

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

**IN THE MATTER OF PROPOSED INCREASE IN SHAREHOLDING AND VOTING RIGHTS OF AJANTA PHARMA LIMITED– EXEMPTION APPLICATION FILED UNDER REGULATION 4 (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997.**

**1.0 BACKGROUND**

1.1 Ajanta Pharma Limited (hereinafter referred to as the target company) is a company incorporated under the Companies Act, 1956 having its Registered Office at “Ajanta House”, Charkop, Kandivli (West), Mumbai – 400 067. The equity shares of the target company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as BSE) and National Stock Exchange of India Limited (hereinafter referred to as NSE).

**2.0 APPLICATION FOR GRANT OF EXEMPTION**

2.1 Ajanta Pharma Limited on behalf of Mannalal B Agrawal, Purushottam B. Agrawal, Madhusudan B. Agrawal, Yogesh M. Agrawal, Ravi P. Agrawal, Rajesh Agrawal, Ayush M. Agrawal, Mannalal B. Agrawal (HUF), Madhusudan B. Agrawal (HUF), Purushottam B. Agrawal (HUF), Vimal M. Agrawal, Samta Agrawal, Mamta M. Agrawal, Manish Yogesh Agrawal, Richa Ravi Agrawal, Smriti Rajesh Agrawal and Gabs Investments Private Limited (hereinafter collectively referred to as the Acquirers), vide letter dated November 16, 2009, filed an application under Regulation 4(2) read with Regulation 3(1)(I) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the Takeover Regulations) to Securities and Exchange Board of India (hereinafter referred to

as SEBI). It is stated that the acquirers belong to the promoter and promoter group of the target company and currently hold 66.82% of the paid up capital of the target company. It is further stated that the target company proposes to buy-back a maximum of 11,24,752 equity shares from open market at a price not exceeding Rs. 101/- per share. This buy-back would result in an increase of the acquirers' shareholding from 66.82% to 73.92% which would trigger Regulation 11(2) of the Takeover Regulations. Since, the proposed increase in the voting rights of the acquirers in target company consequently triggers the provisions of the Takeover Regulations, the exemption has been sought by the acquirers *inter alia*, on the following grounds:

- a. The increase in shareholding and the corresponding voting rights of the acquirers is incidental to the buy-back proposal of the target company and is not a proactive acquisition.
- b. The acquirers are holding 66.82% of the equity share capital in the target company and are already in control of the target company and that there would not be any change in the control or management of the target company on account of the buy-back.
- c. The buy-back is expected to contribute to the overall enhancement of shareholder value and result in an increase in the return on equity of the target company.
- d. Even after the buy-back, the public shareholding in the target company would be at a level of more than 25%, which would meet with the requirements of the listing agreement with the stock exchanges.
- e. The maximum buy-back price of Rs.101/- at which the buy-back is proposed is at a premium of 14.82% of the average of the twenty six week average price and 10.65% of the average of the two weeks average price at the stock exchanges, taking the date of the application as reference date.
- f. The acquirers do not intend to tender their shares in the buy-back and have undertaken not to transact in the shares of the target company till the closure of the buy-back.

2.2 The shareholding pattern of the target company (before and after the buy back ) as per the aforesaid application is as under:-

Shareholders Category	Number of Registered shareholders as on 06.11.2009	Before the proposed Buy-Back			After the Proposed Buy-Back	
		Number of shares	% of shares/total voting capital held		Number of shares*	% of shares/voting rights
Promoter	3	21,57,986	18.43		21,57,986	20.39
PAC	14	56,65,635	48.39		56,65,635	53.53
<b>Total</b>	<b>(**)23</b>	<b>78,23,621</b>	<b>66.82</b>	<b>66.82</b>	<b>78,23,621</b>	<b>73.92</b>
Foreign Investors (GDRs/OCBs/FIIs/NRIs/Non-residents)	51	19,052	0.17	33.18	27,60,127	26.08
Indian Financial Institutions/Banks/ Mutual Funds/Govt. Companies/ Insurance Companies	2	2,49,900	2.13			
Public including other Bodies Corporate	8944	36,15,927	30.88			
<b>Total</b>	<b>9020</b>	<b>117,08,500</b>	<b>100.00</b>		<b>1,05,83,748</b>	<b>100.00</b>

\* Assuming full deployment of the Maximum buy back size at the maximum buy back price

\*\* No. of shareholders 17: No. of Folio 23

2.3 The acquirers thereafter submitted certain information/documents, vide various letters.

### 3.0 RECOMMENDATION OF THE TAKEOVER PANEL

3.1 The aforesaid application was forwarded by SEBI to the Takeover Panel, in terms of Regulation 4(4) of the Takeover Regulations and the Takeover Panel, vide report dated December 30, 2009 has recommended as under:

*“ ..... It was further felt that the buyback offer will provide an exit option to those public shareholders who desire to exit and the same may enhance overall shareholders value. Considering all these aspects, the Panel has found the proposal to be in interest of the public shareholders and recommended exemption to the acquirer from the applicability of Regulation 11(1) of the Takeover Regulations subject to the Target Company/Acquirer complying with*

*the relevant provisions of the Companies Act, 1956, SEBI Regulations and Listing Agreement.”*

#### **4.0 FINDINGS**

4.1 I have considered the application dated November 16, 2009, the subsequent information provided by the acquirers, the recommendation of the Takeover Panel, and other relevant materials available on record.

