

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1) AND SECTION 11(2)(h) OF THE SEBI ACT READ WITH REGULATION 11(5) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

IN THE MATTER OF PROPOSED ACQUISITION OF SHARES AND VOTING RIGHTS IN –

TARGET COMPANY	DREDGING CORPORATION OF INDIA LIMITED
ACQUIRERS	<ol style="list-style-type: none"> 1. VISAKHAPATNAM PORT TRUST 2. PARADIP PORT TRUST 3. JAWAHARLAL NEHRU PORT TRUST 4. DEENDAYAL PORT TRUST

BACKGROUND –

1. Dredging Corporation of India Limited (“**Target Company**”) was incorporated under the Companies Act, 1956 as a private limited company on March 29, 1976 and was subsequently converted into a public company on March 10, 1992. It was declared as a ‘Mini-Ratna’ Category-I Public Sector Undertaking by the Government of India (“**GOI**”) on November 8, 1999. The Registered Office of the Target Company is at Core: 2, 1st Floor, Scope Minar, Plot No. 2A and 2B, Laxminagar District Centre, Delhi-110092. The shares of the Target Company are listed on BSE Limited (“**BSE**”) and the National Stock Exchange of India Limited (“**NSE**”).
2. An Application dated January 23, 2019 (“**Application**”) seeking exemption from the applicability of *inter alia* Regulations 3 and 4 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**Takeover Regulations**”) in the matter of proposed acquisition of shares and voting rights in the Target Company, was received by SEBI from Visakhapatnam Port Trust (“**Acquirer 1**”) on behalf of itself, Paradip Port Trust (“**Acquirer 2**”), Jawaharlal Nehru Port Trust (“**Acquirer 3**”) and Deendayal Port Trust (“**Acquirer 4**”) (Collectively referred to as “**Acquirers 1-4**”).

3. Regulations 3 and 4 of the Takeover Regulations state –

“Substantial acquisition of shares or voting rights.

3. (1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

(2). No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Explanation — For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

- (i) Gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.
- (ii) In the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition.

(3) For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.

Acquisition of control.

4. Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.”

4. In the aforementioned Application and subsequent correspondences, the following was *inter alia* stated –

- i. The Cabinet Committee on Economic Affairs chaired by the Hon'ble Prime Minister of India gave an '*in principle*' approval dated November 8, 2018 for strategic disinvestment of shares held by the President of India (through the GOI) in the Target Company to a consortium of Acquirers 1–4, who have co-operated to form an unincorporated consortium to acquire 73.47% of the shares/voting rights and control of the Target Company as under –

TABLE A – SHAREHOLDING IN THE TARGET COMPANY (SOURCE: APPLICATION)

SR. No.	NAME	PRE – ACQUISITION AS ON 31.12.2018		POST – ACQUISITION	
		NO. OF SHARES	% SHAREHOLDING	NO. OF SHARES	% SHAREHOLDING
A.	PROMOTER/ PROMOTER GROUP				
1.	PRESIDENT OF INDIA – GOI – TRANSFEROR	2,05,72,013	73.47	0	0
2.	VISAKHAPATNAM PORT TRUST – ACQUIRER 1	0	0	54,51,710	19.47
3.	PARADIP PORT TRUST – ACQUIRER 2	0	0	50,40,101	18.00
4.	JAWAHARLAL NEHRU PORT TRUST – ACQUIRER 3	0	0	50,40,101	18.00
5.	DEENDAYAL PORT TRUST – ACQUIRER 4	0	0	50,40,101	18.00
	TOTAL	2,05,72,013	73.47	2,05,72,013	73.47
B.	PUBLIC SHAREHOLDING	74,27,987	26.53	74,27,987	26.53
C.	TOTAL (A + B)	2,80,00,000	100.00	2,80,00,000	100.00

- ii. Further, vide a letter bearing reference no. SS – 28036/18/2016 – DCI – Part 94) dated November 19, 2018, the GOI conveyed its '*in principle*' approval to the Acquirers 1–4 and also appointed Acquirer 1 as the leader of the consortium of Acquirers. Pursuant to the aforesaid, the Acquirers 1–4 entered into a Memorandum of Understanding dated January 4, 2019 for the purpose of constituting an unincorporated consortium for participating in the proposed acquisition. In addition, the Board of Trustees of the Acquirers 1–4 have passed resolutions approving their participation in the proposed acquisition and have submitted the per-share acquisition price to the Evaluation Committee and the same is being considered by the Core Group of Secretaries for Disinvestment, GOI.
- iii. Acquirers 1–4 are Port Trusts constituted by the GOI under the Major Port Trusts Act, 1963 ("**MPT Act**") as autonomous entities to undertake the administration and management of the major ports.

iv. In accordance with Section 5 of the MPT Act, the Board of Trustees of major ports constituted under the aforesaid Act shall be a body corporate having perpetual succession and a common seal with powers to acquire, hold or dispose of property and such Board runs the affairs of their respective port. Further, as per the provisions of the MPT Act, the President of India acting through the GOI exercises supervisory control over such Port Trusts *inter alia* in matters concerning constitution and appointment of Trustees on the Board of Trustees, vacation of office of Trustees, power to raise loans, submission of Administration Report and Statement of income and expenditure, power to supersede the Board of Trustees, etc.

v. Grounds for seeking exemption –

- a.* The GOI shall disinvest 73.47% of the shares/ voting rights and direct control of the Target Company in favour of the Acquirers 1–4, who will fall under the ‘Promoter Group’ category of the Target Company. Further, since the Acquirers 1–4 are under the supervisory control of the GOI (in accordance with the MPT Act), the ultimate supervisory control of the Target Company by the GOI (through the Acquirers 1–4) shall not change.
- b.* Regulation 10(1)(a)(iii) of the Takeover Regulations exempts *inter-se* transfer of shares amongst certain qualifying persons being a company ... other companies in which such persons hold not less than 50% of the equity shares ... subject to control over such qualifying persons being exclusively held by the same persons. The Explanation to the aforesaid Regulation states that the company referred to therein shall include a body corporate, whether Indian or foreign. Accordingly, the aforementioned Regulation provides outright scope to exempt an *inter-se* transfer of shares between entities housed under the control of same persons from the requirement of making an open offer. Although Regulation 10(1)(a)(iii) of the Takeover Regulations may not strictly apply for the proposed acquisition, we believe that the same shall apply in spirit since the GOI will continue to have ultimate supervisory control over the Target Company post consummation of the proposed acquisition.
- c.* In January 2018, ONGC had acquired the GOI’s 51.11% stake in HPCL for ₹36,915 Crores without making an open offer under the Takeover Regulations. ONGC exercised an exemption from the mandatory open offer obligation under Regulation 10(1)(a)(iii) of the Takeover Regulations citing that since the character of HPCL had not changed, no open offer was mandated. Further, it was cited that the GOI’s holding was being transferred to another Govt. Company and the ultimate ownership/control was not changing and HPCL continued to be an independent legal entity. It may be appreciated that the proposed acquisition is significantly parallel to the ONGC–HPCL transaction but may not be a mirror image as the proposed

acquisition envisages inter se transfer of shares between the President of India (GOI) – not a body corporate/sole corporation and 4 major port trusts – unincorporated consortium.

5. I have considered the Application submitted by the Acquirers 1–4 along with their additional correspondences and other material available on record. From the preceding paragraphs, it is noted that –
- A. The Application submitted is in respect of the proposed acquisition of shares and voting rights in the Target Company i.e. **Dredging Corporation of India Limited**.
- B. As detailed at Table A of page 3, the aforesaid acquisition is proposed to be made by **Visakhapatnam Port Trust, Paradip Port Trust, Jawaharlal Nehru Port Trust and Deendayal Port Trust** i.e. the **Acquirers 1–4**, in the following manner –
- i. As on December 31, 2018, the President of India (GOI) holds 73.47% of the equity shares and voting rights in the Target Company and proposes to transfer its entire shareholding to the Acquirers 1–4, as under –
- Transfer of 54,51,710 (19.47%) equity shares of Target Company to the Acquirer 1.
 - Transfer of 50,40,101 (18%) equity shares of Target Company to the Acquirer 2.
 - Transfer of 50,40,101 (18%) equity shares of Target Company to the Acquirer 3.
 - Transfer of 50,40,101 (18%) equity shares of Target Company to the Acquirer 4.
- C. I note that the proposed acquisition will not be covered under the automatic exemption available under Regulation 10(1)(a)(iii) of the Takeover Regulations since the exemption available therein is *inter alia* in respect of *inter se* transfer of shares amongst qualifying persons being a company and other companies in which such persons hold not less than 50% of the equity shares subject to control over such qualifying persons being exclusively held by the same persons.
- D. Having regard to the facts of the instant Application, I find that the proposed acquisition will change the nature of control exercised by the GOI from direct to indirect control as the direct control would be with the 4 Port Trusts governed by the Board of Trustees appointed by the GOI. It will however, not have the effect of a change in control of the Target Company, from a takeover perspective, since the GOI shall continue to exercise supervisory control over the Target Company through the Acquirers 1–4 as detailed at paragraph 4(iv) of page 4. I also note that the proposed acquisition is necessitated as part of the strategic

disinvestment of the Target Company as approved by the GOI. Further, I note that the pre-acquisition and post-acquisition shareholding of the Promoter and Promoter Group in the Target Company will remain the same and there will also be no change in the public shareholding of the Target Company. I also note that the Target Company shall continue to be in compliance with the minimum public shareholding requirements under the Securities Contracts Regulation Rules, 1957 (“**SCRR**”) and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

6. Considering the aforementioned, I am of the view that exemption as sought for in the Application (read with further correspondences) be granted to the Acquirers 1–4, subject to certain conditions as ordered herein below. The exemption has been granted as per the facts contained in the Application and subsequent correspondences received by SEBI from the Acquirers 1–4 and shall not operate as a precedent.

Order –

7. I, in exercise of the powers conferred upon me under Section 19 read with Section 11(1) and Section 11(2)(h) of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) and Regulation 11(5) of the Takeover Regulations, hereby grant exemption to the Acquirers 1–4, viz. **Visakhapatnam Port Trust, Paradip Port Trust, Jawaharlal Nehru Port Trust and Deendayal Port Trust**, from complying with the requirements of Regulations 3 and 4 of the Takeover Regulations with respect to the proposed acquisition/exercise of voting rights in respect of the Target Company, viz. **Dredging Corporation of India Limited**, by way of proposed acquisition as mentioned in the Application.
8. The exemption so granted is subject to the following conditions:
 - i. The proposed acquisition shall be in accordance with the relevant provisions of the Companies Act, 2013 and other applicable laws including the Takeover Regulations.
 - ii. The statements/ averments made or facts and figures mentioned in the Application and other submissions by the Acquirers 1–4 are true and correct.
9. The exemption granted above is limited to the requirements of making open offer under the Takeover Regulations and shall not be construed as exemption from the disclosure requirements under Chapter V of the aforesaid Regulations; compliance with the SEBI (Prohibition of Insider

Trading) Regulations, 2015; Listing Agreement/SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 or any other applicable Acts, Rules and Regulations.

10. The Application dated January 23, 2019, filed by Visakhapatnam Port Trust on behalf of itself, Paradip Port Trust, Jawaharlal Nehru Port Trust and Deendayal Port Trust, is accordingly disposed of.

Place: Mumbai
Date: February 28, 2019

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA