WTM/RKA/CFD-DCR/ 16 /2015

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 and regulations 44 and 45 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with regulations 32 and 35 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 in respect of: -

1. **Mr.Tarun Jiwarajka**
2. **Mr.Ayush Jiwarajka**
3. **Manori Properties Private Limited**
4. **Mr. Sitaram Jiwarajka**
5. **Sitaram Jiwarajka (HUF)**
6. **Mr. Gopal Kumar Jiwarajka**
7. **Gopal Kumar Jiwarajka (HUF)**
8. **Ms. Savitri Devi Jiwarajka**
9. **Ms. Neetu Jiwarajka**
10. **Mr. P.N. Mehta**

In the matter of acquisition of shares of Salora International Limited.

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1. Salora International Limited (hereinafter referred to as "the target company") is a company having its registered office at D-13/4, Okhla Industrial Area, Ph-II, New Delhi - 110020. Its shares are listed on Bombay Stock Exchange Limited ("BSE") and National Stock Exchange of India Limited ("NSE").

2. The promoters of the target company as on the quarter ending March 2009 comprised Mr. Tarun Jiwarajka, Mr.Ayush Jiwarajka, Manori Properties Private Ltd, Mr.Sitaram Jiwarajka, Sitaram Jiwarajka (HUF), Mr. Gopal Kumar Jiwarajka, Gopal Kumar Jiwarajka (HUF), Ms. Savitri Devi Jiwarajka, Ms. Neetu Jiwarajka Mr. P.N. Mehta (hereinafter collectively referred to as "the promoter group").

3. As on March 30, 2009, the promoter group held 50,87,883 equity shares of the target company constituting 57.77% of the its share capital. As per the shareholding pattern and the disclosures filed with the stock exchanges, additional acquisitions were made by the following entities of the promoter group resulting in the below-mentioned changes in the shareholding of the promoter group in the target company:-

Name of promoter/ acquirer	Date of acquisition	No. and % of shares acquired	Pre-acquisition holding of promoter group	Post-acquisition holding of promoter group
Tarun Jiwarajka	March 31, 2009	2,20,000 (2.5%)	**57.77%**	60.27%
Ayush Jiwarajka	March 31, 2009	2,16,098 (2.45%)	60.27%	62.72%
Tarun Jiwarajka	May 11, 2009	1,08,018 (1.23%)	62.72%	63.95%
Ayush Jiwarajka	May 11, 2009	1,14,267 (1.3%)	63.95%	65.25%
Manori Properties Private Limited	May 19, 2009	1,30,000 (1.48%)	65.25%	**66.72%**

4. In view of the above acquisitions, SEBI issued a show cause notice dated July 11, 2014 (hereinafter referred to as "the SCN") to the promoter group of the target company (hereinafter collectively referred to as "the noticees") calling upon them to show cause as to why suitable directions under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") and regulation 44 and 45 of the Takeover Regulations, 1997 read with regulations 32 and 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "Takeover Regulations, 2011") should not be issued against them.

5. The following was, *inter alia*, alleged in the SCN: -
   i. Consequent to the aforementioned acquisitions, the collective shareholding of the promoter group of the target company increased from 57.77% to 66.72% i.e. an increase of 8.95% of the share capital of the target company.
   ii. The aforementioned acquisitions were made through transactions being in excess of 0.5% of the share capital of the target company listed on the stock exchange, which qualified as bulk deals in terms of SEBI Circulars dated January 14, 2004 (SEBI/MRD/SE/Cir-7/2004) and September 02, 2005 (MRD/DoP/SE/Cir-19/05).
   iii. The said increase of 8.95% shares in the shareholding of the promoters through bulk deals triggered the requirement of making a public announcement of an open offer under regulation 11(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "the Takeover Regulations, 1997").
   iv. As per regulation 14(1) of the Takeover Regulations, 1997, the public announcement, referred to in regulation 11, shall be made not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein.

v. Thus, in terms of regulation 11(2) read with regulation 14(1) of the Takeover Regulations, 1997, the promoter group of the target company, was required to make a public announcement of an open offer for acquiring shares of the target company within 4 working days from the date of acquisitions i.e. March 31, 2009, May 11, 2009 and May 19, 2009, which they failed to make.

