

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

**UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 32 OF SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2 IN RESPECT OF KGPL INDUSTRIES & FINVEST PVT. LTD.**

**IN THE MATTER OF ACQUISITION OF SHARES OF SOMA TEXTILES AND INDUSTRIES LTD.**

1. Soma Textiles and Industries Ltd., (hereinafter referred to as “Target Company”) is a company having its registered office at 2, Red Cross Place, Kolkata - 700001 and its shares are listed on the Bombay Stock Exchange Ltd. and National Stock Exchange of India Ltd.
2. As on March 13, 2014, the promoter group of the target company was holding 44.37% shares of its total share capital. On March 14, 2014, one of the promoters of the target company i.e. KGPL Industries & Finvest Pvt. Ltd. (hereinafter referred to as “acquirer”) acquired 16,20,000 shares constituting 4.9% of the share capital of the target company through open market purchase.
3. Consequently, the following changes were observed in the shareholding of the acquirer and the promoter group:

	<b>Pre-acquisition shareholding (no.)</b>	<b>Pre-acquisition shareholding (%)</b>	<b>Post- acquisition shareholding (no.)</b>	<b>Post- acquisition shareholding (%)</b>
KGPL Industries & Finvest Pvt. Ltd.	66,77,716	20.22	82,97,716	<b>25.12</b>
Promoter Group	1,46,57,241	44.37	1,62,77,241	49.28

4. As highlighted in the above table, pursuant to the aforesaid acquisition by the acquirer on March 14, 2014, its shareholding in the target company increased from 20.22% to 25.12% thereby breaching the threshold of 25% stipulated in regulation 3(1) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “Takeover Regulations,

2011). In terms of regulation 3(1) read with regulation 3(3) and 13(2) of the Takeover Regulations, 2011, prior to placement of the purchase order to acquire shares on March 14, 2014, the acquirer was under an obligation to make a public announcement of an open offer for acquiring shares of the target company, which it failed to make.

5. Since, the acquirer failed to comply with the obligation to make a public announcement of an open offer in respect of the acquisition dated March 14, 2014 in terms of regulation 3(1) read with 3(3) and 13(2) of Takeover Regulations, 2011, SEBI issued a show cause notice dated February 10, 2016 (hereinafter referred to as "the SCN") to the acquirer calling upon it 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 regulations 32 of Takeover Regulations, 2011 should not be issued against it.
6. The acquirer filed its reply to the SCN vide letter dated February 25, 2016. An opportunity of personal hearing was also provided to it on May 11, 2016 when its authorized representatives appeared and made submissions on its behalf. The replies/submissions of the acquirer are, *inter alia*, as under:
  - a) Pursuant to the purchase of the target company's shares, the acquirer complied with the requirements of regulation 29(2) of the Takeover Regulations, 2011 and made the requisite disclosures to the BSE, NSE and the target company. The requisite disclosures under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 was also made.
  - b) The violation of regulation 3(1) of the Takeover Regulations, 2011 as mentioned in the SCN, by virtue of the increase in its shareholding percentage in the target company by 0.12% beyond the threshold limit of 25%, was not committed with any *mala fide* intent to circumvent the Takeover Regulations, 2011.
  - c) The purchase of the target company's shares by it has neither caused any change in the board structure of the target company nor has such purchase of the target company's shares by it resulted in any change in the control of the target company in any manner whatsoever.
  - d) The essence and the very foundation of the Takeover Regulations (as elaborated by the Bhagwati Committee report) is to provide an exit opportunity to the public shareholders in the event of a change in "control" of the target company (which includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

- e) Prior to the acquisition of the target company's Shares, the acquirer was one of the promoters of the target company who along with other promoters of the target company, collectively, held 44.37% shares of the target company and that the promoters, prior to the acquisition of the target company's Shares, were already in control of the management of the target company.
  - f) The non-compliance of regulation 3(1) of the Takeover Regulations as mentioned in the SCN be considered as a procedural lapse as the intent was not to suppress any information or to circumvent the regulatory framework and not to cause any change in control of the Target Company, which is duly evidenced by the act of making all the requisite disclosures required under regulation 29(2) of the Takeover Regulations.
  - g) The aforesaid non-compliance of regulation 3(1) of the Takeover Regulations being merely technical in nature and a procedural lapse be viewed leniently.
7. I have considered the SCN, replies and submissions made by the acquirer and other material available on record. In the present case, it is an undisputed fact that the acquirer acquired 16,20,000 shares constituting 4.9% of the share capital of the target company through open market purchase as a result whereof the acquirer's shareholding in the target company increased from 20.22% to 25.12% thereby breaching the threshold of 25% stipulated in regulation 3(1) of the Takeover Regulations, 2011. It is also an admitted position that in respect of the aforesaid acquisition, the acquirer was required to make a public announcement prior to the placement of the purchase order to acquire the shares on March 14, 2014 in terms of regulation 3(1) read with 3(3) and 13(2) of Takeover Regulations, 2011.
8. I note that as a result of the aforesaid acquisition by the acquirer (who was an existing promoter of the target company on the date of acquisition), the collective shareholding of the promoter group of the target company increased from 44.37% to 49.28% (i.e. an increase of 4.91%) which was within the permissible limit of 5% which could be acquired by the promoter group as a whole by virtue of regulation 3(2) of the Takeover Regulations, 2011.
9. It has been submitted by the acquirer, the aforesaid increase in its shareholding was inadvertent and without any *mala fide* intent. In my view, the intention and motive behind an acquisition are not relevant for the purposes of application of regulation 3(1). The language of regulation 3(1) envisages a mandatory obligation to make a public announcement of an open offer in case of acquisition of shares beyond 25% in a target company.
10. I note that regulation 32 of the Takeover Regulations, 2011 which provides consequences of breach, as found in this case, gives flexibility to SEBI to enforce regulation 3(1) by way of several

directions including - (a) disinvestment of shares acquired in breach of regulations; (b) transfer of any proceeds or securities to the investors protection fund; (c) making open offer for acquiring shares of the target company, etc.

11. I note that in the context of enforcement of regulation 10, 11 and 12 of the Takeover Regulations, 1997 which is *pari materia* the provisions of regulations 3(1), 3(2) and 4 of the Takeover Regulations, 2011, 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:

*"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."*

12. I note that the object and purpose of Takeover Regulations, 1997 and Takeover Regulations, 2011 both is common i.e. to provide equality of treatment of all shareholders, to provide an exit opportunity to the shareholders in the case of a substantial acquisition of shares or takeover and to ensure that persons in control of a target company do not consolidate their shareholding in the target company in a clandestine manner and to the detriment of other shareholders. I further note that the guiding principle for the directions under regulation 32 is the protection of interests of the investors and securities market. I, therefore, am of the view that the above mentioned principles laid down by the Hon'ble SAT shall apply in the present case also.
13. In the present case, the obligation of the acquirer to make the open offer has been triggered on account of breach of provisions of regulation 3(1) read with regulation 3(3) and 13(2) of the Takeover Regulations, 2011 as the acquirer individually acquired 25.12% equity shares in the target company. Had the acquirer made the public announcement on March 14, 2014 in accordance with the Takeover Regulations, 2011 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 June 09, 2014.

14. I find that the acquirer has deprived the shareholders from the exit opportunity in respect of infrequently traded shares of the target company. 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, 2011, and issue any other direction as envisaged in regulation 32. I also find it important to mention that the shares of the target company are infrequently traded and therefore a direction to the acquirer to make a public announcement for an open offer will be in the interest of shareholders of the target company.
15. 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 acquirer 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.
16. I, therefore, in exercise of powers conferred upon me under sections 11, 11B read with section 19 of the SEBI Act, 1992 and regulation 32 of the Takeover Regulations, 2011, hereby issue the following directions to the acquirer :
- a) The acquirer shall shall make a public announcement to acquire shares of the target company in accordance with the provisions of the Takeover Regulations, 2011, within a period of 45 days from the date of this order;
  - b) The acquirer shall alongwith the consideration amount, pay interest at the rate of 10% per annum from June 9, 2014 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.
17. This order shall come into force with immediate effect. A copy of this order shall be served upon the acquirer, stock exchanges and depositories for ensuring compliance with the above directions.

Sd/-

**DATE: July 5<sup>th</sup>, 2016**  
**PLACE: MUMBAI**

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