

# SWOJAS ENERGY FOODS LIMITED

(Under Voluntary Winding up)

77, Vijaynagar Colony,  
2147 Sadashiv Peth,  
Pune 411 030



SEBI/IW/P/20150411/0000021513

April 8, 2015

The General Manager,  
Securities & Exchange Board of India,  
SEBI Bhavan, Plot No. C-4A, G Block,  
Bandra Kurla Complex, Bandra East,  
Mumbai – 400051.

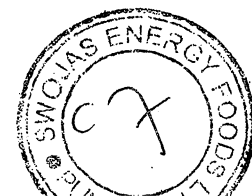
भा. प्र. वि. बो. SEBI	
सं/No 21513	
दिनांक	Date
	10 APR 2015

Dear Sir,

**Subject:** Request for Interpretive Letter under the Securities and Exchange Board of India (Informal Guidance) Scheme 2003 (“SEBI Informal Guidance Scheme”) regarding applicability of various provisions of Sebi regulations as well as the Listing Agreement to M/s Swojas Energy Foods Limited, a company under voluntary winding up.

## 1. Background

- 1.1 Swojas Energy Foods Limited (hereinafter referred to as “Swojas” or “the Company”) is an Indian public limited company based in Pune.
- 1.2 The Company was incorporated as “Swojas Energy Foods Limited” on October 11, 1993 under the provisions of the Companies Act, 1956 by Shah family with the object of carrying a business of milk products. Parmalat SpA (hereinafter referred to as “Parmalat”), a multinational Italian dairy and food corporation which was known for its premium milk products acquired majority stake in the Company with an intention to enter in growing Indian market. Parmalat had global presence having operations in different countries in Europe, Latin America, North America, Australia, South Africa, China, etc.
- 1.3 With the global expertise of Promoter, Swojas tried to introduce new superior product range in the domestic market, however, it could not compete with local players. There were several other factors beyond its control due to which the Company continued to incur losses. Eventually, Swojas suffered major setback and with the increasing losses, Parmalat did not find continuation of business as a viable option.
- 1.4 The management considered all the possible ways for revival of the Company, but in vain. Being a commitment of Parmalat towards India and shareholders of the Company, the management took a decision of voluntary winding up of the Company in the best interest of all the shareholders and also to avoid further losses. Accordingly, a special resolution was passed by the shareholders of the



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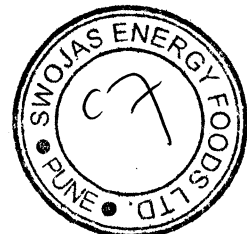
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Company with requisite majority at the Extra Ordinary General Meeting held on 31st day of August 2000 and Mr Milind B Kasodekar had been appointed as the Liquidator (hereinafter referred to as “Liquidator”).

- 1.5 The Company is under voluntary winding-up w.e.f. August 31, 2000 and it had been duly communicated to all the stakeholders through direct communication as well as newspaper advertisement. Further, it has also been published in the Official Government Gazette and its copy is enclosed alongwith (Annex\_1). The Company has not carried out any business after going into liquidation. The Liquidator sold different assets of the Company over a period of time and used the proceeds to make payment to creditors and clear the liabilities of the Company.
- 1.6 BSE in September 2000 immediately suspended trading in the equity shares of Swojas after getting a communication from the Liquidator. Further due to applicable legal provisions on appointment of the Liquidator, both the depositories and RTA stopped rendering any services like transfer, dematerialisation, rematerialisation, etc to the Company and its shareholders. There are around 4000+ shareholders of the Company which have been stuck up in the Company since September 2000.
- 1.7 Mr Vishal Dedhia, Mr Ketan Kataria and Mr Amar Kakaria (hereinafter collectively referred to as “Acquirers”) acquired Paramalat’s stake in January 2014 and also made an Open Offer to general public under Sebi Regulations with an intention to revive the Company. They have now taken necessary steps to bring the Company out of liquidation. The Acquirers also aim to get the shares listed on BSE again after doing all necessary compliances with an intention to unlock value for the Company and its shareholders who have been stuck up for almost 15 years due to ongoing winding-up process.
- 1.8 In order to put the process on fast track, the Liquidator has approached the regulator, depositories as well as the Registrar to understand further course of action to be done for revival of the Company. They have been requested to provide their claims as on 31<sup>st</sup> August 2000 i.e. the day on which Swojas went into liquidation.

## 2. Winding-up Process & Flow of Events

<i>Date / Period</i>	<i>Developments</i>
31 <sup>st</sup> August 2000	Approval by the shareholders for voluntary winding-up of Swojas by passing a special resolution in the Extra-Ordinary General Meeting of the Company
31 <sup>st</sup> August 2000	Board of Directors of Swojas ceased to exist with immediate effect



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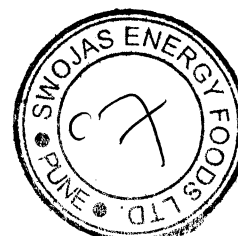
<i>Date / Period</i>	<i>Developments</i>
	under section 491 of the Companies Act, 1956 and Mr Milind B Kasodekar took entire control as Liquidator of the Company
<b>10<sup>th</sup> September 2000</b>	Intimation to BSE by the Liquidator to suspend trading of shares of the Company
<b>15<sup>th</sup> September 2000</b>	Last date of trading on equity shares of Swojas at BSE. Thereafter, BSE suspended trading in equity shares based on communication by the Liquidator.
<b>21<sup>st</sup> September 2000</b>	Publication in the Official Gazette about voluntary winding up of the Company
<b>11<sup>th</sup> September 2001</b>	Suspension of trading in the shares of Swojas by the BSE due to non-payment of fees (As confirmed by BSE in its communication dated 28-10-2014)
<b>During the Year 2000 &amp; 2001</b>	Communication with BSE by the Liquidator for clearance of outstanding dues of the stock exchange
<b>Regularly since FY 2000-01</b>	Disposing off the assets of the Company and utilisation of the sale proceeds for settlement of claims of eligible creditors based on supporting documents
<b>Regularly every year on February 28 &amp; August 31</b>	Preparation of Liquidator's Report and getting the financials audited from Auditor of the Company.
<b>Regularly since FY 2001-02</b>	Conducting meetings of the shareholders u/s 496 of the Companies Act, 1956 and filing of Liquidator's Report with the Registrar of Companies / Ministry of Corporate Affairs
<b>January 2014</b>	Execution of Share Purchase Agreement by M/s Vishal Dedhia, Ketan Kataria & Amar Kakaria ("Acquirers") with Parmalat for acquiring its stake in Swojas followed by launch of Open Offer under Sebi regulations
<b>June 2014</b>	Successful completion of the Open Offer process with the permission of Sebi
<b>July 2014</b>	Remittance of consideration to Parmalat followed by transfer of its shares to the Acquirers with the consent of the Liquidator

*Permit suspension*

### 3. Inability to do statutory compliances due to applicable legal provisions

As per the prevalent regulations, it is mandatory for every listed company to comply with the Sebi regulations as well as the Listing Agreement. Some of the mandatory compliances of the Listing Agreement to be complied by the Company are as below:

- Clause 15/16 - Book Closure / record date
- Clause 31 - Annual Report



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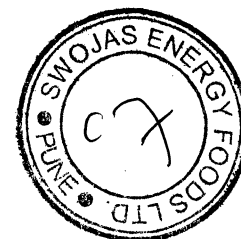
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- Clause 35 - Shareholding pattern
- Clause 38 - Listing fees
- Clause 41 - Quarterly Results
- Clause 47 - Half Yearly Certificate, Appointment of Compliance Officer, Appointment of RTA, etc
- Clause 49 - Corporate Governance
- Secretarial Audit Report
- Annual disclosures under SAST regulations

These compliances can be done by listed companies with running business in the normal course through its officers as defined under the Companies Act which may include any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is accustomed to act.

However, situation is totally different for the companies which are under liquidation. Following table highlights major differences on key parameters related to regulatory position, annual filing, management control, accounting, etc in respect of normal company vis-à-vis a company under liquidation.

Parameters *	Normal Company	Company under Voluntary winding-up
<i>Ministry of Corporate Affairs</i>		
1) Status of Ministry of Corporate Affairs	Active	Under Liquidation
2) Annual Filing with MCA	Form 20B, 23AC, 23ACA, 23B, 66	Form 57, 58, 150, 152, 153
<i>Managing affairs of the Company</i>		
3) Operational Management Control /	Officers as defined u/s 2(30) of the Companies Act, 1956 which may include any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is accustomed to act	An independent agency called as Liquidator appointed u/s 490 of the Companies Act, 1956
4) Purpose of managing the	To run the business	To look after the affairs of



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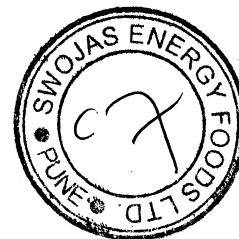
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affairs	efficiently to create value for all the stakeholders	winding up procedure and distribution of assets of the Company to settle the creditors
5) Appointment	Directors are appointed by the shareholders. However, they in turn appoint other officers such as Company Secretary, Chief Accounting Officer, etc in order to run operations of the Company smoothly.	Liquidator is appointed by the shareholders to handle all the responsibilities related to winding up procedure.
6) Retirement	Companies Act has provided for retirement of Directors by rotation	Liquidator will retire only after completion of the winding up procedure or revival of the Company
<b>Accounting</b>		
7) Basic assumption while preparing financial statements	Going Concern	Under Liquidation
8) Method of Accounting followed	Accrual method	Cash method
9) Financial statements prepared for annual reporting	Profit & Loss Account, Balance Sheet, Annexures, etc as per Schedule VI	Liquidator's Statement of Accounts
10) Cut-off date for reporting	End of the financial year related to the Company	12 months from the date of appointment of the Liquidator
11) Frequency of reporting	Quarterly, Half Yearly and Annual	Annual / Half Yearly
*Since provisions of the Companies Act, 1956 were applicable when Swojas went into liquidation, it has been considered while making a comparison on above points.		

As a consequence of the appointment of the Liquidator on August 31, 2000, the Board ceased to exist immediately and the Company was required to function as per the provisions of winding up specifically stated in the Companies Act, 1956 and the Companies Court rules.

The Company had duly complied with the relevant provisions of applicable regulations including corporate laws, tax laws, labour laws, state laws, etc which were applicable for the company under liquidation. However, in view of above situation it was not legally possible to comply with different provisions of the Listing Agreement or SEBI



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regulations as the Board ceased to act and further, holding of Board Meeting and General Meeting as per the provisions of the Companies Act, 1956 was not possible.

#### 4. Procedural vis-à-vis Penal Suspension by BSE

Sebi has asked all the Stock Exchanges in India to adopt Standard Operating Procedures (SOPs) for taking any action against the listed companies including suspension in order to ensure uniform treatment for all the companies. BSE levies reinstatement fees for revocation of suspension for companies under penal suspension, however, no such fees is levied in case of procedural suspension. BSE usually suspends trading in companies due to procedural reasons in the event of corporate actions like amalgamation, liquidation, capital reduction, etc.

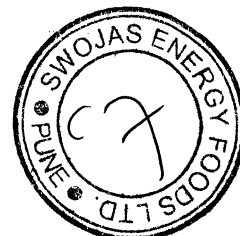
As per primary analysis, BSE has suspended 14 companies under liquidation for procedural reasons during 2001 to 2014 though they have hardly complied with various clauses of the Listing Agreement after going into liquidation, however, Swojas has been suspended for penal reasons. A summary of compliances by each of these 14 companies, as per information available on BSE portal is enclosed for your perusal (Annex\_2). No information about payment of fees by these companies is available in the public domain, however, there is a very high probability that no payment might have been made by them after going into liquidation.

Had principle similar to suspension of those 14 companies is applied, ideally Swojas should have been suspended for procedural reasons and no reinstatement fees would have been applicable in the given case. Apparently, there is a deviation from SOPs since all these 14 companies are differently classified while suspending though uniform treatment should be given as per the directives of Sebi for the given category of non-compliances.

BSE had communicated re-instatement fees of Rs 28 Lakhs + Service Tax initially. They had a policy of offering concession in re-instatement fees for sick companies. The sick companies work under the aegis of their Board and they can do all compliances legally. However, it is not possible for companies under liquidation since its Board does not exist and the Liquidator manages the show as per applicable statutory provisions. After making a representation to BSE about the "Liquidation" status of the Company, they have revised it to Rs 15 Lakhs + Service Tax. We are enclosing copy of their communication (Annex\_3)

#### 5. Services Provided by Depositories & Registrars to Companies under Liquidation & its shareholders

As per the Companies Act, no transfer of equity shares is allowed without the permission of the Liquidator for the company under liquidation. Therefore, as a standard practice, Stock Exchanges in India immediately suspend trading in equity shares of company once



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it goes into liquidation. Moreover, it is not possible to convert shares to demat form after the commencement of liquidation process. Hence, it would be apt to mention that no services can be provided by depositories / RTA to shareholders of the companies under liquidation due to applicable legal provisions.

Swojas had voluntarily taken demat connectivity from both the depositories and also appointed Link Intime India Private Limited as Registrar before the year 2000 even though it was not mandatory at that time. The Company had made timely payment of their dues before going into liquidation.

Both the depositories & the Registrar were informed by the Liquidator on commencement of the liquidation process and subsequently, NSDL issued an internal circular to all its depository participants for their update (Annex\_4). On commencement of the liquidation process, demat requests of the shareholders had been rejected by the depository participants and copy of the given circular was attached while sending share certificates back to the shareholders. In fact, it was not possible for the shareholders to opt for rematerialisation as well. CDSL also rejected demat requests on similar lines.

Since none of them had not submitted any claim, the Liquidator wrote to both the depositories and the Registrar to submit their claim upto 31<sup>st</sup> August 2000. However, they submitted claim for their services provided during the period in which the Company was under liquidation. Following are the claims raised by each of the parties:

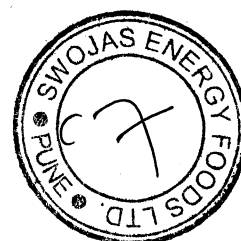
- Link In-Time (Registrar) – Rs 2,82,728 (As on 31/01/2013)
- NSDL – Rs 4,80,909 (As on 31/03/2013)
- CDSL – Rs 8,98,849.92 (As on 11/08/2014)

The Liquidator communicated to each of them that claim should be submitted upto 31<sup>st</sup> August 2000 and also regularly followed-up with them to provide valid claim, but there had been no response except for CDSL who submitted the claim.

### 6. Revival of the Company

New Promoters have successfully acquired stake from Parmalat and also made an Open Offer to general public under Sebi regulations. They have now taken necessary steps to bring the Company out of liquidation. Once the Company is out of liquidation, the Acquirers plan to approach BSE for revocation of suspension. They aim to get its shares listed on BSE in the next year after doing all necessary compliances with an intention to unlock value for the Company and its shareholders who have been stuck up for almost 15 years due to ongoing winding-up process.

### 7. Guidance Sought



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The acquirers are committed to revive Swojas by doing necessary compliances. We seek your guidance on the following matters:-

1. Trading in equity shares of Swojas was initially suspended due to procedural reasons on commencement of winding-up process in September 2000 and thereafter, BSE suspended it for penal reasons due to non-payment of fees in September 2001. Further, on commencement of winding-up process, the Board ceased to exist and control of the Company went to the Liquidator due to which various provisions of the Listing Agreement could not be met legally. ①

**Query: Is there any possibility to provide relaxation to companies under liquidation from various compliances under the Listing Agreement for the period in which it remains under liquidation?** ②

2. There are 14 different companies under liquidation which were initially suspended due to procedural reasons and continues to be suspended for procedural reasons despite doing hardly any compliance under the Listing Agreement. As per BSE policy, reinstatement fees is not applicable for companies under procedural suspension and hence, it will not be payable in the event of revival of those companies.

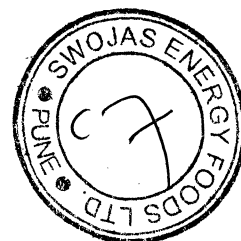
**Query: If all the exchanges in India have to follow SOPs, should suspension of Swojas be classified under procedural reasons instead of penal reasons?**

3. In order to facilitate speedy revival of sick companies, BSE has a policy of offering concession in reinstatement fees to them though they could have legally done all the compliances. However, there is no such policy for the companies under liquidation which are actually in even worse situation. After making a representation, BSE has revised its re-instatement fees from Rs 28 Lakhs to Rs 15 Lakhs for non-compliances under the Listing Agreement.

**Query: If the companies under liquidation can not comply with some clauses of the Listing Agreement due to application of law, should they still be levied reinstatement fees at the time of revival?**

4. Prima facie, both the depositories and the Registrar did not submit any claim which is outstanding as on 31<sup>st</sup> August 2000 despite repetitive follow-up. They did not render any services to the Company as well as its shareholders during the course of liquidation due to applicable legal provisions. However, still both the depositories & Registrar have raised huge demands towards the services which were never provided by them to Swojas and its shareholders.

**Query: Is it legally correct & fair on the part of depositories & the Registrar to raise claims for the period in which they had not rendered any services?**





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We are also enclosing a demand draft of Rs 25,000/- (No. 415049, dated 08/04/2015) drawn on Canara Bank towards the prescribed fees under the Securities and Exchange Board of India (Informal Guidance) Scheme 2003.

We would be pleased to provide any additional information as well as would be available for a personal meeting on the above matter.

We would appreciate an early response on the above matter.

Yours Sincerely,  
For Swojas Energy Foods Limited (Under Liquidation)



Milind B Kasodekar  
Liquidator