6. The Noticees filed their replies to the SCN vide letters dated August 16, 2014. Subsequently, they were also granted an opportunity of personal hearing on September 24, 2014 when their authorized representative appeared and made submissions on their behalf. The Noticees also filed their written submissions in the matter vide letter dated October 14, 2014. The replies/submissions of the Noticees are, *inter alia,* as under:-

Reply/submissions of Mr. Tarun Jiwarajka, Mr. Ayush Jiwarajka and Manori Properties Private Limited.

(a) They form part of the promoter group of the target company.
(b) At the time of the acquisitions, they were under a genuine belief that they had complied with the provisions of the Takeover Regulations, 1997.
(c) The impugned acquisitions were made through open market purchases, and the promoter group and the target company made the requisite disclosures under the Takeover Regulations, 1997 and SEBI (Prohibition of Insider Trading) Regulations, 1992 in a timely manner to the stock exchanges.
(d) The impugned acquisitions were made by them in their individual capacity and not in concert with the other promoters. They had placed the orders with the brokers for purchase of said shares below the specified limit of 5%. The brokers had acquired the said shares in multiple trades from open market without realizing that there was a technical breach over the single day quantity limits specified under the definition of "bulk deal", which was an inadvertent error of judgment.
(e) The impugned acquisitions were made without any *mala fide* or intention to derive any undue benefits. At the time of the impugned acquisitions, they were under the impression that the permissible creeping acquisition of 5%, as mentioned in the second proviso to regulation 11(2) of Takeover Regulations, 1997, is applicable for every financial year and thus, additional shareholding, aggregating 4.945% shares of the target company, was acquired during the financial year ended 2009 and additional shareholding, aggregating 4.003% shares of the target company, was acquired during the financial year ended 2010.

(f) SEBI issued a circular dated August 6, 2009, after the impugned acquisitions, wherein SEBI clarified that the second proviso to regulation 11(2) of the Takeover Regulations, 1997 provides that an acquirer, who holds 55% or more but less than 75% of the shares or voting rights in a target company, can acquire additional shares or voting rights up to a maximum of 5% in a target company in one or more tranches without any restriction on the time-frame, without making a public announcement.

(g) Thus, the impugned acquisitions are being treated as non-compliance of the aforesaid regulation only due to non-clarity of the intent of legislation at the time when the said acquisitions were made.

(h) Acquisition of voting rights consequent upon acquisition of said shares has also not given any additional effective right in the management of the target company since the promoter group already had more than 51% voting rights and were already in control of the target company.

(i) Subsequent to the impugned acquisitions, the promoter group shareholding in the target company has remained at same level i.e. 66.72% till date and has always remained below 75% in compliance with the Regulations.

(j) There has been no sale/trading of the said shares by the promoter group since the impugned acquisitions. Further, the target company have not declared any dividend nor has it issued any bonus or rights shares since the impugned acquisitions and thus, no pecuniary benefit has been derived from the said acquisitions.

(k) The impugned acquisitions have been made *bona fide* under the Takeover Regulations, 1997 and though there has been a technical violation, it has not resulted in any consequential loss to any investor or affected the interests of the shareholders or public at large. On the contrary, the personal wealth of these acquirers has eroded since the acquisitions.

Reply/ submissions of Mr. Sitaram Jiwarajka, Sitaram Jiwarajka (HUF), Mr. Gopal Kumar Jiwarajka, Gopal Kumar Jiwarajka (HUF), Ms. Savitri Devi Jiwarajka, Ms. Neetu Jiwarajka Mr. P.N. Mehta (hereinafter referred to as "PACs")

(a) Although the acquirers (i.e. Mr. Tarun Jiwarajka, Mr. Ayush Jiwarajka and Manori Properties Private Limited) formed part of the promoter group of the target company, the acquisitions have not been made in concert with the other members of the promoter group.

(b) They were not remotely involved in the impugned violations of the Takeover Regulations,1997 committed by the acquirers.

(c) Even assuming that the acquisitions have been made in violation of the Takeover Regulations, 1997, neither the acquirers nor any other member of the promoter group have

made any pecuniary gain. The acquirers have also not traded since those acquisitions. Further, acquisitions of voting rights consequent upon acquisition of shares has not given the acquirers or the other members of the promoter group an additional effective right in the management of the target company since prior to the acquisition the promoter group including the acquirers had more than 50% voting rights and even after the said acquisitions, the voting rights have not gone above 75% enabling the promoter group to have a special majority.

7. I have considered the SCN, replies and submissions made by the noticees and other material available on record. In the present case, it is noted that the following facts are undisputed:-
   i. Six members of the promoter group Mr. Tarun Jiwarajka, Mr.Ayush Jiwarajka, Mr.Sitaram Jiwarajka, Mr. Gopal Kumar Jiwarajka, Ms. Savitri Devi Jiwarajka and Ms. Neetu Jiwarajka are members of the same family. Mr. Sitaram Jiwarajka and Mr. Gopal Kumar Jiwarajka are *kartas* of Sitaram Jiwarajka (HUF), Gopal Kumar Jiwarajka (HUF), respectively. All these entities alongwith Manori Properties Private Ltd. and Mr. P.N. Mehta comprised and continue to comprise the promoter group of the target company.
   ii. On March 31, 2009 (i.e. during the financial year 2008-2009), Mr. Tarun Jiwarajka and Mr. Ayush Jiwarajka acquired 2.5% and 2.45% shares, respectively in the target company resulting in an increase of shareholding of the promoter group from 57.77% to 62.72% (i.e. increase of 4.95%) during the financial year 2008-2009. During the financial year 2009-2010, these two promoters further acquired 1.23% and 1.3% shares, respectively in the target company on May 11, 2009. In addition, Manori Properties Private Limited acquired 1.48% shares in the target company on May 19, 2009. Consequent to these acquisitions, the shareholding of promoter group in the target company increased from 62.72% to 66.72% (i.e. 4% increase) in the financial year 2009-2010. Thus, the shareholding of the promoter group increased from 57.77% in financial year 2008-2009 to 66.72% in the financial year 2009-2010. All these acquisitions were made through bulk deals.

8. I note that the basis of the allegation against the Noticees is that prior to the acquisitions dated March 31, 2009, the entire promoter group cumulatively held 57.77% shares of the target company and in terms of regulation 11(2) they could not acquire even a single share in the target company without making a public announcement to acquire shares in accordance with the Takeover Regulations, 1997. The acquirers have contended that at the time of the impugned acquisitions, there was a lack of clarity as to whether the acquisition of 5% shares permissible under the second proviso to regulation 11(2) could be done in every financial year and therefore they had acquired 4.95% and 4.% shares in the financial years 2008-09 and 2009-10, respectively.

9. In order to deal with the allegations leveled against the Noticees in the SCN and their contention, I deem it necessary to refer to the provisions of regulation 11(2) of the Takeover Regulations, 1997 as it existed at the time of acquisitions in this case. The said provisions read as follows: -

" Consolidation of holdings

11. (2) No acquirer, who together with persons acting in concert with him holds, fifty five per cent. (55%) or more but less than seventy five per cent. (75%) of the of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent. (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures 'seventy five per cent. (75%)', the words and figures 'ninety per cent. (90%)' were substituted.

Provided further that such acquirer may, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him up to five per cent. (5%) voting rights in the target company subject to the following:-

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company;

(ii) the post acquisition shareholding of the acquirer together with persons acting concert with him shall not increase beyond seventy five per cent.(75%)."

10. In terms of regulation 11(2), an acquirer, holding 55% or more but less than 75% shares or voting rights in the target company could acquire any additional shares or voting rights therein only by way of an open offer by making a public announcement in accordance with the Takeover Regulations, 1997 except in a situation where the acquisitions were made in accordance with the second proviso to regulation 11(2). The second proviso was inserted in the Takeover Regulations, 1997 with effect from October 30, 2008. In terms of this proviso, an acquirer holding 55% or more but less than 75% shares or voting rights in the target company could acquire additional shares or voting rights up to 5% without making a public announcement subject to the following two conditions:-

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through ***bulk deal*** */block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company;*
(ii) the post acquisition shareholding of the acquirer together with persons acting concert with him shall not increase beyond seventy five per cent.

11. It is clear from the above provision that in order to qualify for the benefit of acquiring upto 5% shares without making a public announcement for an open offer, the acquisition in question should be through open market purchases in the normal segment but not through bulk deals. In this case all the acquisitions were made by the acquirers through bulk deals as defined in SEBI Circulars dated January 14, 2004 and September 02, 2005. Thus, none of the acquisitions made by the acquirers met the requirements of the second proviso to regulation 11(2).

12. It is pertinent to mention that though was there was a lack of clarity regarding the availability of the permissible acquisition of 5% financial year-wise till SEBI issued clarification on August 06, 2009, there was no ambiguity at all with respect to non-availability of benefit of the above mentioned proviso of regulation 11(2) in case of acquisitions through bulk deals, etc. I, therefore, reject the contentions of the acquirers in this regard.

13. The acquires have further contended that the brokers, with whom they had placed their purchase orders, had acquired the shares of the target company in multiple trades from open market without realizing that there was a technical breach over the single day quantity limits specified under the definition of "bulk deal". In this regard, I note that the acquires had made the acquisitions under consideration on five instances and on all these instances, the acquisitions were made through bulk deals. This fact in itself rules out any scope of an inadvertent error on part of the broker in placing orders. Further, given that the orders were made on the last day of the financial year, it is clear that the intent of the acquirers was to purchase the shares on the same day. It is thus clear that the acquisitions were made by the acquirers being conscious of the percentages of shares of the target company that they were purchasing and that there was no technical breach in that regard. I, therefore, do not find any merit in these contentions of the acquirers.

14. It has also been contended by the Noticees that the acquisitions in question were not made by the acquirers acting in concert with other members of the promoter group . In this regard, it is also relevant to mention that, by their submissions, on the one hand the acquirers have sought to claim benefit of 5% acquisition in every financial year under regulation 11(2) by clubbing the

shareholding of all promoters on the other they have claimed that other promoters were not acting in concert with the acquirers. The fact that they have consolidated the shareholding of all promoters with regard to increase of total shareholding of entire promoter group itself indicates that the Noticees were acting in concert with each other with regard to the acquisitions in question. The Noticees have failed to prove anything contrary to this fact. I further note that eight out of the ten promoters of the target company were members of the same family/HUFs of members of the same family. It is further noted that all the promoters of the target company were declared as *persons acting in concert* in the disclosures made by the target company with the stock exchange under regulation 8(3) of the Takeover Regulations, 1997. They have taken into account the combined shareholding of the entire promoter group for the purpose of consolidation of their shareholding under the provisions of second proviso to regulation 11(2) of the Takeover Regulations, 1997. From these facts and circumstances it is evident that the acquirers and other promoters were acting in concert for the purpose of the acquisitions under consideration.

15. In view of the above, I find that all the acquisitions as found hereinabove, were in breach of the provisions of regulation 11(2) of the Takeover Regulations, 1997. In this case, the acquisition made on March 31, 2009 itself triggered the obligation of the Noticees to make the requisite public announcement in accordance with the provisions of the Takeover Regulations, 1997. Accordingly, the Noticees were required to make public announcement in terms of regulation 11(2) read with regulation 14(1) of the Takeover Regulations, 1997 within 4 days from March 31, 2009 which they failed to make. In this context, I note that the Hon'ble Securities Appellate Tribunal ("SAT"), vide order dated September 08, 2011 in the matter of *Nirvana Holdings Private Limited vs. SEBI* (Appeal no. 31/2011) observed as follows:

> *"It must be remembered that whenever an acquirer violates Regulation 10, 11 or 12 of the takeover code by not making a public announcement, he should be directed to comply with the provision by making a public offer. The words "unless such acquirer makes a public announcement" appearing in Regulations 10 and 11(1) make these provisions mandatory and a public announcement has to be made. Similar words appear in Regulation 12 as well. These provisions make the acquisition conditional upon a public announcement being made. The primary object of the takeover code is to provide an exit route to the public shareholders when there is substantial acquisition of shares or a takeover. This right to exit is an invaluable right and the shareholders cannot be deprived of this right lightly. It is only when larger interest of investor protection or that of the securities market demands that this right could be taken away. Therefore, as a normal rule, a direction to make a public announcement to acquire shares of the target company should issue to an acquirer who fails to do that. The Board need not give reasons as to why such a*

direction is being issued because that is the mandate of Regulations 10, 11 and 12. However, if the issuance of such a direction is not in the interest of the securities market or for the protection of interest of investors, the Board may deviate from the normal rule and issue any other direction as envisaged in Regulation 44 of the takeover code. In that event, the Board should record reasons for deviation ."

16. In the present case, the obligation of the Noticees to make the open offer has been triggered on account of breach of regulation 11(2) and the acquisitions in such breach have been repeated by them. Had the Noticees made the public announcement within a period of 4 days from March 31, 2009 in accordance with the Takeover Regulations, 1997 and complied with all related activities within the timelines specified therein, all formalities with respect to their public announcement and the open offer would have been completed on July 02, 2009. As per the provisions of regulation 20(7) of the Takeover Regulations, 1997 if the acquirer acquires shares after making the public announcement at a price higher than the offer price, then the highest of the price paid for such acquisition shall be payable in the open offer. Thus, the acquirers in this case, could have acquired further shares only in compliance of these regulations. In this case, they not only failed to make the public announcement within 4 days from March 31, 2009 but also made further acquisitions in breach of the regulations. The acquisitions on March 31, 2009 were at a price of ₹ 27.83 per share and ₹ 28.11 per share and subsequent acquisitions on May 11, 2009 were at the price of ₹ 33.98 per share and ₹ 33.90 per share. The acquisition on May 19, 2009 was at price of ₹ 32.65 per share. Thus, had the Noticees made the public announcement within the time stipulated in regulation 14 of the Takeover Regulations, 1997, the price offered to the shareholders in the open offer could have been determined taking into consideration the highest of the price of such acquisitions. It is also relevant to mention that at the relevant time the shares of the target company were infrequently traded on the stock exchange. I find that the Noticees have deprived the shareholders the exit opportunity at the best offer price. In the facts and circumstances of the present case, I do not find any reason to deviate from the normal rule to make a public announcement to acquire shares of the target company in accordance with the provisions of Takeover Regulations, 1997, and issue any other direction as envisaged in regulation 44.

17. I am also of the view that since the public announcement now would provide a delayed exit opportunity to the shareholders of the target company, the Noticees should pay interest on the consideration amount to the shareholders who tender their shares in the open offer and who are eligible for interest as per law.

18. Considering the above, I, in exercise of powers conferred upon me under sections 11, 11B read with section 19 of the SEBI Act and regulation 44 and 45 of the Takeover Regulations, 1997 read with regulations 32 and 35 of the Takeover Regulations, 2011, hereby issue the following directions:

a) The Noticees shall make a public announcement to acquire shares of the target company in accordance with the provisions of the Takeover Regulations, 1997, within a period of 45 days from the date of this order;

b) The Noticees shall, alongwith the consideration amount, pay interest at the rate of 10% per annum from July 03, 2009 to the date of payment of consideration, to the shareholders who were holding shares in the target company on the date of violation and whose shares are accepted in the open offer, after adjustment of dividend paid, if any.

19. This order shall come into force with immediate effect. A copy of this order shall be served upon the Noticees for ensuring compliance with the above directions

Sd/-

DATE: March 4th, 2015
PLACE: MUMBAI

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA