WTM/RKA/CFD/DCR/ 41/2012

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER

ORDER

IN THE MATTER OF PROPOSED ACQUISITION OF EQUITY SHARES OF HEMAKUTA INDUSTRIAL INVESTMENT CO. LTD.– EXEMPTION APPLICATION FILED UNDER REGULATION 11(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA(SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

Date of Hearing: July 19, 2012

Appearances:

For Applicant:
1. Mr. Kannan Krishnan Naiker
2. Mr. S. Swarnam
3. Mr. R Bangauswamy, Chartered Accountant

For SEBI:
1. Mr. Santosh Kumar Shukla, Joint Legal Adviser
2. Mr. Anindya Kumar Das, Dy. General Manager
3. Mr. E. Balasubramanian, Asst. General Manager, and
2. Mr. Amitesh Kumar, Asst. Legal Adviser

1. Hemakuta Industrial Investment Co. Ltd. ('the target company') is a company incorporated under the Companies Act, 1956, having its registered office at Munirabad, R.S., Dist: Koppal, Karnataka. The equity shares of the target company are listed on the Bombay Stock Exchange Ltd. ('BSE').

2. Mr. Kannan Krishnan Naiker ('the applicant'), of the target company, had filed an application with the Securities and Exchange Board of India ('SEBI') received by SEBI on February 03, 2012 under regulation 11(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('the Takeover Regulations'). By this application the acquirer had sought exemption from the open offer obligation under the provisions of regulations 3(1) and 4 of the Takeover Regulations in respect of the proposed acquisition of 5,62,500 shares representing 45% of paid up capital of the target company by him from existing promoters.

3. The proposed acquisition, if completed, would increase the shareholding of the applicant from 24.4% to 69.4% and would attract open offer obligations under regulations 3(1) and 4 of the Takeover Regulations. Vide his application, the applicant had sought exemption under regulation 11 *inter-alia* on following grounds:

a. The target company was established in 1940 and its business has scaled down since 1985 when the account with bank was irregular and bank recovery was filed.
b. The trading in the shares of the target company is suspended since 2002 due to lack of compliances.
c. The capital base of the target company is ₹1.25 crore, its present book value is negative by 170% and disputed income tax liability is approximately ₹3 crore. Due to the accumulated loss, income tax liability and absence of working capital funds, the target company's activity has come to a standstill.
d. The original promoters are old and not in position to concentrate on business and to revive the target company.. The proposed promoters are financially sound and would be able to bring additional funds and start business quickly.
e. At this juncture, it is not possible to raise funds from banks or other investors as net worth of company is negative and doesn't have concrete business to generate revenue.
f. The shares are acquired at price of □ 1 share (face value is□ 10/share) and the overall cost of acquisition would be □ 7.25 lakhs.
g. In order to comply with procedures under Takeover Regulations, i.e. public offer appointment of Merchant Banker, Public announcement, fees etc, the company/promoters have to spend a large sum. If the exemption is allowed, the said amount can be effectively used for revival of the target company.
h. There will not be any adverse loss to the public shareholders as the promoters will sell the shares of ₹10 each for ₹1 / per share.

4. An opportunity of personal hearing was given to the applicant on July 19, 2012 when the applicant appeared before me and submitted that he does not intend to deprive the other public shareholders of any exit opportunity and he will make individual offer to all the public shareholders of the target company to buy their shareholding in the target company at the negotiated price of ₹1/ per share. He requested time and permission to revise the application and to make revised request, which were granted to him.

5. The applicant submitted his revised application/proposal vide letter dated July 24, 2012, seeking relaxation / exemption from the procedural requirements under Chapter III and Chapter IV (regulations 13, 14, 15, 16 and 18) of the Takeover Regulations.

6. I have carefully considered the applications, oral as well as written submissions made by the applicant and other relevant material available on record.

7. I note that in his revised application the applicant has proposed that he would:

a. make individual offer to all the public shareholders of the target company offering to buy their shareholding in the target company at the negotiated price of ₹1/- per equity share ,by approaching them directly through registered post;
b. appoint a SEBI registered merchant banker to monitor and oversee the steps and the due compliance of the alternate mechanism;
c. if pursuant to such acquisition from public shareholders the applicant's shareholding in the target company exceeds the maximum permissible limit of 75%, the applicant will take necessary steps to facilitate compliance with the provisions of the Securities Contracts (Regulation) Rules, 1957 (SCRR); and
d. comply with such other conditions as may be stipulated by the SEBI.

8. The applicant has submitted that the exemption is sought only from the procedural requirements to save costs. The revised proposal would be in the interest of public shareholders and he does not intend to deprive them of any exit opportunity. The shares of the target company are not traded since 2002, when the last traded price was ₹7.40. As per the audited balance sheet of the Company, the accumulated loss is to the tune of ₹3.38 crores and networth is negative to the tune of ₹2.13 crores. The present book value of the shares of the target company is negative by 170% (-17) and also there is no earning from its operation. In absence of all these parameters, the minimum offered price is fixed at ₹1/per share i.e. the negotiated price.

9. I note that the shareholding pattern of the target company before and after the proposed acquisition is as follows:

Shareholders Category	**Before the proposed acquisition**		**After the proposed acquisition**	
	No. of shares	**% of shares total share capital**	**No. of shares**	**% of shares total share capital**
A. PROMOTER GROUP	5,96,260	47.70	33,760	2.70
B. PUBLIC SHAREHOLDING				
1. Acquirer	3,05,000	24.40	8,67,500	69.40
2. Financial Institutions/Banks	40,250	3.22	40,250	3.22
3. Individuals	3,08,490	24.68	3,08,490	24.68
GRAND TOTAL (A+B)	**12,50,000**	**100.00**	**12,50,000**	**100.00**

10. I note that the applicant had acquired 14.4% equity shares of the target company on August 03, 2011 and additional 10% equity shares on November 19, 2011. At present, he holds 24.4 % equity shares of the target company and is an additional director on the target company since November 21, 2011. It is observed that applicant is largest individual shareholder in the target company. I further note that the combined net worth of the applicant and his relatives namely; Murugan Krishnan Naiker, Krishnan A Naiker and Swarnam K Naiker, as certified by M/s R Bangauswamy, Chartered Accountant (Membership No.-021551) is ₹50,88,76,656/. The applicant proposes to acquire shares from promoters at the negotiated price of ₹1 per share and consolidate his shareholding and control.

11. I note that the applicant has expressed his willingness to revive the target company from the financial losses and for this purpose he wants to consolidate his shareholding in the target company and control over it by the proposed acquisition without compromising on the interests of the public shareholders. Although no fresh fund would be infused in the target company by the proposed acquisition, the applicant has submitted that, after the proposed acquisition, he is interested to bring additional funds and start the activity of the target company whereby all the stakeholders might get benefitted.

12. I observe that the applicant has now proposed to provide exit opportunity to all the public shareholders of the target company and has sought exemption only from the strict compliance of regulations 13, 14 and 15 with regard to the public announcement and regulation 16 and 18 with regard to filing / dispatch, etc. of letter of offer. I am of the view that the revised proposal of the applicant to make exit offer to all the public shareholders of the target company would be in line with the objective of the Takeover Regulations.

13. The shares of the target company are listed only on the BSE and are not traded since 2002. There are only 245 public shareholders in the target company. In my view, therefore, the revised proposal of the applicant is reasonable and in the facts and circumstances of the case the proposed acquisition merits relaxation from strict compliance of procedures specified under regulations 13, 14 ,15, 16 and 18 of the Takeover Regulations with regard to public announcement and filing / dispatch, etc. of letter of offer .

14. As regards the offer price, I am of the view that the public shareholders should be given exit opportunity at the best offer price so as to be in consonance with the objects of the Takeover Regulations. In this case, the book value per share of the target company is ₹(-17) /- per share. The networth of the target company is also negative. In my view, in the interest of the investors, the offer price shall be the price determined in terms of regulation 8 of the Takeover Regulations

by the merchant banker or the price at which the applicant had purchased shares of the target company during August/November 2011, whichever is higher. Further, in order to ensure information disclosure to all shareholders, the proposed public offer should be given wide publicity and information about the same should be disseminated to the public through public notice and the disclosure to BSE.

15. I also note that depending upon the response from public shareholders to the open offer of the applicant, the target company may breach the mandatory requirements of maintaining minimum level of public shareholding (25%) stipulated in rule 19A of the Securities Contract (Regulation) Rules, 1957 and Clause 40A of the Listing Agreement. In that eventuality, the applicant shall comply with the provisions of regulation 7(4) of the Takeover Regulations.

16. In view of the above, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with regulations 11 of the Takeover Regulations, hereby grant relaxation/exemption to the applicant, namely, Mr. Kannan Krishnan Naiker, from making a public announcement as required under regulation 3(1) and 4 read with regulations 13, 14 and 15 and from the obligation to file the letter of offer under regulation 16(1) of the Takeover Regulations, in respect of their revised proposal to acquire equity shares of the target company. However, the said relaxation/exemption is granted, subject to the compliance of the following conditions:

    (a) The applicant shall appoint a merchant banker in terms of regulation 12 of the Takeover Regulations for the purposes of monitoring and supervising the entire process, determining the offer price and compliance of the conditions stipulated herein ;
    (b) The offer price shall be the price determined in terms of regulation 8 of the Takeover Regulations or the price at which the applicant had purchased shares of the target company during August/November 2011, whichever is higher;
    (c) The applicant shall send individual offers to all the public shareholders of the target company by directly addressing offer letters to buy their shareholding in the target company. Such offer letters shall be sent to each of such shareholders by registered post with acknowledgement due at their addresses available on record of the target company ;
    (d) Before sending offer letters to the public shareholders of the target company, the applicant shall intimate BSE about his offer and mode thereof and the BSE shall, immediately, on receipt of such intimation, disseminate the same to the public;

(e) Simultaneously, while sending the individual offer letters to public shareholders, the applicant shall issue public notice in two newspapers having nationwide circulation; one in English and one in Kannada, being the vernacular language of the State of Karnataka, informing the public shareholders, all the details of offer including the details of the target company, acquirers, the proposed acquisition, the offer price, offer size, mode of payment, etc. The said public notice shall also mention that individual offer letters have been dispatched to all the public shareholders to their addresses available on record of the target company and the shareholders may tender their shares in response to the public notice also;

(f) The open offer shall be completed within 3 months from the date of this order and on completion of the offer, the applicant shall submit a certificate of the merchant banker to SEBI and BSE, within 7 days of completion of the acquisition certifying compliance with the above conditions of this order ;

(g) In the event shares accepted in the open offer are such that the aggregate shareholding of the applicant exceeds the maximum permissible non-public shareholding, the applicant shall comply with the stipulation mentioned under regulation 7(4) of the Takeover Regulations.

17. The application/revised proposal of the applicant is hereby disposed of, accordingly.

18. A copy of this order shall also be sent to the Bombay Stock Exchange Limited for information and compliance of condition at paragraph 16(d) and for monitoring and ensuring compliance of Rules 19 and 19A of the Securities Contracts (Regulation) Rules, 1957 and Clause 40A of the Listing Agreement, consequent to the acquisition in the matter.

DATE: October 8th, 2012 **RAJEEV KUMAR AGARWAL**
PLACE: MUMBAI **WHOLE TIME MEMBER**
SECURITIES AND EXCHANGE BOARD OF INDIA