4.2 In terms of the application, the target company proposes to buy-back maximum of 11,24,752 equity shares from open market at a price not exceeding Rs. 101/- per share. The buy-back would result in an increase in the acquirer's shareholding from 66.82% to 73.92%, an increase by 7.1%. The same would trigger regulation 11(2) of the Takeover Regulations. I note, in terms of the application that there is no direct acquisition of any equity shares/voting rights of the target company by the acquirers. The acquirers are holding 66.82% and there would not be any change in control in the target company. I also note that the buy-back is being proposed in keeping with the target company's desire to enhance overall shareholders value, which would lead to reduction in outstanding number of equity share. Further, even after the proposed buy-back of the equity shares by the target company (in case of 100% response to the proposed buy-back), the public shareholding in the target company would remain at 26.08% i.e. above the minimum 25%. I note that the Takeover Panel has observed that the said increase in the shareholding of the acquirers would not be prejudicial to the public shareholders. However, I also note that, in terms of the second proviso to Regulation 11(2) [inserted with effect from October 30,2008] an acquirer (together with persons acting in concert with him), holding 55% or more but less than 75% of shares or voting rights in a target company, may acquire additional shares or voting rights entitling him to five percent of the voting rights in a target company without making a public announcement, if the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company. The buy back of the company (in case of 100% response) would result in the

increase of the shareholding of the acquirers in the target company by 7.1%. In terms of the second proviso to Regulation 11(2) of the Takeover Regulations, the acquires are entitled to acquire additional shares or voting rights which entitle them to exercise upto 5% of the voting rights in the target company without making a public announcement. As they are already eligible to acquire upto 5% without the public announcement, exemption needs to be granted only in respect of the balance 2.1% assuming that the buy back may get 100% response resulting in such increase in the shareholding of the acquirers. Further, SEBI vide circular dated August 6, 2009, clarified that the aforesaid 5% limit can be availed in one or more tranches, without any restriction on the time-frame within which the shares can be acquired.

4.3 In view of the above facts, I agree with the recommendations of the Takeover Panel and consider the present case fit for granting exemption. However, considering the aforesaid amendment and subsequent clarification by SEBI, the acquirers in the present case may be exempted from complying with the provisions of Regulation 11(2) of the Takeover Regulations for the acquisition of 2.1% voting rights over and above the permitted limit of 5% as per the second proviso to Regulation 11(2) of the Takeover Regulations.

## **5.0 ORDER**

5.1 In view of the above findings, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 4(6) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby grant exemption to the acquirers, namely Mannalal B Agrawal, Purushottam B. Agrawal, Madhusudan B. Agrawal, Yogesh M. Agrawal, Ravi P. Agrawal, Rajesh Agrawal, Ayush M. Agrawal, Mannalal B. Agrawal (HUF), Madhusudan B. Agrawal (HUF), Purushottam B. Agrawal (HUF), Vimal M. Agrawal, Samta Agrawal, Mamta M. Agrawal, Manish Yogesh Agrawal, Richa Ravi Agrawal, Smriti Rajesh Agrawal and Gabs Investments Private Limited from complying

with the provisions of Regulation 11 (2) thereof, with regard to their proposed increase in voting rights of by 2.1% over and above the 5% limit (which the acquirers are already permitted to acquire through buy-back or open market purchases as per the second proviso to Regulation 11(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, pursuant to the proposed buy back of equity shares by Ajanta Pharma Limited.

5.2 The exemption is granted subject to the following conditions:

- a. The statements/averments made/facts or figures given in the application are true and correct to the best knowledge of the acquirers.
- b. The acquirers i.e. promoter and promoter group of the target company shall ensure compliance with the statements, disclosures and undertakings made in the application.
- c. The proposed buy-back shall be in accordance with the relevant provisions of the Companies Act, 1956, Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 1998, the Listing Agreement and other applicable laws.

5.3 This exemption shall not be construed as exemption from requirements of any other provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations (e.g. disclosure requirements under Chapter II), the Listing Agreement or any other law.

**DR. K. M. ABRAHAM**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**PLACE: MUMBAI**  
**DATE: JANUARY 29, 2010**