WTM/SKM/CFD/ 38 /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	**UNITED BREWERIES LIMITED**
ACQUIRER	**HEINEKEN INTERNATIONAL B.V.**

Background

1. United Breweries Ltd. (hereinafter referred to as "***Target Company***") is a company incorporated under the Companies Act, 1956 on March 31, 1999, wherein the Heineken Group (i.e. through Scottish & Newcastle India Limited, Heineken UK Limited and Heineken International B.V.) and Mr. Vijay Mallya ("VJM") and his group companies (hereinafter referred to as "VJM Group") are part of the Promoter Group of the *Target Company*.

2. The *Target Company's* registered office is located at UB Towers, UB City, 24, Vittal Mallya Road, Bangalore - 560001, India. Currently, the main business activities of the *Target Company* are to produce, package, distribute, market and sell beer in India and outside India, including under its flagship brand "Kingfisher".

3. An Application dated June 07, 2021 followed by further submission on June 20, 2021 (hereinafter collectively referred to as "***Application***") was received by SEBI from the **Heineken International B.V. (**hereinafter referred to as "***Acquirer / Applicant***"). Vide the

Application, the *Applicant* has sought exemption from the applicability of regulations 3(2) and regulation 3(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "***Takeover Regulations, 2011***") in the matter of its proposed acquisition of maximum number of 3,96,44,346 equity shares (hereinafter referred to as "***Transfer Shares***") of the *Target Company* from the Recovery Officer of the Bangalore Debt Recovery Tribunal (hereinafter referred to as "**Bangalore DRT**"), under whose custody the *Transfer Shares* owned by the VJM Group are being held.

4. Regulation 3(2) and Regulation 3(3) of the *Takeover Regulations, 2011* state as under:

> "***Substantial acquisition of shares or voting rights.***
>
> ***3.*** *(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.*
>
> ***3.*** *(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.*

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

(a) The *Acquirer* is presently evaluating the acquisition of a maximum of 3,96,44,346 equity shares of the *Target Company* (corresponding to a maximum of approximately 14.99% of the total paid-up equity share capital of the *Target Company*) (Proposed Acquisition).

(b) The *Acquirer* is considering acquiring such maximum number of *Transfer Shares* from any or all of the VJM Group's members i.e. United Breweries (Holding) Ltd., Devi Investments Private Holding, Mallya Private Limited, Pharma Trading Company Private Limited, Vittal Investment Private Limited, Kamsco Industries Private Limited, and Gem Investment and Trading Company Private Limited (hereinafter collectively referred to as "VJM Group Transferors").

(c) The Recovery Officer of the Bangalore DRT, has set in motion the process for sale of the *Transfer Shares* pursuant to the recent PMLA Order dated May 24, 2021 passed by the Shri Jayendra C. Jagdale, The Special Judge for CBI, City Civil & Sessions Court, Gr. Bombay. It is also possible that the number of shares of the *Target Company* to be acquired by the *Acquirer* may be lower than the *Transfer Shares* depending on: (a) the order of sale passed by the Recovery Officer, (b) any orders/ directions passed by any other Court having jurisdiction and/or any other government authority, or (c) the final decision of the board of directors of the *Acquirer* in this regard (as the case may be).

(d) The Proposed Acquisition, would be transacted on the floor of the stock exchanges (i.e. either on the BSE or NSE) through "Block Deal" mechanism in accordance with the applicable laws including regulations prescribed by SEBI including the *Takeover Regulations, 2011*. The acquisition price of the *Transfer Shares* would therefore be in accordance with the pricing requirements applicable to Block Deal including guidelines issued by SEBI Circular

CIR/MRD/DP/118/2017 dated 26 October 2017 and other relevant guidelines pertaining to Block Deal issued by SEBI.

(e) Pursuant to its order dated 19 January 2017 in O.A. 766 of 2013 (hereinafter referred to as "DRT Order"), the Bangalore DRT ordered VJM, UBHL, Kingfisher Airlines Limited, and Kingfisher Finvest Limited, "jointly and severally" liable to pay approximately INR 6203,00,00,000 plus applicable interest to the consortium of banks led by State Bank of India (hereinafter referred to as "SBI Consortium"). In terms of the DRT Order, in the event of failure of payment of the outstanding amounts, the SBI Consortium "*is at liberty to (i) sell the hypothecated/ mortgaged movable/immovable property described in the schedule of the main petition according to law […]; and (ii) proceed against the person and other properties of the defendants as required under law and also as advised*".

(f) Pursuant to the DRT Order, the Bangalore DRT has issued (i) a recovery certificate dated 21 February 2017 (as amended by recovery certificate dated 10 April 2017) ordering the Recovery Officer of the Bangalore DRT to realize the outstanding amount due to the SBI Consortium in the manner prescribed under the RDB Act (Recovery Certificate), and (ii) attachment orders dated 7 January 2019 in relation to the shares held by VJM Group Transferors.

(g) Each of the VJM Group Transferors have been disclosed as promoters in the shareholding pattern of the *Target Company* for well in excess of 3 years and at least since June 2006. Accordingly, in case the *Transfer Shares* were transferred to the *Acquirer* directly from any of the VJM Group Transferors (as the case may be) pursuant to the proceedings before the Bangalore DRT, the same would qualify as a transaction between the qualifying promoters, i.e. the relevant VJM Group Transferors (as the case may be) and the *Acquirer* would be exempted under Regulation 10(1)(a)(ii) of the *Takeover Regulations, 2011* from the requirement of making an open offer.

(h) As per rules and regulations governing the sale of shares in pursuance of the Recovery of Debts and Bankruptcy, Insolvency Resolution and Bankruptcy of Individuals and Partnership Firms Act, 1993 (RDB Act) (incorporated by reference from the Second and Third Schedules of the (Indian) Income Tax Act 1961 and the Income-tax (Certificate Proceedings) Rules, 1962); the Recovery Officer has taken custody of the *Transfer Shares* in its own demat account, which may be finally sold through a registered broker on the stock exchange.

(i) Therefore, in the context of the Proposed Acquisition, the transferor would technically be the Recovery Officer, who would have custody of the *Transfer Shares* originally owned by the VJM Group Transferors in its demat account by operation of PMLA Order dated May 24, 2021. However, the mere possession / holding of the *Transfer Shares* would not qualify the Recovery Officer as a promoter of the *Target Company*.

(j) Shareholding pattern of the *Target Company* before and after the Proposed Acquisition is tabulated in the following format:

Particulars	**Shareholding Before the Proposed Acquisition**		**Proposed Acquisition***		**Shareholding After the Proposed Acquisition**	
	No. of shares	**% holding**	**No. of shares**	**% holding**	**No. of shares**	**% holding**
Promoters & Promoter Group other than Acquirers						
Mr. Vijay Mallya	2,13,53,620	8.08	-	-	2,13,53,620	8.08
McDowell Holdings	45,51,000	1.72	-	-	45,51,000	1.72

Limited						
Kamsco Industries Private Limited	32,74,000	1.24	-		32,74,000	1.24
Pharma Trading Company Pvt. Ltd.	620	0.00	-	-	620	0.00
UB Overseas Limited	4,27,740	0.16	-	-	4,27,740	0.16
United Breweries (Holdings) Limited	-	-	-	-	-	-
Devi Investment Private Limited	-	-	-	-	-	-
Vittal Investment Private Limited	-	-	-	-	-	-

Mallya Private Limited	-	-	-	-	-	-
The Gem Investment & Trading Company Private Limited	-	-	-	-	-	-
Acquirers and PAC						
Scottish And Newcastle India Limited	8,99,94,960	34.04	-	-	8,99,94,960	34.04
Heineken UK Limited	84,89,270	3.21	-	-	84,89,270	3.21
Heineken International B.V (Acquirer)	2,45,25,575	9.28	*3,96,44,346*	14.99*	6,41,69,921*	24.27
Public						
Deputy Director, Directorate of Enforcement, Mumbai/	4,27,04,758	16.15	()* 3,96,44,346*	()* 14.99*	30,60,412	1.16

Recovery Officer						
Entities holding more than 1%	2,09,10,979	7.91	-	-	2,09,10,979	7.91
Other public	4,81,72,627	18.22	-	-	4,81,72,627	18.22
Total	**26,44,05,149**	**100.00**	**-**	**-**	**26,44,05,149**	**100.00**

Assuming that all the Transfer Shares are sold to the Acquirer as part of the Proposed Acquisition. It is possible that the actual number of Transfer Shares acquired by the Acquirer may be lower depending upon (a) the order passed by the Recovery Officer, (b) any orders/directions passed by any other Court having jurisdiction and/or any other government authority, or (c) the final decision of the board of directors of the Acquirer in this regard (as the case may be).

(k) The Proposed Acquisition is very similar in substance to an exempted transaction between qualifying promoters under regulation 10(1)(a)(ii) of the *Takeover Regulations, 2011* that is applicable in the context of acquisitions under both regulation 3 (2) and 3 (3) of the *Takeover Regulations, 2011*. The Proposed Acquisition would thus a fit case for the grant of an exemption from the requirement to make an open offer under regulation 3 of the *Takeover Regulations, 2011*.

Grounds for seeking exemption

6. The *Applicant* has sought exemption vide its *Application* on the following grounds:

(a) *The potential acquisition of the Transfer Shares by the Acquirer from the Recovery Officer, who has temporary custody of the Transfer Shares to fulfil the technical requirements under the RDB Act and rules and regulations thereunder. The Recovery*

Officer's temporary custody of the Transfer Shares does not alter the beneficial ownership of the Transfer Shares. This application is therefore being made under Regulation 11(1) read with Regulation 11(3) of the SAST Regulations seeking an exemption from the applicability of Regulation 3(2) and Regulation 3(3) to the Acquirer in the current facts and circumstances.

(b) *The Acquirer and each of the VJM Group Transferors have been listed as promoters of the Target Company in the periodic shareholding patterns filed with the BSE and NSE for a period well in excess of 3 years and therefore qualify as promoters eligible for the general exemption from the obligation to make an open offer under Regulation 10(1)(a)(ii) of the SAST Regulations in connection with any inter se transfers between such promoters and subject to the prescribed conditions.*

(c) *However, on account of VJM's and UBHL's default in paying their outstanding dues to the SBI Consortium, the shares held by them and the other VJM Group Transferors in UBL, for purely technical reasons have been taken into the custody of the Recovery Officer in its demat account.*

(d) *An exemption under Regulation 11(1) should be granted for the purchase of shares of a promoter of a listed entity from a Recovery Officer in terms of the RDB Act which has been enacted for the benefit of banks and financial institutions, for the recovery of their dues through the sale of the debtor's assets, as if not for the technicality of the temporary custody of the shares by the Recovery Officer, the sale and purchase of such shares by one qualifying promoter from another qualifying promoter would be eligible for the general exemption under Regulation 10(1)(a)(ii) of the Takeover Regulations, 2011.*

(e) *In the absence of an exemption, the efforts of the banks and financial institutions who are seeking to sell the listed shares of a debtor pursuant to proceedings under the RDB Act in a timely manner would stand adversely impacted by virtue of the requirement for an acquirer, who is an existing promoter in the same company, to make an open offer*

to the public shareholders of the company solely due to the transfer of shares through the demat account of the Recovery Officer for purely technical reasons.

(f) *Section 25 of the RDB Act only empowers the Recovery Officer to sell the assets of the defendants. The Recovery Officer acts as a mere agent of the Bangalore DRT to administer and sell the assets of the defendants to recover outstanding dues and is not vested with title to such assets. The transfer of the Transfer Shares to the Recovery Officer's demat account is only a matter of procedure, is temporary in nature, and only an intermediate step to enable the Recovery Officer to sell the Transfer Shares in accordance with the RDB Act. It is a settled position in law that the Recovery Officer, as an agent of the Bangalore DRT, would not gain any title or beneficial ownership over the relevant Transfer Shares and that the VJM Group Transferors would continue to retain beneficial title and ownership over the Transfer Shares until such time that the underlying Transfer Shares are actually sold.*

(g) *In addition, one of the key objectives behind requiring an acquirer to make an open offer is to allow the public shareholders the opportunity to exit their investment in a company pursuant to a substantial acquisition of shares by a new shareholder. At the same time, the Takeover Regulations exempt certain transactions, such as the inter-se sale of shares between qualifying promoters under Regulation 10(1)(a)(ii) of the Takeover Regulations. Such an exemption has been specifically provided in the Takeover Regulations in recognition of the fact that where there is continuity in the management and affairs of a company, the interests of the public shareholders are protected and thus public shareholders are not required to be provided an opportunity to exit their investment in a company where shares are being purchased by its existing promoters.*

(h) *The potential acquisition of the Transfer Shares by the Acquirer is not prejudicial to the interest of the public shareholders. In fact, the potential acquisition of the Transfer Shares by the Acquirer would ensure continuity of ownership and control by the existing Promoter Group and would provide the desired stability to the Target*

Company. It would therefore be in the interest of the public shareholders who recognize and identify the Heineken Group as an existing promoter of the Target Company. Therefore, regardless of the technicalities of the Proposed Acquisition, it is clear that the Acquirer is not a new promoter or a third-party acquirer that would necessitate providing an exit opportunity to the public shareholders.

Recommendation of the Panel of Experts (Takeover Panel)

7. Since, the issue involved in the matter is unique in nature and required clarification / interpretation of certain provisions relating to *Takeover Regulations, 2011*, the said application and submissions received from the *Acquirer* were referred to the Panel of Experts ("*Takeover Panel*") constituted in terms of regulation 11(5) of the *Takeover Regulations, 2011* for their advice and recommendations. The recommendation made by the *Takeover Panel* is as under:

"*The Recovery Officer is holding these shares pursuant to the order of Debt Recovery Tribunal. This remains a mere technical requirement since the transaction would have been exempted under Regulation 10 (1) (a) (ii) of the Takeover Regulations. The applicant is a promoter and is already in control of the company and is eligible for the exemption.*

In view thereof, the Panel recommended granting exemption to the applicant subject to their compliance with the proviso to Regulation 10 (1) (a) of Takeover Regulations."

Consideration

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

(a) The *Acquirer* is presently evaluating the acquisition of a maximum of 3,96,44,346 equity shares of the *Target Company* (*Transfer Shares*) (corresponding to a maximum of approximately 14.99% of the total paid-up equity share capital of the *Target Company*) (Proposed Acquisition) from the Recovery Officer, who is holding and is in custody of the *Transfer Shares* to fulfil the

technical requirements under the RDB Act and rules and regulations thereunder.

(b) In the event, the acquisition of *Transfer Shares* by the *Acquirer* is materialized, it shall result in increase in the shareholding of the *Acquirer* along with its group companies (PAC) beyond the threshold of more than 5% of equity shares in the *Target Company* in a single Financial year and would trigger open offer obligation under regulation 3(2) read with regulation 3(3) of *Takeover Regulations, 2011.*

(c) The matter was referred to the *Takeover Panel* in terms of proviso of regulation 11(5) of *Takeover Regulations, 2011* and after due deliberation, the Panel Members have opined that that the Recovery Officer is holding these shares in pursuance of the order of Debt Recovery Tribunal and it remains a mere technical requirement since the transaction would have been otherwise exempted under regulation 10 (1) (a) (ii) of the *Takeover Regulations, 2011.*

(d) I also note that the *Transfer Shares* were originally held by the group companies of the promoter VJM, who defaulted in paying the outstanding dues to various Public Sector Banks and other Financial Institutions led by the SBI Consortium. Further, despite lapse of sufficient years of time and opportunities granted, the aforesaid outstanding liability has not been honored. I also note that VJM has been declared as a Fugitive Economic Offender. In the facts of this matter, I note that consequently, for recovering dues of Public Sector Banks and other Financial Institutions, the *Transfer Shares* held by VJM Group Transferors were directed to be liquidated under the proceedings of Bangalore DRT. Accordingly, in pursuance thereof, the Proposed Acquisition is being executed through the sale proclamation dated June 07, 2021 ("Sale Proclamation") made by the Recovery Officer. In effect the other promoter of the *Target Company i.e.* the *Acquirer,* is now intending to acquire 14.99% of the

equity shares (*Transfer Shares*) of the *Target Company* from the Recovery Officer on the stock exchange platform under the Block Deal mechanism through Proposed Acquisition.

(e) In view of the peculiar facts of this matter, the public policy and public interest involved in the entire transaction and taking into cognizance various steps taken by the agencies over the years to recover the dues of the Public Sector Banks and other Financial Institutions by liquidating the assets of the defaulter including the *Transfer Shares,* I note that Proposed Acquisition has a merit for consideration. Considering the above and the facts that the aforesaid *Transfer Shares* are proposed to be acquired by another promoter of the *Target Company (* which is already having controlling stake in the *Target Company)* from the Recovery Officer, who is holding these *Transfer shares* under the directions of the Bangalore DRT and considering the favorable recommendations of the *Takeover Panel,* I find that it would be apt to grant exemption to the *Acquirer* from open offer requirements as laid down in the regulations 3 (2) and 3 (3) of the *Takeover Regulations. 2011*.

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*, Heineken International B.V., from the obligation to make an open offer under regulation 3(2) read with regulation 3(3) of the *Takeover Regulations, 2011* with respect to the proposed acquisitions of transfer shares in the *Target Company*, viz. **United Breweries Ltd.**, by way of Proposed Acquisition to be undertaken as mentioned in the *Application and at paragraph 5 of this Order* and in line with the sale proclamation.

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

(a) The *Acquirer* has to comply with the proviso of regulation 10(1)(a) of the *Takeover Regulations, 2011*.

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

(c) On completion of the proposed acquisitions, 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.

11. The exemption granted above is limited to the requirement 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 June 07, 2021 read with other submissions, filed by *Acquirer*, is accordingly disposed of.

-Sd-

Place: Mumbai **S.K. Mohanty**

Date: June 22, 2021 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA