WTM/SM/CFD/ 58 /2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1) AND SECTION 11(2)(h) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 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	**Available Finance Limited**
Acquirer	**Vinod Agarwal Legacy Trust**

Background

1. **Available Finance Limited** (hereinafter referred to as "***Target Company***" / "***AFL***"**)** was incorporated on February 03, 1993 under the Companies Act, 1956 and having its registered office at Agarwal House, 5 Yeshwant Colony, Indore – 452003, Madhya Pradesh. *Target Company* is registered as Non-Banking Financial Company Non-Deposit Taking Non-Systematically Important and is engaged providing loan and making investments in group companies and related concerns. The equity shares of the *Target Company* are listed on the BSE Ltd. (hereinafter referred to as "**BSE**") since December 20, 1995.

2. An Application dated December 07, 2021 (hereinafter referred to as "***Application***") and subsequent clarifications vide emails dated January 20 & 29, 2022 seeking exemption from the applicability of regulation 5 read with regulation 4 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "***Takeover Regulations, 2011***") in the matter of proposed acquisition of shares in the *Target Company* was received by SEBI from **Vinod Agarwal Legacy Trust** (hereinafter referred to as "***Proposed Acquirer / Acquirer Trust / Applicant***").

3. Regulation 4 and 5 of the *Takeover Regulations, 2011* states as under –

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.

Indirect acquisition of shares or control:

5. *For the purposes of regulation 3 and regulation 4, acquisition of shares or voting rights in, or control over, any company or other entity, that would enable any person and persons acting in concert with him to exercise or direct the exercise of such percentage of voting rights in, or control over, a target company, the acquisition of which would otherwise attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, shall be considered as an indirect acquisition of shares or voting rights in, or control over the target company."*

4. In the aforementioned *Application*, the following was, *inter alia,* stated:

(a) The Settlor, Trustees and beneficiaries of the aforementioned *Acquirer Trust* are as under**:**

Name of settlor	**Name of Trustee(s)**	**Name of Beneficiaries**	**Relationship with settlor**
Mrs. Neenadevi Agarwal	Mr. Vinod Kumar Agarwal	Mr. Tapan Agarwal and his lineal descendants	Mr. Tapan Agarwal is son of Mr. Vinod Kumar Agarwal and Mrs. Neenadevi Agarwal.

(b) The details of the proposed acquisition are as follows:

i. The proposed acquisitions involve indirect acquisition of shares of the *Target Company* by *Proposed Acquirer* from promoters and promoter group companies of the *Target Company*. Pursuant to acquisition of shares and

voting rights, the *Proposed Acquirer* will indirectly acquire control over the *Target Company*. Present shareholding of *Target Company* is as under*:

Category of shareholder	No. of shareholders	No. of fully paid up equity shares held	Shareholding as a % of total no. of shares
Promoter & Promoter Group	4	63,06,820	61.81%
Public	2,074	38,96,880	38.19%
Total	**2,078**	**1,02,03,700**	**100%**

**As per BSE's website - shareholding pattern for the quarter ending December 2021*

ii. Shareholding of promoter and promoter group is tabulated below:

Name of shareholder	No. of fully paid up equity shares held	Shareholding as a % of total no. of shares
Mr. Tapan Agarwal	3,15,774	3.10
Mrs. Neenadevi Agarwal	1,000	0.01
Archana Coal Private Limited	58,38,946	57.22
Deepali Finance (P) Ltd	1,51,100	1.48
Total	**63,06,820**	**61.81**

Indirect Acquisition:

iii. *Acquirer Trust* proposes to acquire interest in the *Target Company,* indirectly from promoters and promoter group of the *Target Company*. Pursuant to the proposed acquisition of shares and voting rights, the *Acquirer Trust* along other promoters and members of promoter group shall indirectly have control over the *Target Company*. Post the proposed acquisition of the shares and voting rights by the *Acquirer Trust*, the

overall shares held by the Promoters and members of the Promoter Group of the Target Company with the *Acquirer Trust* shall continue to be at 61.81%.

iv. *Acquirer Trust* proposes to acquire 98.78% shares of Archana Coal Private Limited (which holds 57.22% of shares of the *Target Company),* held by Mrs. Neenadevi Agarwal by way of gift. Shareholding pattern of Archana Coal Private Limited is as follows:

Name of Shareholder	**No. of equity shares**	**% of shares**
Mr. Vinod Kumar Agarwal	270	0.184
Mrs. Neenadevi Agarwal	1,45,215	98.786
Mrs. Archana Kothari	255	0.173
Mrs. Aditi Mittal	250	0.170
Vinod Kumar Agarwal HUF	10	0.007
Mr. Tapan Agarwal	1,000	0.680
Total	**1,47,000**	**100.00**

v. *There* would be no alteration in total equity share capital of the *Target Company* as a result of the proposed acquisition. The shareholding pattern of the *Target Company* before and after the proposed acquisition will be as under:

Particulars	Shareholding before the proposed acquisition		Proposed transaction		Shareholding after the proposed acquisition	
	No. of shares	% holding	No. of shares	% holding	No. of shares	% holding
Mr. Tapan Agarwal	3,15,774	3.10	-	-	3,15,774	3.10
Mrs. Neenadevi Agarwal	1,000	0.01	-	-	1,000	0.01
Archana Coal Private Limited	58,38,946	57.22	-	-	58,38,946	57.22
Allure Fabtex	1,51,100	1.48	-	-	1,51,100	1.48

Private Limited (Formerly Deepali Finance (P) Ltd)						
Acquirers and PAC						
Vinod Agarwal Legacy Trust	-	-	-	-	-	-
Public Shareholding						
Public	38,96,880	38.19%	-	-	38,96,880	38.19%
Total	**1,02,03,700**	**100%**	-	-	**1,02,03,700**	**100%**

vi. *The Acquirer Trust* currently do not hold any equity shares in the *Target Company* and do not hold any shares in Archana Coal Private Limited. Pursuant to the proposed acquisition of shares by *Acquirer Trust*, the *Acquirer Trust* along with other promoters and members of promoter group shall indirectly acquire control over the *Target Company*. The aggregate shareholding of the promoter and promoter group in the *Target Company* before and after the proposed acquisition shall remain the same.

Grounds for seeking exemption

5. The following grounds have been cited by the *Applicant* while seeking the exemption from *Takeover Regulations, 2011*:

(a) The proposed acquisition of shares of the *Target Company* is undertaken to carry out an internal reorganization within the promoter family and is intended to streamline succession and promote welfare of the promoter family. The proposed acquisition would not affect or prejudice the interest of the public shareholders of the *Target Company* in any manner.

(b) The *Acquirer Trust* shall fall within the definition of 'promoter group' under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 as the trustees and ultimate beneficiaries of the *Acquirer Trust* are promoters and members of the promoter group family of the *Target Company*. Thus, the proposed

acquisition would not result in any increase / decrease in the holding of the promoters or promoter group in the Target Company.

(c) The proposed acquisition of shares of the *Target Company* by the *Acquirer Trust* would also not result in change in control and management of the *Target Company*. Mr. Vinod Kumar Agarwal (Managing Trustee of the *Acquirer Trust*) through whom control would be exercised over the assets of the *Acquirer Trust*, is part of promoter and promoter group of the *Target Company* in his individual capacity.

(d) In the event, since the *Acquirer Trust* has been set up for the benefit of the members of promoter family, the trustees of the *Acquirer Trust* will exercise control only as part of promoter family. Therefore, regardless of whether the trustees exercise control in their individual capacity or as trustees, the promoter family would continue to be in control of the *Target Company* to the extent of shares held by them.

