SEcurities and EXchange BOARD OF INDIA

ORDER


IN THE MATTER OF NON-COMPLIANCE WITH THE MINIMUM PUBLIC SHAREHOLDING NORMS

IN RESPECT OF ACCEL FRONTLINE LIMITED

1. Accel Frontline Limited (hereinafter referred to as “the Company”) is a company incorporated on June 08, 1995 under the provisions of the Companies Act, 1956. The Corporate Identification Number (CIN) of the Company is L30006TN1995PLC031736. The registered office of the Company is situated at 75, 3rd Floor, Nelson Manickam Road, Aminjikarai, Chennai, Pin Code - 600029. The equity shares of the Company are listed on the National Stock Exchange of India Limited (“NSE”) and the Bombay Stock Exchange Limited (“BSE”).

2. As per the shareholding pattern of the Company as available in the website of the BSE for the quarter ended March 31, 2015, it is noted that the public shareholding in the Company is at 24.71%. The same is less than the mandated 25% under rule 19A of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as 'SCRR') read with section 21 of the Securities Contracts (Regulation) Act, 1956 (SCRA). In this context, it is important to refer to the provisions governing the minimum public shareholding in companies, the methods prescribed by SEBI for listed companies to achieve compliance with such norms and the need for such minimum public shareholding in listed companies -

a) The SCRA was enacted to prevent undesirable transactions in securities by regulating the business of dealings therein, and by providing for certain other matters connected therewith. Further for carrying out the mandate of the SCRA, the SCRR was framed by the Central Government. Section 21 of the SCRA mandates the compliance, by all listed companies, of the conditions of the listing agreement with the stock exchange. The SCRR inter-alia, prescribes the requirements which have to be satisfied by companies for the purpose of getting their securities listed on any stock exchange in India.
b) The SCRR was amended vide notification of the Securities Contracts (Regulation) (Amendment) Rules, 2010 (‘First amendment’) by the Central Government dated June 04, 2010 and amended once again vide Securities Contracts (Regulation) (Second Amendment) Rules, 2010 (‘Second amendment’) in terms whereof Rule 19(2)(b) was amended and a new rule; Rule 19(A) was introduced to the SCRR respectively. The amended provisions of rule 19(2)(b) and the newly inserted rule 19(A) of the SCRR are reproduced below for reference:

Requirements with respect to the listing of securities on a recognised stock exchange.

19 (2) …………..

(b) (i) At least twenty five per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company was offered and allotted to public in terms of an offer document; or
(ii) At least ten per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company was offered and allotted to public in terms of an offer document if the post issue capital of the company calculated at offer price is more than four thousand crore rupees:

Provided that the requirement of post issue capital being more than four thousand crore rupees shall not apply to a company whose draft offer document is pending with the Securities and Exchange Board of India on or before the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, if it satisfies the conditions prescribed in clause (b) of sub-rule 2 of rule 19 of the Securities Contracts (Regulation) Rules, 1956 as existed prior to the date of such commencement:

Provided further that the company, referred to in sub clause (ii), shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of listing of the securities, in the manner specified by the Securities and Exchange Board of India.

Continuous Listing Requirement.

19A. (1) Every listed company [other than public sector company] shall maintain public shareholding of at least twenty five per cent:

Provided that any listed company which has public shareholding below twenty five percent, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India.

Explanation: For the purposes of this sub-rule, a company whose securities has been listed pursuant to an offer and allotment made to public in terms of sub-clause (ii) of clause (b) of sub-rule (2) of rule 19, shall maintain minimum twenty five per cent public shareholding from the date on which the public shareholding in the company reaches the level of twenty five percent in terms of said sub-clause.

(2) Where the public shareholding in a listed company falls below twenty five per cent at any time, such company shall bring the public shareholding to twenty five per cent within a maximum period of twelve months from the date of such fall in the manner specified by the Securities and Exchange Board of India.

(3) Notwithstanding anything contained in this rule, every listed public sector company shall maintain public shareholding of at least ten per cent:

Provided that a listed public sector company-
(a) which has public shareholding below ten per cent, on the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2010 shall increase its public shareholding to at least ten per cent, in the manner specified by the Securities and Exchange Board of India, within a period of three years from the date of such commencement;

(b) whose public shareholding reduces below ten per cent, after the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2010 shall increase its public shareholding to at least ten per cent, in the manner specified by the Securities and Exchange Board of India, within a period of twelve months from the date of such reduction.

[Emphasis supplied]

c) In terms of the amended provisions of rules 19(2)(b) and 19A of the SCRR, all listed companies in the private sector were mandated to achieve and maintain the minimum public shareholding of 25% of each class or kind of equity shares or debentures convertible into equity shares issued by such companies. Those companies with public shareholding of less than 25% were required to achieve the same, within a period of three years from the date of commencement of the first amendment i.e. by June 03, 2013 in the manner specified by the Securities and Exchange Board of India (SEBI).

d) Importantly, in terms of rule 19A(2) of the SCRR, where the public shareholding in a listed company falls below twenty five per cent at any time, such company shall bring the public shareholding to twenty five per cent within a maximum period of twelve months from the date of such fall in the manner specified by SEBI.

e) In order to align the requirements in the Listing Agreement with the requirements specified in Rule 19(2)(b) and Rule 19A of SCRR and to specify the manner in which public shareholding may be raised to the prescribed minimum level, SEBI issued a Circular No CIR/CFD/DIL/10/2010 dated December 16, 2010 to suitably amend Clause 40A of the Listing Agreement. This Circular provided the following methods for complying with the minimum public shareholding requirement:

   a. Issuance of shares to the public through prospectus;
   b. Offer for sale of shares held by promoters to public through prospectus;
   c. Sale of shares held by promoters through the secondary market;

f) Subsequently, SEBI issued another Circular dated February 08, 2012 which inter-alia provided that listed companies may achieve the minimum public shareholding requirement through Institutional Placement Programme (IPP). With a view to further facilitate listed
companies to comply with the minimum public shareholding requirements within the time specified in the SCRR, SEBI issued the Circular dated August 29, 2012 which specified the following additional methods to comply with the minimum public shareholding requirements:

d. Rights Issues to public shareholders, with promoters/promoter group shareholders forgoing their rights entitlement.

e. Bonus Issues to public shareholders, with promoters/promoter group shareholders forgoing their bonus entitlement.

f. Any other method as may be approved by SEBI, on a case to case basis.

g) SEBI also initiated a consultative process with these companies and market participants to elicit a concrete plan of action as regards ensuring compliance with the minimum public shareholding requirement and held a series of meetings with active companies to enable the process of complying with the minimum public shareholding requirement.

h) All these measures and methods were taken/initiated to ensure that listed companies comply with the minimum public shareholding norms before the due date and comply strictly in accordance with the prescribed methods.

3. The rationale behind the insertion of rule 19A in the SCRR, can be noted from the Press Release dated June 4, 2010, issued by the Ministry of Finance, Government of India, which inter alia states that "A dispersed shareholding structure is essential for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices. Further, the larger the number of shareholders, the less is the scope for price manipulation.". Further, the availability of a minimum portion/number of shares (floating stock) of the listed securities with the public ensures that there is a reasonable depth in the market and the prices of the securities are not susceptible to manipulation. Moreover a dispersed shareholding structure is also essential for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices. I also note the following observations made by the Hon'ble Securities Appellate Tribunal in the order dated July 03, 2013 passed in the matter of Gillette Limited vs. SEBI (Appeal no. 65 of 2013):

"24. ............... In our opinion, the Appellant seems to have overlooked, whether deliberately or inadvertently, the fact that the underlying philosophy behind the requirement of a minimum public holding of 25% is prevention of concentration of shares in the hands of a few market players by ensuring a sound and healthy public float to stave off any manipulation or perpetration of other unethical activities in the securities market which would unfortunately be the
irrefragable consequence of the reins of the market being in the hands of a few.

25. It is pertinently noted that in the proposition put forth by the Appellant, the entire idea behind having a specific percentage of 25 involving a large number of the members of the public in the shareholding of listed companies, is eclipsed by the Appellants trying their best to part with as little of the promoters' shareholding as possible. .........."

4. As regards the alleged non-compliance by the Company with the MPS norms, the following important facts need to be noted:

a) During December 2013, one of the Company's promoter, CAC Corporation, Japan, had acquired a majority stake in the Company and triggered an open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("the Takeover Regulations"). Pursuant to the completion of the open offer on March 03, 2014, the total promoters' shareholding increased to 89.02% (with public shareholding at 10.98%).

b) In order to comply with the minimum public shareholding norms (which mandate that the public shareholding in a listed public company should be at a minimum of 25%), the Company, vide letter dated October 30, 2014, sought approval from SEBI to allow its promoter group to offer for sale 41,72,547 equity shares aggregating to 14.02% of its equity share capital by way of a proposed Institutional Placement Programme ("IPP").

