

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: K. M. ABRAHAM, WHOLE TIME MEMBER**

ORDER

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

WTM/KMA/CFD/48/03/2009

1.0 BACKGROUND

1.1 M/s Gitanjali Gems Limited (hereinafter referred to as the target company) is a company incorporated under the Companies Act, 1956 having its registered office at 801/802, Prasad Chambers, Opera House, Mumbai 400 004, Maharashtra. The equity shares of the target company are listed on the Bombay Stock Exchange Limited (BSE) and the National Stock Exchange of India Limited (NSE).

2.0 APPLICATION FOR EXEMPTION

2.1 The target company, vide letter dated December 30, 2008 filed an application under Regulation 4(2) read with Regulation 3(1)(f) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the Takeover Regulations) on behalf of its Promoters/Promoter Group/Persons Acting in Concert namely, Mr. Mehul Choksi, Ms. Priti Choksi, Mr. Guniyal Choksi, Partha Gems Private

Limited, Priyanka Gems Private Limited, Rohan Diamonds Private Limited, Mozart Investments Private Limited, Digico Holdings Limited, Nihar Trading Private Limited and Trans Exim Limited. The aforesaid persons/entities are hereinafter collectively referred to as the acquirers. The target company stated that the acquirers are presently holding 4,60,94,283 equity shares representing 54.19% of voting rights of the target company. The target company proposes to buy back upto 1,20,00,000 equity shares at a price not exceeding Rs.120/- per share aggregating to a total consideration of Rs. 144 crores. In this process, if, 1,20,00,000 equity shares are bought back, the equity shareholding and voting rights of the acquirers would increase from 54.19% to 63.09%, and a public announcement would have to be made under the provisions of the Takeover Regulations, unless exemption is granted thereon. Hence, the exemption in respect of the above increase in shareholding/voting rights is sought *inter alia* on the following grounds:

- i) The Board of Directors of the target company in its meeting held on December 19, 2008 approved the buy back upto 1,20,00,000 shares of the target company. The buy back is proposed *inter alia* with the objective to improve the equity valuation, Earning per Share etc.
- ii) The acquirers are the promoters of the target company and as on the date of the application, they were collectively holding 4,60,94,283 equity shares representing 54.19% of the voting rights of the target company. The increase in the voting rights of the acquirers is incidental to the buy back proposal of the target company and the acquirers existing (as on the date of the application) shareholding in terms of number would remain the same.

- iii) In case of 100% response to the proposed buyback offer of the target company, assuming that 1,20,00,000 equity shares are bought back, the voting rights of the acquirers would increase from 54.19% to 63.09% of the voting rights of the target company.
- iv) There is no direct acquisition of any equity shares/voting right of the target company by the acquirers. There would be no change in control over the target company consequent to the increase in shareholding/voting rights, as the acquirers are already in control of the target company.
- v) Even after the proposed buy-back, the public shareholding would be 36.91% which is more than the minimum percentage of public shareholding required for continuous listing equity shares.

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

Particulars	Number of equity shares- pre buy back	% to the existing equity share capital- pre buy back	No. of equity shares- post buy back	% holding- post Buy Back
Promoter group	4,60,94,283	54.19%	4,60,94,283	63.09%
Banks	3,70,440	0.44%	2,69,68,600	36.91%
FIIS/NRIs/OCBs	2,17,86,732	25.61%		
Public	1,68,11,428	19.76%		
Total	8,50,62,883	100.00%	7,30,62,883	100.00%

3.0 CONSIDERATION OF THE APPLICATION BY THE TAKEOVER PANEL

3.1 The aforesaid application was forwarded by SEBI to the Takeover Panel in terms of sub-regulation (4) of Regulation 4 of the Takeover Regulations. The Takeover Panel vide report dated January 20, 2009 recommended as under-

“...as on 31/03/2008, the shareholding of the Promoters/Promoters Group was 49.62% which has increased by 4.57% due to purchases by them from open market till the date of this application. The present holding of the Promoters/Promoters Group which is now 54.19% may go further upto 63.09% consequent upon the proposed buyback. The Company has undertaken to buyback such number of equity shares which will not lead to increase in holding of Promoters/Promoters Group beyond 5% upto 31/03/2009. The panel took note of this undertaking and found the proposal to be in the interest of the public shareholders considering the maximum offer price of Rs.120/- per share as against the closing price of Rs.70.45/- on 29/12/2009 at both NSE and BSE. The panel therefore recommended the exemption subject to the Target Company complying with the relevant provisions of the Companies Act, 1956, SEBI Regulations and Listing Agreement.”

4.0 FINDINGS

4.1 I have carefully considered the application dated December 30, 2008, the recommendations of the Takeover Panel and other relevant materials available on record.

4.2 I observe that in case of 100% response to the proposed buy back offer, the shareholding and voting rights of the acquirers (who are also a part of the promoter group) would increase from 54.19% to 63.09% of the outstanding equity share capital of the target company, though the number of shares held by them would remain same at 4,60,94,283 even after the buy back of shares by the target company. I note that there is no direct acquisition of shares by the acquirers and the above mentioned increase in shareholding and voting rights of the acquirers is incidental to the proposed buy back plan of the target company. Further, the proposed buy back would not result in change in control over the target company as the acquirers belong to the promoter group of the target company and have control over it.

4.3 I also note that, even in case of 100% response in the proposed buy-back offer and successful completion of the said buy-back, the public shareholding in the target company would be at a level more than what is required for meeting the requirements of minimum public shareholding as per the Listing Agreements. The acquirers made a submission in their application that their shareholding in the target company as on March 31, 2008 was 49.62% and subsequently, they had acquired 4.57% from the open market from April 01, 2008 till the date of application. According to the target company, the weekly high and low of the closing prices of the shares of the target company as quoted at NSE during two weeks preceding the date of the application (reference date– December 29,2008) was Rs. 73.10/-. I note that the target

company has also undertaken to buy back such number of equity shares which will not lead to increase in holding of the acquirers beyond 5% upto March 31, 2009.

4.4 In view of the above findings, I am of the opinion that this is a fit case for grant of exemption from the applicability of Regulation 11(1) and 11(2) of the Takeover Regulation, in terms of Regulation 3 (1) (I) read with Regulation 4 thereof.

5.0 ORDER

5.1 In view of the above findings, I, in exercise of the powers conferred upon me by virtue of section 19 of the Securities and Exchange Board of India Act, 1992 read with sub - regulation (6) of Regulation 4 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby grant exemption to the acquirers namely, Mr. Mehul Choksi, Ms. Priti Choksi, Mr. Guniyal Choksi, Partha Gems Private Limited, Priyanka Gems Private Limited, Rohan Diamonds Private Limited, Mozart Investments Private Limited, Digico Holdings Limited, Nihar Trading Private Limited and Trans Exim Limited from complying with the provisions of Regulations 11(1) and 11(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 with respect to the increase in percentage shareholding and voting rights of the acquirers from 54.19% to 63.09% in the target company viz. Gitanjali Gems Limited pursuant to the proposed buy-back of upto 1,20,00,000 paid-up equity shares by the said target company.

5.2 The exemption is granted subject to the condition that the acquirers shall ensure compliance with the statements, disclosures and undertakings made in the application and that the proposed buy back of equity shares shall

be in accordance with the Companies Act, 1956, the 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.

K.M.ABRAHAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: March 26, 2009