(e) There is no effective change in the exercise of voting power or in the control / management of the *Target Company*. Even where pre-acquisition shareholding pattern and post-acquisition shareholding pattern of promoter and members of the promoter group in the *Target Company* change, aggregate shareholding of the promoter and members of the promoter group in the *Target Company* would remain the same. Further, the change in the identity of persons exercising voting rights over the promoter holding companies (being the promoter group of the *Target Company*) would only be between persons, who in their individual capacities, are part of the promoter family of the *Target Company*.

(f) The *Target Company* shall continue to be in compliance with the minimum shareholding requirements under the Securities Contracts Regulations Rules, 1957 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 as the pre-acquisition shareholding and post-acquisition shareholding of public in the *Target Company* would remain same.

(g) Trustees are representative of the *Acquirer Trust* and accordingly all regulations can therefore be enforced on the trustees in their individual capacity. Accordingly, there shall be no difficulty as regards enforceability of the provisions of the *SEBI Act, 1992* and the regulations framed thereunder if the shares of *Target Company* are held by the trustees for the benefit of the beneficiaries of the *Acquirer Trust*.

(h) The *Acquirer Trust* is a private family trust, settled as a discretionary trust, for the benefit of the members of the promoter group. The trustee and ultimate beneficiaries are individuals from the promoter family and persons belonging to the category 'promoter and members of promoter group'. The structure in no way results in lack of transparency and does not in any way impact the interest of investors.

(i) The acquisition of shares and voting rights of the *Target Company* and promoter holding companies holding shares in the *Target Company* by the *Acquirer Trust* is for efficient succession planning and for holding the controlling interest in the *Target Company* ultimately in one entity rather than spreading the holding amongst different individuals.

6. The *Acquirer Trust*, vide the *Application* read with subsequent submissions, have confirmed compliance with the following Guidelines outlined in the Schedule to the SEBI Circular dated December 22, 2017:

(a) No person other than immediate relatives (as defined under *Takeover Regulations, 2011*) or lineal descendants or legal heirs of the promoter or members of promoter group of the *Target Company* shall be added as trustees or beneficiaries of the *Acquirer Trust*. For the purpose of this clause, the terms 'promoter' and 'promoter group' shall have the meaning as provided in SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

(b) There shall be no limitation of liability of the trustees / beneficiaries of the *Acquirer Trust* in relation to provisions of the *SEBI Act, 1992* and regulations thereunder and the trustees / beneficiaries shall continue to be liable as if they

were acting as promoters / members of promote or group in their individual capacity.

(c) Any change in the trustees / beneficiaries and any change in ownership or control of shares or voting rights of the *Acquirer Trust* shall be disclosed within two days to BSE and a copy of the same shall be filed with SEBI.

(d) Where the *Acquirer Trust* acquires, invests in or holds any shares of the *Target Company*, the ownership or control of such shares or voting shall be construed as vesting with the trustees as well as indirectly with the beneficiaries as far as the provisions of the *SEBI Act, 1992* and the regulations framed thereunder are concerned.

(e) The liabilities and obligations of individual transferor under the *SEBI Act, 1992* and the regulations framed thereunder will not change or get diluted due to transfer to the *Acquirer Trust*.

(f) The *Acquirer Trust* shall confirm, on an annual basis, that it has complied with the Order passed by SEBI under regulation 11 of *Takeover Regulations, 2011*. Such compliance status shall also be certified by an independent Chartered Accountant.

(g) The compliance status along with certificate of the independent Chartered Accountant shall be furnished BSE and a copy of the same shall be filed with SEBI.

(h) The proposed acquisition is in accordance with the provisions of the Companies Act, 2013 and other applicable laws.

(i) There is no layering in terms of trustees / beneficiaries in case of the *Acquirer Trust*.

(j) The Trust Deed does not contain any limitation of liability of the trustees / beneficiaries in relation to the provisions of the *SEBI Act, 1992* and all regulations framed thereunder.

(k) The *Acquirer Trust* is in substance, only a mirror image of the promoter's holdings and consequently, there is no change of ownership or control of the shares or voting rights in the *Target Company*.

(l) Only individual promoters or their immediate relatives or lineal descendants are Trustees and beneficiaries.

(m) The beneficial interest of the beneficiaries of the *Acquirer Trust* has not been and shall not in the future, be transferred, assigned or encumbered in any manner including by way of pledge / mortgage.

(n) In case of dissolution of the *Acquirer Trust*, the assets will be distributed only to the beneficiaries of the *Acquirer Trust* or to their legal heirs.

(o) The Trustees will not be entitled to transfer or delegate any of their powers to any person other than one or more of themselves.

(p) As far as the provisions of the *SEBI Act, 1992* and the regulations framed thereunder are concerned, the ownership or control of shares or voting rights will be treated as vesting not only with the Trustees but also indirectly with the beneficiaries.

Consideration

7. I have considered the *Application* submitted by the *Acquirer Trust* and other material available on record. Without reiterating the facts as stated above, the following is noted:

(a) The *Application* submitted is in respect of the proposed indirect acquisition of shares and voting rights in the *Target Company* i.e., **Available Finance Limited**. The proposed acquisition as detailed above, which is to be made by the *Acquirer Trust*, will attract the provisions of regulation 5(1) read with regulation 4 of the *Takeover Regulations, 2011*.

(b) There will be no change in control of the *Target Company* pursuant to the proposed acquisition, as stipulated under the SEBI Circular dated December 22, 2017.

(c) The pre–acquisition and post–acquisition shareholding of the promoters and promoter group in the *Target Company* will remain the same.

(d) There will also be no change in the public shareholding of the *Target Company*.

(e) The *Target Company* shall continue to be in compliance with the Minimum Public Shareholding requirements under the Securities Contracts Regulation Rules, 1957 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(f) The *Acquirer Trust* has confirmed that it is in compliance with the Guidelines outlined in the Schedule to the SEBI Circular dated December 22, 2017 (as reproduced at paragraph 5 above).

8. Considering the aforementioned, I am of the view that exemption as sought for in the *Application* (read with further submissions) may be granted to the *Proposed Acquirer*, subject to certain conditions as ordered herein below.

Order

9. I, in exercise of the powers conferred upon me under Section 19 read with Section 11(1) and Section 11(2)(h) of the SEBI Act, 1992 and Regulation 11(5) of the *Takeover Regulations, 2011*, hereby grant exemption to the *Proposed Acquirer*, viz. **Vinod Agarwal Legacy Trust** from complying with the requirements of regulation 5(1) read with regulation 4 of *Takeover Regulations, 2011* with respect to the proposed indirect acquisition in the *Target Company*, viz. **Available Finance Limited**, by way of proposed transaction as mentioned in the *Application*.

10. The exemption so granted is subject to the following conditions:

(a) The proposed acquisition shall be in accordance with the relevant provisions of the Companies Act, 2013 and other applicable laws.

(b) The proposed acquisition shall be without prejudice to any liability that may emerge on account of taxation, stamp duty, statutory charges etc.

(c) On completion of the proposed acquisition, the *Proposed Acquirer* shall file a report with SEBI within a period of 21 days from the date of such acquisition, as provided in the *Takeover Regulations, 2011*.

(d) The statements / averments made or facts and figures mentioned in the *Application* and other submissions by the *Proposed Acquirer* are true and correct.

(e) The *Proposed Acquirer* shall ensure compliance with the statements, disclosures and undertakings made in the *Application*. The *Proposed Acquirer* shall also ensure compliance with the provisions of the SEBI Circular dated December 22, 2017.

(f) The *Proposed Acquirer* shall also ensure that the covenants in the Trust Deed are not contrary to the above conditions and undertaking provided by the transferor. In such case, the Trust Deed shall be suitably modified and expeditiously reported to SEBI.

11. The exemption granted above is limited to the requirements of making open offer under the *Takeover Regulations, 2011* 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.

12. The *Application* dated December 07, 2021 filed by the *Applicant*, is accordingly disposed of.

Sd/-

Place: Mumbai **S.K. MOHANTY**

Date: February 18, 2022 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA