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# EASTERN INVESTMENTS LTD.

(Under Administrative Control of Government of India, Ministry of Steel)

# इष्टार्न इनभेष्टमेन्ट लिमिटेड

(इस्पात मन्त्रालय, भारत सरकार के प्रसासनिक नियन्त्राधीन)

BIRD GROUP
बर्ड ग्रुप

Smt. Neelam Bharadwaj
General Manager, DCR, CFD
Securities and Exchange Board of India,
Plot No.C-4,-A, "G" Block
Bandra Kurla Complex, Bandra (East)
Mumbai-400 051

27th October, 2009

भा. प्र. वि. बो. SEBI
सं /No 66357
दिनांक
Date 27 NOV 2009

M(EG)
Have they replied to our query
Pl obs.
30/11

Dear Madam,

**Subject: Request for Clarifications on Certain Issues relating to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997**

At the outset we would like to convey our thanks to you for the cooperation we have always received from SEBI's end whenever approach has been made by us in regard to clarifications on various matters concerning SEBI Regulations. This time we have an issue before us relating to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and we seek your clarifications on the same before we can move with a restructuring scheme in respect of our company and two other associate companies, the scheme having been duly approved by the Ministry of Steel, Government of India and also the Cabinet.

We start with the background of the companies as well as the details of the restructuring scheme for understanding of the issue for which we request for your clarifications.

**Background of the concerned Companies/Group**

Eastern Investments Ltd (EIL) is an Investment Company under the present Bird Group of Companies. The other companies under the Group are:

1. The Orissa Minerals Development Company Ltd (OMDC)
2. The Bisra Stone Lime Company Ltd (BSLC)
3. The Karanpura Development Company Ltd (KDCL)
4. Scott & Saxby Ltd (SSL)
5. The Burrakur Coal Company Ltd (Burrakur) (In Liquidation)
6. The Borrea Coal Company Ltd (Borrea) (In Liquidation)

All the above seven companies including EIL along with some other companies were earlier under the managing agency of the erstwhile Bird & Co Ltd. Managing agency system having been abolished, these companies came under the control of the erstwhile company from 1970. The undertaking of the erstwhile Bird & Co Ltd having been nationalized vide The Bird & Company Limited (Acquisition and Transfer of Undertakings and other Properties) Act, 1980 (Act No. 67 of 1980). The names of 21 companies under control of erstwhile company appeared in Schedule I to the said Act as 'Specified Companies'. Shares of the specified companies held by the erstwhile Bird & Co Ltd got vested in the President of India. Because of such holding

Act Schedule I Specified Co.

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of shares by the President of India, the different companies specified in Schedule I to the said Act including their subsidiaries, if any, came under administrative control of different Ministries of the Government of India.

Thus the seven companies viz., EIL, OMDC, BSLC, KDCL, SSL (as subsidiary of KDCL), Burrakur and Borrea came under the administrative control of the Ministry of Steel, Government of India since 25th October, 1980. These seven companies were styled as 'Bird Group of Companies' after change over of the administrative control.

Out of these seven companies two companies viz., Burrakur and Borrea were inoperative companies, their coal mines having been nationalized in 1970-71. Decision was taken to wind up these two companies by the Court and they went into liquidation in 2005. They are in the process of liquidation now by the Calcutta High Court.

**Restructuring of the Bird Group of Companies-Approval thereof**

The Ministry of Steel, Govt of India, as administrative Ministry, had been considering restructuring of remaining five companies under the present Bird group since long for administrative convenience. The matter was of late taken up seriously and a restructuring scheme has been approved by the Ministry as well as the Cabinet. The copy of the Ministry letter dated 30 09.2009 conveying approval of the Cabinet to the proposed Restructuring Scheme is enclosed as **Annexure I** to this letter for kind perusal.

KDCL and SSL, being non profit entities and having huge accumulated loss were left out of the restructuring scheme and decision has been taken to wind up these two companies under provisions of the Companies Act, 1956.

Remaining three companies under the Bird group viz., EIL, OMDC and BSLC have been brought under the purview of the scheme. These three companies are listed with Calcutta Stock Exchange.

**Restructuring Scheme-Salient - Features thereof**

RINL
EIL
OMDC BSLC

As part of restructuring OMDC and BSLC will be Subsidiaries of EIL and EIL on the other hand will be Subsidiary of Rashtriya Ispat Nigam Ltd (RINL), a reputed public sector company in the steel sector under the Ministry of Steel. This process will in effect constitute change in status of the three companies from 'Government managed' companies to 'Government' companies under section 617 of the Companies Act, 1956. EIL will be subsidiary of RINL and OMDC & BSLC will on the other hand be subsidiaries of EIL. Under provisions of section 617 of the Companies Act 'subsidiary of a government company is also a government company'.

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Phone (दुरभाष) : 2321 3983, 2337 3582, 2337 3584, 2334 3526, Fax (फैक्स) : 91-033-2321-3874, E-mail (ई-मेल) : birdgroup@etc.net

Now in the process of converting OMDC and BSLC as subsidiaries, EIL has to acquire substantial shares of these two companies. For this purpose authorized share capital of EIL has already been increased. Authorized share capital of BSLC has also

been increased for different purpose, that is, for conversion of Government loan to equity and issue of equivalent shares in the name of the President of India.

Consequent upon conversion of Government debt of BSLC into equity and issue of equivalent shares in the name of the President of India, transfer will be effected of 50% shareholding of the President of India in BSLC to EIL.

In the process of implementing the restructuring scheme EIL shall have to acquire existing 14.20% holding (comprising 85,219 shares) of the President of India in OMDC. In order to convert OMDC to its Subsidiary, EIL will have to acquire balance shares of OMDC from LICI, EIL's existing holding in OMDC being 33.98%.

In lieu of acquiring shares of OMDC and BSLC from the President of India, EIL needs to issue equivalent amount of Eli's shares in the name of the President of India. No cash transaction is involved in respect of exchange of shares in between the Government of India and EIL. After restructuring in the above manner, transfer of 51% shares of Government of India in EIL to RINL shall be effected to make EIL subsidiary of RINL.

Present shareholding pattern of EIL, OMDC and BSLC is given at **Annexure II** to this letter for kind perusal.

**Applicability of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations,1997**

It would be evident that in the process of restructuring EIL would have to acquire substantial shares of OMDC and BSLC to make the two companies subsidiaries of its own, the entire share transfer being taking place from the Government of India excepting minimum OMDC shares from LICI.

This position shots up question whether in such circumstances compliance of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 shall be applicable to EIL prior to such acquiring of OMDC and BSLC shares.

Regulations 10, 11 and 12 of the said Regulations,1997 stipulate that for substantial acquisition of shares (15% and above or higher specified limits) or voting rights in and acquisition of control over a listed company, Regulation for substantial acquisition of shares/takeovers is attracted and the acquirer in such case needs to make a Public Announcement to acquire substantial shares (5% and above) of such listed company in accordance with the regulations prior to such acquisition.

The point at issue is whether EIL needs to comply and make public announcement under SEBI Regulations.

Regulation 3 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 specify certain clauses clarifying that on fulfillment of any such clause under Regulation 3, public announcement pursuant to Regulations 10, 11 and 12 shall not be applicable.

In this regard we refer to clause (1)(e)(i) of Regulation 3. This clause stipulates that: "Nothing contained in Regulations 10, 11 and 12 shall be applicable in respect of inter se transfer of shares among group companies within the definition of group as defined in the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 (54 of 1969) where persons constituting such group have been shown as Group in the last published Annual Report of the target company".

Under MRTP Act, 1969 section 2(ef) defines the 'group' as below:
*Group means a group of -*

- (i) two or more individuals, associations of individuals, firms, trusts, trustees or bodies corporate (excluding financial institutions) or any combination thereof, which exercises or is established to be in a position to exercise control directly or indirectly over any body corporate, firm or trust; or
- (ii) associated persons.

From the existing shareholding pattern of the companies it would be observed that EIL with 33.98% shareholding over OMDC and 40.45% shareholding over BSLC and also in combination with the President of India (holding 50.42% in EIL has control over OMDC (where the President of India holds 14.20%) and also control over BSLC (where Government's holding is one share of Rs.10/-.).The concerned companies therefore form a 'group' under definition of the MRTP Act, 1969. The last published Annual Reports of both the target companies also depicts the position clearly showing that they are associate companies of EIL. Annual Reports of both the target companies and that of EIL are enclosed as **Annexure III A & B** and **Annexure IV** respectively.

**<u>Request for Clarifications from SEBI's end</u>**

Restructuring scheme is required to be implemented expeditiously. Before we take other various steps in this direction we deem it necessary to approach you with the request for clarifications/confirmations on the issue whether SEBI Regulations relating to substantial acquisition of shares and takeovers shall be applicable in respect of EIL The position is summed as below to have a short glimpse at the issue for your kind consideration and clarifications / confirmations.

1. Restructuring scheme is approved by the Ministry of Steel, Government of India and also the Cabinet.
2. All the concerned companies are Government managed companies.
3. After implementation of the restructuring scheme all the three companies will be converted to Government companies.

4. Acquisition of shares of target companies viz., OMDC BSLC will be from the President of India.
5. No cash transactions are involved in transferring shares. This is based absolutely on the share swap in both the cases.
6. The concerned companies viz., EIL, OMDC and BSLC are according to us form a 'group' as defined under MRTP Act, 1969 and as such the transfer of shares involved are inter se transfer amongst group and therefore exempted pursuant to Regulation 3(1)(e)(i) from complying with the provisions of Regulations 10,11 and 12 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

Kindly note that we have sought similar clarification in the year 2002 regarding applicability of Regularization Scheme, 2002 under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and received your confirmation that, being Government controlled company we need not to participate in the scheme. (Copy of the letter is enclosed as **Annexure – V**). In view of this it is assumed that at present also the above stated Regulations is not applicable in our case. However, we would like to seek re-confirmation from SEBI in this regard.

Hence, we shall be extremely grateful to you if you kindly take up the issue early for re-confirmation about the non-applicability of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 in our case so that we can proceed with the implementation of the restructuring scheme within the timeframe as set by the Ministry.

Thanking you again,

Yours faithfully
For Eastern Investments Ltd

(J Banerjee)
Company Secretary

Encl : As above