH.9 along with the fee and signed by at least two directors of the company, one of whom shall be the managing director, if any, and verified by an affidavit as specified in the said Form.
2. The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but not later than twenty days from its filing with the Registrar of Companies.
3. The offer for buy-back shall remain open for a period of not less than fifteen days and not exceeding thirty days from the date of dispatch of the letter of offer.

"Provided that where all members of a company agree, the offer for buy-back may remain open for a period less than fifteen days."²

1. In case the number of shares or other specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the company, the acceptance per shareholder shall be on proportionate basis out of the total shares offered for being bought back.
 2. The company shall complete the verifications of the offers received within fifteen days from the date of closure of the offer and the shares or other securities lodged shall be deemed to be accepted unless a communication of rejection is made within twenty one days from the date of closure of the offer.
 3. The company shall immediately after the date of closure of the offer, open a separate bank account and deposit therein, such sum, as would make up the entire sum due and payable as consideration for the shares tendered for buy-back in terms of these rules.
 4. The company shall within seven days of the time specified in sub-rule⁷
 - make payment of consideration in cash to those shareholders or security holders whose securities have been accepted
 - return the share certificates to the shareholders or security holders whose securities have not been accepted at all or the balance of securities in case of part acceptance.
1. The company shall ensure that
 - the letter of offer shall contain true, factual and material information and shall not contain any misleading

information and must state that the directors of the company accept the responsibility for the information contained in such document.

- The company shall not issue any new shares including by way of bonus shares from the date of passing of special resolution authorizing the buy-back till the date of the closure of the offer under these rules, except those arising out of any outstanding convertible instruments
 - The company shall confirm in its offer the opening of a separate bank account adequately funded for this purpose and to pay the consideration only by way of cash;
 - The company shall not withdraw the offer once it has announced the offer to the shareholders
 - The company shall not utilize any money borrowed from banks or financial institutions for the purpose of buying back its shares
 - The company shall not utilize the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities for the buy-back
1. The company, shall maintain a register of shares or other securities which have been bought-back in Form No. SH.10.
 - The register of shares or securities bought-back shall be maintained at the registered office of the company and shall be kept in the custody of the secretary of the company or any other person authorized by the board in this behalf
 - The entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose
1. The company, after the completion of the buy-back under these rules, shall file with the Registrar, and in case of a listed company with the Registrar and the Securities and Exchange Board of India, a return in the Form No. SH.11 along with the fee.
 2. There shall be annexed to the return filed with the Registrar in Form No. SH.11, a certificate in Form No. SH.15 signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made there under.

Case Studies

Vodafone India Services Private vs The Deputy Commissioner of Income ... on 23 January, 2018.

Income Tax Appellate Tribunal - Ahmedabad Vodafone India Services Private ... vs The Deputy Commissioner of Income.

Shri D.A. Gadgil vs Securities and Exchange Board of ... on 30 October, 2003.

Britannia Industries Limited, ... vs Department of Income Tax

Amway India Enterprises Pvt. Ltd. vs 1Mg Technologies Pvt. Ltd. & ANR on 8 July, 2019.

Blue Coast Hotels Limited vs IFCI Limited and 3 ORS on 23 March, 2016.

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