

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	NUVOCO VISTAS CORPORATION LIMITED
PROPOSED ACQUIRER	MR. HIREN KARSANBHAI PATEL (PAN No. AGGPP2907H)

Background -

1. Nuvoco Vistas Corporation Limited ("*Target Company*") is a company incorporated on February 08, 1999, having its registered office at Tower 3, Equinox Business Park, East Wing, 4th Floor, LBS Marg, Kurla (West), Mumbai, Maharashtra, 400 070. The equity shares of the *Target Company* are listed on the BSE Ltd. ("**BSE**") and National Stock Exchange of India Ltd. ("**NSE**").
2. An application dated February 23, 2024, along with replies dated May 07, 2024, June 11, 2024 and June 26, 2024 ("*Application*"), seeking exemption from the applicability of regulations 3, 4 and 5 (1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("*Takeover Regulations, 2011*") for the proposed indirect acquisition of shares in the *Target Company* was received from Mr. Hiren Karsanbhai Patel ("*Proposed Acquirer/ Applicant*").
3. *The Proposed Acquirer*, vide the *Application*, *inter-alia* submitted as under:
 - (a) The issued, subscribed and paid-up equity share capital of the *Target Company* is INR 357,15,61,530/- divided into 35,71,56,153 equity shares of INR 10/- each.

The promoters and promoter group entities collectively hold 72.02% of the

paid-up capital of the *Target Company* and the remaining 27.98% is held by public shareholders.

(b) The shareholding pattern of *Target Company* is as follows:

S. No.	Name of shareholder	No. of shares	Percentage of Shareholding (%)
Promoter and Promoter group			
1.	Karsanbhai Khodidas Patel	-	-
2.	Hiren Karsanbhai Patel	3,34,36,478	9.37
3.	Rakesh Karsanbhai Patel	83,13,982	2.33
4.	Keyuriben Rakeshbhai Patel Jt. Rakesh Karsanbhai Patel	3,31,528	0.09
5.	Rajalben H Patel Jt. Hiren Karsanbhai Patel	2,79,641	0.08
6.	Hemil Hiren Patel	100	-
7.	Dhruvil Hiren Patel	29	-
8.	Shantaben Karsanbhai Patel	29	-
9.	Niyogi Enterprise Private Limited	21,48,55,889	60.16
Total (A)		25,72,17,676	72.02
Public Shareholding			
10.	Public Shareholders	9,99,38,477	27.98
Total (B)		9,99,38,477	27.98
Total Shareholding (A+B)		35,71,56,153	100.00

(c) The shareholding pattern of Niyogi Enterprise Private Limited (“NEPL”), one of the promoters of the *Target Company* is as follows:

S. No.	Name of shareholder	No. of shares	Percentage of Shareholding (%)
1.	Karsanbhai Khodidas Patel	60,30,710	58.98
2.	Hiren Karsanbhai Patel	20,40,199	19.95
3.	Rakesh Karsanbhai Patel	20,06,823	19.63
4.	Keyuriben Rakeshbhai Patel Jt. Rakeshbhai Karsanbhai Patel	80,024	0.78
5.	Rajalben H Patel Jt. Hiren K Patel	67,501	0.66

S. No.	Name of shareholder	No. of shares	Percentage of Shareholding (%)
6.	Dhruvil Hiren Patel	7	0.00
Total		1,02,25,264	100.00

- (d) The applicant intends to acquire 60,30,710 shares representing 58.98% of the share capital of NEPL from Mr. Karsanbhai Khodidas Patel, who is the Applicant's father and also a promoter of both the *Target Company* and NEPL, by way of gift.
- (e) The proposed acquisition is an *inter-se* transfer of shares of NEPL, a promoter company of the *Target Company*, among immediate relatives, i.e., father and son.
- (f) The shareholding pattern of the NEPL before and after the proposed acquisition is given in the Table below:

Particulars	Before the proposed transaction		Proposed Transaction		After the proposed transaction	
	No. of Shares	% of holding	No. of Shares	% of holding	No. of Shares	% of holding
Karsanbhai Khodidas Patel	60,30,710	58.98	(60,30,710)	(58.98)	-	-
Hiren Karsanbhai Patel	20,40,199	19.95	60,30,710	58.98	80,70,909	78.93
Rakesh Karsanbhai Patel	20,06,823	19.63	-	-	20,06,823	19.63
Keyuriben Rakeshbhai Patel Jt. Rakeshbhai Karsanbhai Patel	80,024	0.78	-	-	80,024	0.78
Rajalben H Patel Jt. Hirenbhai K Patel	67,501	0.66	-	-	67,501	0.66
Dhruvil Hiren Patel	7	0.00	-	-	7	0.00
Total	1,02,25,264	100.00	-	-	1,02,25,264	100.00

4. The Applicant has, *inter-alia*, provided the following grounds for seeking exemption:
- (a) *The Applicant is the son of the transferor. The transferor (i.e. the father of the Applicant) wishes to gift his shareholding in NEPL to the Applicant.*
 - (b) *The Regulation 10(1)(a)(i) of the SAST Regulations provides the exemption for making an open offer if the acquisition is an inter-se transfer between immediate relatives. The Proposed Transaction involving transfer of shares of NEPL from the Transferor (father) to the Applicant (son) falls under the exemption under Regulation 10(1)(a)(i) of the SAST Regulations.*
 - (c) *A plain reading of Regulation 10(1)(a)(i), along with Regulations 3 and 5 of the SAST Regulations, would indicate that any inter-se 'acquisition' of shares between immediate relatives is exempt from the open offer obligations. 'Acquisition' has been defined under Regulation 2(1)(b) of the SAST Regulations to mean acquiring or agreeing to acquire shares or voting rights or control in the target company, directly or indirectly. Accordingly, the exemption under Regulation 10(1)(a)(i) of the SAST Regulations is not limited to acquisition of shares of the listed company alone, but also extends to acquisition of shares of an intermediate company that would have otherwise triggered open offer obligations under the SAST Regulations. This view has also been confirmed by the SEBI in various informal guidance's - D B Corp Ltd. (2012); OCL Iron and Steel Ltd. (2013) and Multibase India Ltd. (2018). SEBI, in these informal guidance's, has held that indirect transfers of shares of a target company between qualifying persons under Regulation 10(1)(a) of the SAST Regulations is exempt from the requirement of making an open offer.*
 - (d) *Further, the above interpretation is also in consonance with the intent and spirit of the exemption under Regulation 10(1)(a) of the SAST Regulations. We believe that the spirit of exemption is that the SEBI does not require any open offer when*

acquisition is made between the immediate relatives of the promoters as: (a) no additional voting rights being acquired by the promoter group, as a whole; and (b) the overall pre-acquisition and post-acquisition shareholding of the promoter group in the target company remains the same. Such an exemption has been provided in recognition of the fact that where there is continuity in the management and affairs of a company (as is the case in the present instance since even currently, the management of the Target Company will remain with the existing promoters), the interests of the public shareholders are protected. Therefore, public shareholders are not required to be provided an opportunity to exit their investment in a company where shares are being acquired by its existing promoters.

- (e) *Keeping in view the text of Regulation 10(1)(a) of the SAST Regulations and the spirit and intent of the inter se exemption, we believe that such exemption is available in case of all such transfers inter-se immediate relatives which fulfill the prescribed conditions, notwithstanding whether such transfer takes place directly at the target company level or indirectly at the level of a holding company of such target company. However, in a recent informal guidance issued in the case of Vidli Restaurants Limited (2023) ("Vidli Case"), the SEBI stated that the exemption under Regulation 10(1)(a) of the SAST Regulations is available only for direct acquisition of shares of the target company, and not for indirect acquisitions. Further, the SEBI had said that the applicants (being part of promoter group) can approach the SEBI for an exemption from the open offer obligations under Regulation 11 of the SAST Regulations.*
- (f) *Accordingly, as a matter of abundant caution and without prejudice to the rights of the Applicant under applicable laws, the Applicant respectfully seeks exemption for*

the Proposed Transaction from the applicability of Regulations 3, 4 and 5 of the SAST Regulations on the grounds set out below.

- i. The Applicant understands that the intent of exemptions available under Regulation 10(1) of the SAST Regulations is to provide relaxation from onerous open offer obligations to inter alia persons who are immediate relatives.*
- ii. The Applicant believe that the SEBI should be amenable to granting exemptions for the following reasons:*
 - a) Pursuant to the Proposed Transaction, no third party would be acquiring shares of the Target Company;*
 - b) the Proposed Transaction will not affect the interest of the public shareholders and there will be no change in the existing shareholding of public in the Target Company;*
 - c) the Proposed Transaction is a transaction between immediate relatives and within the existing promoter group; and*
 - d) there is no new acquisition of shares by the promoter group and the overall pre-acquisition and post-acquisition shareholding of the promoter group in the Target Company will remain the same.*

5. The Application along with the further submissions were forwarded to the Takeover Panel in terms of the proviso to regulation 11 (5) of the *Takeover Regulations, 2011*. The Application was deliberated by the Takeover Panel in its meeting held on May 31, 2024. After deliberations, the Takeover Panel made the following observations –

“The Panel deliberated on the item and noted that the proposed transaction in the application was between immediate relative’s i.e. father and son which falls under definition of immediate relative under regulation 2(1)(l) of SEBI (SAST) Regulations, 2011. Further, there is no ultimate change in control in the Target Company.

In view of the above, the Panel recommended for granting exemption in the instant matter”.

CONSIDERATION

6. Before I proceed with my consideration, I find it appropriate to quote the relevant regulatory provision(s) of *Takeover Regulations, 2011*, for ease of reference:

“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.

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.”

7. Having considered the *Application* submitted by the *Proposed Acquirer*, the recommendation of the Takeover Panel and other material available on record, the following are noted:

- (a) The *Application* submitted is in respect of the proposed indirect acquisition of shares and voting rights in the *Target Company*;
- (b) Pursuant to the proposed acquisition, the *Acquirer* along with *PACs* would continue to hold 72.02% shares in the *Target Company*;

- (c) The proposed acquisition, which is to be undertaken by the *Acquirer*, will attract the provisions of regulations 3(1), 4 and 5 (1) of the *Takeover Regulations, 2011*;
- (d) The shareholding pattern of the *Target Company* before and after the proposed acquisition is given in the Table below:

Particulars	Before the proposed transaction		Proposed Transaction		After the proposed transaction	
	No. of Shares	% of holding	No. of Shares	% of holding	No. of Shares	% of holding
Promoter and Promoter Group						
Karsanbhai Khodidas Patel	-	-	-	-	-	-
Hiren Karsanbhai Patel	3,34,36,478	9.37	-	-	3,34,36,478	9.37
Rakesh Karsanbhai Patel	83,13,982	2.33	-	-	83,13,982	2.33
Keyuriben Rakeshbhai Patel Jt. Rakesh Karsanbhai Patel	3,31,528	0.09	-	-	3,31,528	0.09
Rajalben H Patel Jt. Hiren Karsanbhai Patel	2,79,641	0.08	-	-	2,79,641	0.08
Hemil Hiren Patel	100	0.00	-	-	100	0.00
Dhruvil Hiren Patel	29	0.00	-	-	29	0.00
Shantaben Karsanbhai Patel	29	0.00	-	-	29	0.00
NEPL	21,48,55,889	60.16	-	-	21,48,55,889	60.16
Total (A)	25,72,17,676	72.02	-	-	25,72,17,676	72.02
Public (B)	9,99,38,477	27.98	-	-	9,99,38,477	27.98
Total (A+B)	35,71,56,153	100.00	-	-	35,71,56,153	100.00

It is noted that the proposed acquisition will not result in any change in the shareholding pattern of the promoters/promoter group in the *Target Company*;

- (e) The proposed indirect acquisition would not affect or prejudice the interests of the public shareholders of the *Target Company* in any manner;
- (f) There will be no change in control of the *Target Company* pursuant to the proposed acquisition;
- (g) The *Target Company* shall continue to be in compliance with the Minimum Public Shareholding requirements under the Securities Contracts Regulation Rules, 1957 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

8. Considering the above, I am of the view that exemption as sought for in the *Application* may be granted to the *Proposed Acquirer*, subject to certain conditions as ordered herein below.

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*, viz. **Mr. Hiren Karsanbhai Patel** from complying with the requirements of regulations 3 (1), 4 and 5 (1) of the *Takeover Regulations, 2011* with respect to the proposed indirect acquisition in the *Target Company*, viz. **Nuvoco Vistas Corporation Limited**, by way of transaction proposed in the *Application*.
10. The exemption so granted is subject to the following conditions:
- (a) The proposed acquisition shall be in accordance with the relevant provisions of the Companies Act, 2013 and other applicable laws;

- (b) On completion of the proposed acquisition, 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*;
 - (c) The statements / averments made or facts and figures mentioned in the *Application* and other submissions by the *Proposed Acquirer* are true and correct;
 - (d) The *Proposed Acquirer* shall ensure compliance with the statements, disclosures and undertakings made in the *Application*.
11. The exemption granted above is limited to the requirements 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 exemption granted vide this Order from making an open offer pursuant to the Proposed Acquisition shall remain valid for a period of 1 year from the date of this Order and the *Applicant* shall complete the implementation of the Proposed Acquisition within such period failing which the granted exemption shall lapse.
13. The Application dated February 23, 2024, read with other submissions filed is accordingly disposed of.

Place: Mumbai
Date: July 30, 2024

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA