GAZETTE OF INDIA

EXTRA-ORDINARY

PART II - SECTION 3- SUB-SECTION (ii)

PUBLISHED BY AUTHORITY

SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the 30th December, 2004

SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) (SECOND AMENDMENT) REGULATIONS, 2004

S.O. 5(E). In exercise of the powers conferred by Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, namely:-

1. (i) These regulations may be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2004.

(ii) These regulations shall come into force on the date of their publication in the Official Gazette.

2. In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 -

(i) in regulation 2, in sub-regulation (1),

(a) for clause (h) the following shall be substituted, namely:-

"(h) "promoter", unless otherwise provided elsewhere, means-

(i) any person who is directly or indirectly in control of the company; or

(ii) any person named as promoter in any document for offer of securities to the public or existing shareholders or in the shareholding pattern disclosed by the company under the provisions of the Listing Agreement, whichever is later; or

(iii) any person named as person acting in concert with the promoter in any disclosure made in terms of the Listing Agreement with the stock exchange or any other regulations or guidelines made or issued by the Board under the Act.

and includes,

(a) where such person is an individual,

(i) his spouse , parents, brothers, sisters or children;

(ii) any company in which twenty six per cent.(26%) or more of the equity share capital is held by him or by the persons mentioned in sub-clause (i) or any firm or Hindu Undivided Family in which he or any of the persons mentioned in sub-clause (i) is a partner or member;

(iii) any company in which a company specified in sub-clause (ii), holds more than fifty per cent.(50%) of the equity share capital;

(iv) any firm in which the aggregate of his holding and the holdings of the persons mentioned in sub-clause (i) is more than fifty per cent. (50%) .

(b) where such person is a body corporate,

(i) a subsidiary or holding company of that body corporate;

(ii) any company in which the said body corporate holds twenty six per cent.(26%) or more of the equity share capital;

(iii) any company which holds twenty six per cent.(26%) or more of the equity share capital of the said body corporate;

(iv) any company in which persons acting in concert hold twenty six per cent.(26%) or more of the equity share capital and those persons acting in concert also hold twenty six per cent.(26%) or more of the equity share capital in such body corporate;

(v) any other body corporate under the same management as the said body corporate within the meaning of sub-section (1B) of section 370 of the Companies Act, 1956;

Explanation I: A financial institution, scheduled commercial bank, foreign institutional investor, mutual fund and a venture capital fund shall not be deemed to be a promoter merely by virtue of its shareholding.

Explanation II: A financial institution, scheduled commercial bank, foreign institutional investor or a venture capital fund shall be deemed to be a promoter of its subsidiary and of the mutual fund sponsored by it, as applicable.

(b) for clause (j), the following shall be substituted, namely -

"(j) "public shareholding" means shareholding held by persons other than promoters as defined under clause (h)."

(ii) in regulation 3,

(a) in sub-regulation (1),

(1) in clause (e), in sub-clause (iii), after the proviso, the following Explanation shall be inserted, namely - :

"**Explanation:** For the purpose of the exemption under sub-clause (iii) the term "promoter" means -

(i) any person who is directly or indirectly in control of the company; or

(ii) any person named as promoter in any document for offer of securities to the

public or existing shareholders or in the shareholding pattern disclosed by the company under the provisions of the Listing Agreement, whichever is later;

and includes,

(a) where the promoter is an individual, -

(1) a relative of the promoter within the meaning of section 6 of the Companies Act, 1956 (1 of 1956);

(2) any firm or company, directly or indirectly, controlled by the promoter or a relative of the promoter or a firm or Hindu undivided family in which the promoter or his relative is a partner or a coparcener or a combination thereof:

Provided that, in case of a partnership firm, the share of the promoter or his relative, as the case may be, in such firm should not be less than fifty per cent.(50%)";

(b) where the promoter is a body corporate,-

(1) a subsidiary or holding company of that body; or

(2) any firm or company, directly or indirectly, controlled by the promoter of that body corporate or by his relative or a firm or Hindu undivided family in which the promoter or his relative is a partner or coparcener or a combination thereof:

Provided that, in case of a partnership firm, the share of such promoter or his relative, as the case may be, in such firm should not be less than fifty per cent.(50%).”

(2) after clause (k), the following shall be inserted, namely –

"(ka) acquisition of shares in terms of guidelines or regulations regarding delisting of securities specified or framed by the Board".

(b) after sub-regulation (1) the following sub-regulation shall be inserted, namely:

"(1A) The benefit of availing exemption under the relevant clauses of sub-regulation (1), shall be subject to compliance with requirement specified in sub-regulation (2A) of regulation 11."

(iii) in regulation 7, in sub-regulation (1), after the words "fourteen per cent." the words "or fifty four per cent. or seventy four per cent." shall be inserted;

(iv) in regulation 10, the following proviso shall be inserted, namely-

"Provided that no acquirer shall acquire shares or voting rights, through market purchases and preferential allotment pursuant to a resolution passed under section 81 of the Companies Act, 1956 or any other applicable law, which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise more than fifty five per cent. of the voting rights in the company;

Provided further that if the acquirer has acquired shares or voting rights through such market purchases or preferential allotment beyond fifty five per cent. of the voting rights in the company, he shall forthwith disinvest the shares acquired in excess of fifty five per cent. and shall be liable for action under these Regulations and the Act.

Explanation : In case of acquisition through preferential allotment the limit of fifty five per cent. voting rights as provided under this regulation shall be reckoned with reference to the increased share capital pursuant to such preferential allotment."

(v) in regulation 11,

(a) in sub-regulation (1), for the figure and words "75 per cent." the words and figure "fifty five per cent.(55%)" shall be substituted;

(b) for sub-regulation (2), the following shall be substituted, namely –

"(2) An acquirer, who together with persons acting in concert with him has acquired, in accordance with the provisions of law, fifty five per cent.(55%) or more but less than seventy five per cent. (75%) of the shares or voting rights in a target company, may acquire either by himself or through persons acting in concert with him any additional share or voting right, only if he makes a public announcement to acquire shares or voting rights in accordance with these regulations:

Provided that no acquirer shall acquire shares or voting rights, through market purchases and preferential allotment pursuant to a resolution passed under section 81 of the Companies Act, 1956 or any other applicable law, which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise more than fifty five per cent. of the voting rights in the company;

Provided further that if the acquirer has acquired shares or voting rights through such market purchases or preferential allotment beyond fifty five per cent. of the voting rights in the company, he shall forthwith disinvest the shares acquired in excess of fifty five per cent. and shall be liable for action under these Regulations and the Act.

Explanation : In case of acquisition through preferential allotment the limit of fifty five per cent. voting rights as provided under sub - regulation (ii) shall be reckoned with reference to the increased share capital pursuant to such preferential

allotment."

(c) after sub-regulation (2), the following shall be inserted, namely -

"(2A) Unless otherwise provided in these regulations, an acquirer, who seeks to acquire any shares or voting rights whereby the public shareholding in the target company may be reduced to a level below the limit specified in the Listing Agreement with the stock exchange for the purpose of listing on continuous basis**,** may acquire such shares or voting rights, only in accordance with the of guidelines or regulations regarding delisting of securities specified by the Board:

Provided that, the provisions of this sub-regulation shall not apply in case of acquisition by virtue of global arrangement which may result in indirect acquisition of shares or voting rights or control of the target company."

(vi). in regulation 20, in sub-regulation (7), after the proviso, the following shall be inserted, namely –

"Provided further that the shares or voting rights so acquired taken together with the acquisition under the public offer and shares or voting rights, if any, held by him or by persons acting in concert with him, do not result in public shareholding in the target company being reduced to a level below the limit specified in the Listing Agreement with the stock exchange for the purpose of listing on continuous basis."

(vii). in regulation 21,

(a). in sub-regulation (1), the following proviso shall be inserted, namely –

"Provided that where any public offer is made in pursuance of sub-regulation (2) of regulation 11, such public offer shall be for such percentage of voting capital of the target company so that the acquisition does not result in the public shareholding in such company being reduced to a level below the limit specified in the Listing Agreement with the stock exchange for the purpose of listing on continuous basis."

(b) after sub-regulation (1), the following sub-regulation shall be inserted, namely –

"(2) Where an acquirer acquires more than fifty five per cent. (55%) shares or voting rights in the target company through an agreement or memorandum of understanding and the public offer made under regulation 10 or sub-regulation (1) of regulation 11 to acquire minimum percentage of voting capital as specified in sub regulation (1) of regulation 21 results in public shareholding being reduced to a level below the limit specified in the Listing Agreement with the stock exchange for the purpose of listing on continuous basis, the acquirer shall acquire only such number of shares under the agreement or the memorandum of understanding so as to maintain the minimum specified public shareholding in the target company;"

(c) for sub-regulation (3), the following shall be substituted, namely –

"(3) If consequent to the public offer made in pursuance of global arrangement referred to in proviso to sub regulation (2A) of regulation 11, the public shareholding falls to a level below the limit specified in the Listing Agreement with the stock exchange for the purpose of listing on continuous basis, the acquirer shall undertake to raise the level of public shareholding to the levels specified for continuous listing specified in the Listing Agreement with the stock exchange, within a period of twelve months from the date of closure of the public offer, by

(i) issue of new shares by the company in compliance with the provisions of the Companies Act, 1956 and the Securities

and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000; or

(ii) disinvestment through an offer for sale in compliance with the provisions of the Companies Act, 1956 and the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000, of such number of shares held by him so as to satisfy the listing requirements; or

(iii) sale of his holdings through the stock exchange.

Provided that in case of acquisition of shares or voting rights or control in a target company where the public shareholding is below the limit specified for the purpose of listing on continuous basis in terms of the Listing Agreement with the stock exchange, the acquirer shall undertake to raise the level of public shareholding to the levels specified for continuous listing in terms of the listing conditions specified in the Listing Agreement with the stock exchange, within the period specified under the Listing Agreement."

(viii). in regulation 45, in sub-regulation 6, after clause (c), the following shall be inserted, namely –

"(d) directions under section 11(4) of the Act;

(e) cease and desist order in proceedings under section 11D of the Act;

(f) adjudication proceedings under section 15HB of the Act."

[F. No. SEBI/LAD/ 29278 /2004]

G.N. BAJPAI

CHAIRMAN

Securities and Exchange Board of India

Footnote:

The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (the said Regulations) were published in the Gazette of India on 20th February 1997, vide S.O. No. 124(E).

Subsequently a Corrigendum was published in the Gazette of India, Extra- Ordinary on 6th February 1998 vide S.O. No. 106(E).

The said Regulations were subsequently amended by –

1. SEBI (Substantial Acquisition of Shares and Takeovers)(Amendment) Regulations, 1998 published in the Official Gazette vide S.O. 930(E) dated 28th October 1998.

2. SEBI (Appeal to the Securities Appellate Tribunal) (Amendment) Regulations, 2000, published in the Official Gazette vide S.O.278(E) dated 28th March 2000.

3. SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2000 published in the Official Gazette vide S.O. 1178 (E) dated 30th December 2000.

4. SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2001 published in the Official Gazette vide S.O. 791 (E) dated 17th August 2001.

5. SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2001 published in the Official Gazette vide S.O. 875 (E) dated 12th September 2001.

6. SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2001 published in the Official Gazette vide S.O. 1058 (E) dated 24th October 2001.

7. SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2002 published in the Official Gazette vide S.O. 127(E) dated 29th January 2002.

8. SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002 published in the Official Gazette vide S.O. 954(E) dated 9th September 2002.

9. SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2002 published in the Official Gazette vide S.O.1328 (E) dated 18th December, 2002.

10. SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2004 published in the Official Gazette vide S.O. 982 (E) dated 30th August, 2004.

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