c) SEBI had approved such proposal and conveyed the same to the Company/its promoters. However, the Company did not adopt the aforesaid method to comply with the MPS requirement.

d) Thereafter, the promoter group of the Company decided to meet the minimum public shareholding norms by undertaking an Offer for Sale ("OFS") through the stock exchange mechanism and had undertook OFS as per details below:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Sellers in the OFS</th>
<th>Date of OFS</th>
<th>Exchange</th>
<th>Shares offered</th>
<th>Shares sold</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Accel Limited (AL) and Mr. Panicker</td>
<td>27.01.2015</td>
<td>NSE</td>
<td>38,88,497</td>
<td>5,54,343</td>
</tr>
<tr>
<td>2</td>
<td>AL and CAC Holdings Corporation (CAC)</td>
<td>12.02.2015</td>
<td>NSE, BSE</td>
<td>36,18,204</td>
<td>28,34,186</td>
</tr>
<tr>
<td>3</td>
<td>AL</td>
<td>27.02.2015</td>
<td>NSE, BSE</td>
<td>7,84,018</td>
<td>6,96,444</td>
</tr>
</tbody>
</table>

e) Pursuant to the above three OFS, the promoter group of the Company holds 2,24,08,978 shares (i.e., 75.29%) equity shares in the Company. The promoter group therefore holds 0.29% equity shares in excess which has to be divested in order to comply with the Minimum Public Shareholding norms.
5. From the above facts, it can be noticed that the public shareholding in the Company fell below the mandatory minimum of 25% on March 03, 2014. In terms of the rule 19A(2) of the SCRR, the Company had to bring the public shareholding to twenty five per cent within a maximum period of twelve months from the date of such fall in the manner specified by SEBI. The due date for achieving compliance with the MPS requirement was therefore on or before March 02, 2015. Though, it is seen that the public shareholding in the Company is less than the minimum stipulated level of 25% by only 0.29%, it is to be noted that the Company is non-compliant with the MPS norms.

6. It is noted that the Company, vide letters dated March 03, 2015 and June 15, 2015, stated that the promoter group have a bonafide intention to comply with the applicable laws but were unable to meet the MPS norms within the stipulated time period despite all efforts. The Company requested SEBI to-

   a) extend time to the promoter group to comply with the applicable provisions of the SCRR and the Listing Agreement to achieve compliance with the MPS norms; and
   b) one of the promoters, AL be allowed to sell the excess 87,574 (0.29%) equity shares of the Company in the open market instead of undertaking an OFS. If permission was granted, they propose to complete the sale through open market within a period of 30 days from the receipt of approval.

The above proposal was made after the due date (i.e., March 02, 2015) for compliance. Such proposal should have been made before the due date for being considered by SEBI. Also, the relevant statute (i.e. Rule 19A of the SCRR read with clause 40A of the Listing Agreement) does not provide for exemptions or relaxation of the continuous listing requirements mandated therein. It also needs to be noted that SEBI had passed an interim order dated June 04, 2013 against 105 listed companies who did not comply with the minimum public shareholding as stipulated under rule 19A of the SCRR within the due date i.e., June 03, 2013. In all these companies, the promoters' shareholding was in excess of 75% and consequently the minimum public shareholding was less than the stipulated 25%. Such order was confirmed against companies who continued to be non-compliant with the MPS norms and SEBI has also initiated further action against them.

7. In any case of non-compliance with the MPS norms, I am of the considered opinion that the shareholders and the other persons/entities forming part of the promoter/ promoter group and the directors of such non-compliant companies are mainly responsible for such the non-compliance within specified timelines. The promoters/promoter group including the above persons/entities of
the Company would have an advantage on account of their disproportionate stake compared to the public in their Company and also place them in a more advantageous position as compared to the promoter/promoter groups of the compliant companies on account of violating the regulatory requirement prescribed in the SCRR by the Central Government and as specified by SEBI.

8. As such, in order to ensure an equitable participation of the promoter/promoter group and the directors qua the public shareholders in the affairs of a private sector listed company and also provide a level playing field for the promoter/promoter groups of these companies with the promoter/promoter groups of the other companies that have already complied with the abovementioned provisions of SCRR and in the manner as specified by SEBI, it is imperative that this balance be restored and the disproportionate advantage arising out of non-compliance of the minimum public shareholding requirement not be permitted to be vested with the promoter/promoter group. In view thereof, in the interest of all investors and the orderly development of the securities market, it is necessary to pass suitable directions.

9. In view of the foregoing, I, in exercise of the powers conferred upon me by virtue of section 19 and under Sections 11(1), 11(2)(j), 11(4) and 11(B) of the Securities and Exchange Board of India Act, 1992 read with section 12A of Securities Contracts (Regulation) Act, 1956, pending passing of the final order, hereby:

a. direct freezing of voting rights and corporate benefits like dividend, rights, bonus shares, split, etc. with respect to the excess of proportionate promoter/promoter group shareholding (including persons allegedly shown as public shareholders) in the Company, till such time the Company complies with the minimum public shareholding requirement.

i. For the purpose of above direction, proportionate promoter/promoter group shareholding shall be computed on the basis of the public shareholding in the company; e.g. if public shareholding in a company after the deadline is less than 25%, say 10%, in such case, the proportionate promoter shareholding would be 30% (i.e. three times the existing public shareholding). Thus the excess promoter/promoter group holding i.e. 60% shall be frozen till the minimum public shareholding requirement is complied with.

ii. In case of more than one entity in the promoter/promoter group in a company, the excess promoter holding for the purpose of taking action shall be computed on a proportionate basis. For illustrating the example above, if there are three promoters; A, B and C with shareholdings of 45%, 35% and 10% respectively; the excess
promoter holding of 60% shall be allocated as follows:

1. A: (60% multiplied by [45%/45%+35%+10%]) = 30.00%
2. B: (60% multiplied by [35%/45%+35%+10%]) = 23.33%
3. C: (60% multiplied by [10%/45%+35%+10%]) = 06.67%

Total = 60.00%

Based on the above, the excess shareholding of the promoters (including persons allegedly shown as public shareholders) of the Company that should be frozen is presented in the following table:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of the promoter / shareholder</th>
<th>Shareholding (as on March 31, 2015)</th>
<th>Excess shareholding to be frozen</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CAC Holdings Corporation</td>
<td>60%</td>
<td>0.92%</td>
</tr>
<tr>
<td>2</td>
<td>Accel Limited</td>
<td>14.68%</td>
<td>0.23%</td>
</tr>
<tr>
<td>3</td>
<td>Accel Systems Group Inc</td>
<td>0.62%</td>
<td>0.01%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>75.30%</td>
<td>1.16%</td>
</tr>
</tbody>
</table>

b. prohibit the promoters/promoter group and the directors of the Company from buying, selling or otherwise dealing in securities of Company, either directly or indirectly, in any manner whatsoever, except for the purpose of complying with minimum public shareholding requirement till such time the Company complies with the minimum public shareholding requirement.

c. restrain the shareholders forming part of the promoter/promoter group from holding any new position as a director in any listed company, till such time the Company complies with the minimum public shareholding requirement;

d. restrain the directors of Company from holding any new position as a director in any listed company, till such time the Company complies with the minimum public shareholding requirement.

10. This order is without prejudice to the right of SEBI to take any other action, including the following against the Company, their promoters and directors, or issuing such directions in accordance with law:

a. Levying monetary penalty under adjudication proceedings;

b. initiating criminal proceedings by way of prosecution proceedings;

c. moving the scrip to trade-to-trade segment;

d. excluding the scrip from F&O segment;
e. any other action/direction as may be deemed appropriate.

For the above purpose, this Order shall be treated as a show cause notice and the above persons may show cause as to why such proposed action should not be initiated against them.

11. The Board/audit committee of the Company shall, at the end of each quarter, submit compliance report, to the stock exchanges where the shares of Company are listed, giving the extent to which compliance has been achieved and the efforts taken therefor.

12. Copies of this order shall be served on the stock exchanges, depositories and the Company to enable them to take necessary steps to implement the order. The stock exchanges and depositories shall collaborate for the purpose of implementing the order. Depositories shall rely on the filings made with the stock exchanges for ascertaining the promoters, their shareholding and public shareholding. Stock exchanges shall provide the aforesaid data to the depositories to enable them to take necessary action as mentioned above.

13. The entities/persons against whom this order is being passed may file their replies, if any, within 21 days from the date of this order. The entities mentioned herein may also, if they so desire indicate in their replies whether they wish to avail of the opportunity of personal hearing before the Securities and Exchange Board of India at its Head Office at SEBI Bhavan, Plot C4-A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051 on a date and time to be fixed on a specific request.

14. This order shall come into force with immediate effect.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date : 22/07/2015
Place : Mumbai