

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	MAX VENTURES AND INDUSTRIES LIMITED
ACQUIRER	NEEMAN FAMILY FOUNDATION (TRUST)

BACKGROUND –

1. Max Ventures and Industries Limited (“**Target Company**” / “**MVIL**”) was incorporated on January 20, 2015, and its Registered Office is at 419, Bhai Mohan Singh Nagar Village Railmajra, Tehsil Balachaur Nawanshehar Nawan Shehar, Punjab. The shares of the Target Company are listed on BSE Limited (“**BSE**”) and the National Stock Exchange of India Limited (“**NSE**”) since June 20, 2016.
2. An Application dated March 06, 2017 (“**Application**”) seeking exemption from the applicability of *inter alia* Regulation 3, 4 and/or 5 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 Neeman Family Foundation (Trust) (“**Acquirer Trust**”). The Application was followed by additional submissions dated March 23, 2017, July 24, 2017 and August 14, 2017 (hereinafter collectively referred to as “**additional submissions**”).
3. Regulations 3, 4 & 5 of the Takeover Regulations state as follows –

“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.

Indirect acquisition of shares or control.

5. (1) 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. Key submissions made in the Application are as follows:
- (i) An application dated November 26, 2014 had been made with SEBI under Regulation 11 of the Takeover Regulations, together with letter dated July 28, 2016, seeking to:
 - (a) restructure and simplify the shareholding (both direct and indirect) of the Promoters in erstwhile Max India Limited (now renamed as Max Financial Services Limited, hereinafter referred to as the "**Demerged Entity**"), in one of the existing promoter group companies, i.e. Max Ventures Investment Holdings Private Limited ("**MVIHPL**");
 - (b) allot equity shares by MVIHPL to a family trust titled Neeman Family Foundation' ("**Trust**"/ "**Acquirer Trust**"), settled by Mr. Anajit Singh by a registered deed of trust dated November 12, 2010 ("**Trust Deed**"); and
 - (c) seek exemption from complying with Regulation 3, 4 and 5 of the Takeover Regulation, for the aforesaid restructuring.
 - (ii) After the submission of the SEBI Application, the Demerged Entity proposed a composite Scheme of arrangement ("Scheme") which was sanctioned by the Hon'ble High Court of Punjab and Haryana vide its order dated December 14, 2015. The effective date of the Scheme is January 15, 2016. In accordance with the said Scheme, *inter alia* the entire manufacturing activity including the specialty films activities have been demerged and transferred to a company named Capricorn, later renamed as Max Ventures and Industries Limited ("MVIL") with effect from January 02, 2016.
 - (iii) The promoter group company - MVIHPL acquired equity shares aggregating to 0.54% of the paid-up share capital of MVIL.
 - (iv) It is proposed that the shares held by the Promoters in MVIL will be consolidated under MVIHPL *inter alia* after completing the following steps:
 - (a) Transfer of equity shares held directly by the Individual Promoters in MVIL to MVIHPL. The Individual Promoters will continue to hold 20,000 shares each in MVIL, i.e., aggregating to 1,00,000 shares in MVIL.

- (b) Merger of a promoter group company - Mohair investment and Trading Company Pvt Ltd. (MITCPL) into another promoter group company - Liquid Investment and Trading Company Pvt Ltd.(LITCPL); and merger of LITCPL into MVIHPL.
 - (c) The Acquirer Trust will be allotted shares of MVIHPL. Post such allotment, the Acquirer Trust will be holding more than 50% of the equity share capital of MVIHPL.
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- (v) The Individual Promoters will transfer the entire equity share capital held by them in MVIHPL to the Trust.
 - (vi) Given that the aforesaid step of transfer of equity shares in the equity share capital of MVIHPL to the Trust by the Individual Promoters may not strictly fall under any specific clause of Regulation 10 of the Takeover Regulations, it could be argued that it would trigger public offer requirements under Regulation 3, 4 and/or Regulation 5 of the Takeover Regulations.
 - (vii) As the Scheme was not effective at the time of the Application made to SEBI dated November 26, 2014 ("**SEBI Application**"), the final SEBI Order permitted consolidation of shareholding by the Promoters only at the original applicant level (i.e. Max Financial Services Limited, earlier known as Max India Limited) and not for the resultant listed companies, i.e. MIL and MVIL, after the Scheme came into effect. The Acquirer Trust is now making this application to seek a similar exemption for MVIL to ensure smooth succession and inheritance by family members of the Individual Promoters.
5. The shareholding of MVIHPL in the Target Company pre- and post - the proposed acquisition/merger as extracted from the acquirer's Application and submissions are as follows:

TABLE

Shareholding pattern of the **MVIHPL** (Promoter of Target Company) before and after proposed acquisition

Name of the shareholder	% of Shares Before Proposed acquisition	% of Shares After proposed acquisition
Analjit Singh	9.99	0.00
Neelu Analjit Singh	9.93	0.00
Piya Singh	0.02	0.00
Veer Singh	0.02	0.00
Tara Singh Vachani	0.02	0.00
LITCPL	65.47	62.41
MITCPL	14.55	13.87
Neeman Family Foundation (Trust)*	0.00	23.72
Total	100.00	100.00

6. **Grounds for seeking exemption** – The applicant listed the following as being its grounds for seeking exemption:

- (i) The Trust is a family trust settled by Mr. Analjit Singh. The sole and exclusive beneficiaries of the trust are the individual promoters only and no third party is a beneficiary.
- (ii) The beneficiaries are not entitled to transfer their beneficial ownership interest in the trust property to any third party. They have to transfer the same to other beneficiaries only. Also, upon demise/insolvency of a beneficiary, his beneficial ownership interest in the Trust Property vests in his biological children and heirs.
- (iii) The governing body of the Trust comprises of eight (8) trustees, out of which five (5) are the Individual Promoters.
- (iv) Mr. Analjit Singh (until the age of 72) has the sole and exclusive control over all decisions of the Trust, including with respect to the shares held in MVIL . He will also continue to be the nominee director of the Trust on the Board of MVIL and all voting rights that the Trust may have in MVIL are to be exercised through him.

- (v) After Mr. Analjit Singh attaining the age of 72 years or after his demise, all decisions in respect of the Trust are to be taken by the surviving individual promoter unanimously. It is only when there is dissent amongst the surviving individual promoters that the matter is referred to the external trustees for decision by way of simple majority.
- (vi) The Trust can be dissolved only after Mr. Analjit Singh attains the age of 72 years or his lifetime, and that too if all surviving beneficiaries unanimously agree and jointly instruct the trustees in writing to dissolve the Trust. Upon dissolution, the Trust Property, is required to be distributed amongst the beneficiaries in equal parts.
- (vii) The aforesaid facts have already been examined by SEBI and upon consideration, SEBI had approved the same holding structure for the Demerged Entity under the SEBI order.
- (viii) It is evident that the indirect legal and beneficial owners of the shares and voting rights indirectly held by the Trust in MVIL will continue to be the individual promoters. Therefore, there is no change of ownership of 31.55% promoter shareholding in MVIL as a result of the entire exercise.
- (ix) There is no change of control of MVIL as even after completion of all the steps contemplated hereinabove the Individual Promoters shall continue to exercise control over MVIL through the Trust. It is important to note that even after Mr. Analjit Singh attaining the age of seventy two (72) years or his demise, the Trust shall continue to be controlled by the Individual Promoters. It is only in certain exceptional circumstances where there is lack of unanimity amongst the Individual Promoters that the external trustees would step in and take decisions in respect of the Trust.
- (x) The Trust is created by Mr. Analjit Singh for the benefit of himself, his wife and his children. Thus the Trust could be identified as a shadow of these persons. It is also legally permissible to look behind the Trust and find out who are the actual beneficiaries and persons in control of the Trust. Therefore, though technically the Trust may not qualify as an

immediate relative under regulation 10(1)(a)(i), transfer of shares by Mr. Analjit Singh and Mrs. Neelu Analjit Singh to the Trust and allotment of shares by MVIHPL to the Trust is in effect a transfer/allotment of shares by the aforesaid two persons to themselves and to their children. Therefore, in view of the spirit and intent behind the said provisions exempting inter-se transfer of shares between immediate relatives, the instant case merits exemption under regulation 10(1)(a)(i).

- (xi) Mr. Analjit Singh, Mrs. Neelu Analjit Singh and the children were named as promoters of the Demerged Entity in the shareholding pattern filed by Demerged Entity for three (3) years prior to the date of the demerger. Further, Mr. Analjit Singh, Mrs. Neelu Analjit Singh and the Children continue to be named as promoters of MVIL, even after the demerger. Therefore, though technically the Trust may not qualify as a "person named as promoter" under Regulation 10(1)(a)(ii) of the Takeover Regulations, in view of the spirit and intent behind the said provision exempting transfer of shares interse between persons named as promoters in last 3 years filings by the Demerged Entity, who continue to be named as promoters of MVIL, the instant case merits exemption under Regulation 10(1)(a)(ii) of the Takeover Regulations.
- (xii) Regulation 10(1)(g) of the Takeover Regulations exempts acquisition of shares by way of transmission, succession or inheritance. While the instant case may not strictly fall within the ambit of the said regulation, but given the sole purpose of creation of Trust is to ensure succession to the family wealth and assets from Mr. Analjit Singh and Mrs. Neelu Analjit Singh to the children and Trust is for the benefit of the individual promoters, it could be argued that the instant case merits exemption on the same rationale as specified under regulation 10(1)(g).

7. The Application along with the additional submissions were forwarded to the Takeover Panel in terms of the *proviso* to Regulation 11(5) of the Takeover Regulations and deliberated by the Takeover Panel in its meeting held on October 30, 2017. After deliberations, the Takeover Panel noted that the policy on granting exemption in

trust case, already provides that the exemption is available only when the name of the transferor/transferee is disclosed for a period of atleast three years prior to the transfer. The Panel was of the view that the case does not warrant grant of exemption and may be rejected since the company had only recently been listed (i.e. on June 20, 2016) and therefore, the promoters have not been named in the shareholding pattern for the last three years.

8. An opportunity of personal hearing was granted to the Acquirer Trust on April 17, 2018 by the Competent Authority. Thereafter, the Acquirer vide letter dated April 23, 2018 filed written submissions. Summary of the oral and written submissions made by the noticee are as follows:

- (i) In terms of regulation 10(1)(a) of the Takeover Regulations, an inter se transfer of shares between "qualifying promoters" is automatically exempt from the requirement to make an open offer under Regulation 3 and Regulation 4 of the Takeover Regulations. Therefore if the Applicant was disclosed as a promoter or a person acting in concert in the shareholding pattern filed by the target companies for a period of three years prior to the date of the proposed acquisition, the Applicant would have become a "qualifying promoter" and the acquisition detailed in the Applications would not have been automatically exempt under Regulation 10(1)(a) and would not have necessitated an application for a specific exemption under Regulation 11 of the Takeover Regulations.
- (ii) Neeman Family foundation is a family trust settled by Mr. Analjit Singh (promoter of the target companies) and the sole beneficiaries of the family trust are the family members of Mr. Analjit Singh and 5 out of the 8 trustees of Neeman Family Foundation comprises of individuals who are family members of Mr. Analjit Singh and are disclosed as promoters of the target company.

- (iii) SEBI by way of its order dated October 03, 2016 has already granted exemption under Regulation 11 sought under the Application in relation to one of the target companies - Max Financial Services Ltd (earlier known as Max India Ltd.)

Consideration of the Application and Findings –

9. I have considered the Application submitted by the Acquirer Trust along with their additional submissions; the recommendations of the Takeover Panel and other material available on record. In this regard, I note the following facts, as on the date of the Application –
- The Promoter Group holds 38.02% of the equity shares and voting rights in the Target Company, of which 31.55% is proposed to be held through MVIHPL.
 - The Acquirer Trust holds nil equity shares and voting rights in the Target Company, as on the date of the Application.
 - The Acquirer Trust would be indirectly acquiring more than 25% in the Target Company through MVIHPL since MVIHPL would be majority controlled by the Acquirer Trust pursuant to implementation of the proposed merger schemes.
 - Accordingly, the proposed acquisition would in normal course breach the thresholds specified in regulation 3(1) read with regulation 5 of Takeover Regulations, thereby triggering the requirement to make an open offer.
10. I note that for any exemption to be granted in the instant proceedings i.e. from the requirement of Regulations 3(1) and 5 of the Takeover Regulations, the Proposed Acquirer Trust has to *inter alia* satisfy the condition specified under Regulation 10(1)(a)(ii) of the said Regulations.
11. Regulation 10(1)(a)(ii) of the Takeover Regulations states –
“*General Exemptions.*”

10.(1) *The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfillment of the conditions stipulated therefor, –*

(a) Acquisition pursuant to inter se transfer of shares amongst qualifying persons, being, –

(i)... ..

(ii) Persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition;”

12. Regulation 10(1)(a)(ii) of the Takeover Regulations exempts acquisitions pursuant to inter-se transfer of shares amongst qualifying persons being promoters provided they are named as Promoters in the shareholding pattern filed by the Target Company in terms of the Listing Agreement or the Takeover Regulations for not less than three years prior to the proposed acquisition.
13. I note that the condition of a pre-existing relationship of at least three years has been specified under Regulation 10(1)(a)(ii) of the Takeover Regulations in order to curtail the abuse of introducing new entities within the definition of ‘qualifying persons’ under the said Regulations. I find that in the instant case, the transferors have not been named as promoters in the shareholding pattern filed by the Target Company with the Stock Exchanges for the last three years as the Target Company was listed less than 3 years ago. I am of the opinion that granting exemption from the said requirement would defeat the very objective why the norms were made stricter. In this regard, I agree with the observations of the Takeover Panel.
14. In view of the aforesaid, I do not find merit in the Application read with the additional submissions filed by the Acquirer Trust seeking exemption from the requirement under Regulation 3 & 5 of the Takeover Regulations with respect to the proposed acquisition. As the Applicant/Acquirer Trust does not meet with the stipulated mandate of disclosure as a ‘promoter’ for three years prior to the proposed acquisition, other aspects of the proposed acquisition including the

clauses forming part of the Trust Deed are not taken up for individual consideration in this Order.

Order –

15. I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 (“SEBI Act”) read with Regulation 11(5) of the Takeover Regulations, hereby reject the request for exemption from complying with the requirements of Regulations 3(1) & 5 of the Takeover Regulations as made by the Acquirer Trust, viz. Neeman Family Foundation (Trust) with respect to the proposed acquisition/exercise of voting rights in respect of the Target Company, viz. Max Ventures and Industries Limited, by way of the proposed transactions as mentioned in the Application dated March 06, 2017 along with the additional submissions.
16. The Application dated March 06, 2017 filed by Neeman Family Foundation (Trust), is accordingly disposed of.

Place: Mumbai

G. MAHALINGAM

Date: July 10, 2018

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA