

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	ACQUIRER(S)
Everest Kanto Cylinders Limited	Pushkar Family Trust

Background –

1. Everest Kanto Cylinders Limited (“**Target Company**”) is a company incorporated on June 24, 1978 under the Companies Act, 1956 and has its registered office at 204, Raheja Centre, Free Press Journal Marg, 214, Nariman Point, Mumbai – 400021, Maharashtra. The equity shares of the Target Company are listed on BSE Ltd. (“**BSE**”) and National Stock Exchange of India Limited (“**NSE**”) since December 15, 2005.
2. An Application dated January 15, 2024 (“**Application**”) seeking exemption from the applicability of regulations 3(2) and 5(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**Takeover Regulations 2011**”) was received by SEBI from Mrs. Suman Khurana, in her capacity as the trustee of Pushkar Family Trust (“**Acquirer Trust**” or “**Proposed Acquirer**”), in respect of the proposed transfer of shares and voting rights to the Acquirer Trust:

- (i) Directly, in the Target Company; and
- (ii) Indirectly, in the Target Company, through transfer of shares in Medical Engineers (India) Limited (“**MEIL**”) and Khurana Gases Private Limited (“**KGPL**”) (MEIL and KGPL are collectively referred to as the “**Promoter Group Companies**”), which are shareholders of the Target Company and are part of the promoter group of the Target Company.

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

- (a) The shareholding pattern of the Target Company as on March 31, 2024, is as under:

TABLE I – SHAREHOLDING IN THE TARGET COMPANY (SOURCE: BSE WEBSITE & APPLICATION)			
	NAME	NO. OF SHARES	% SHAREHOLDING
A.	PROMOTER & PROMOTER GROUP		
1.	SUMAN KHURANA	2,78,03,749	24.78%
2.	PUSHKAR KUMAR KHURANA	1,02,39,973	9.13%
3.	PUNEET KHURANA	1,02,69,459	9.15%
4.	VARUN KHURANA	43,22,000	3.85%
5.	NISHITA PUSHKAR KHURANA	10,000	0.01%
6.	POOJA PUNEET KHURANA	1,000	0.001%
7.	MEIL	48,00,000	4.28%
8.	KGPL	1,78,18,629	15.88%
9.	SONIA KHURANA	3,48,333	0.31%
TOTAL PROMOTER HOLDING		7,56,13,143	67.39%
B.	PUBLIC SHAREHOLDING	3,65,94,539	32.61%
TOTAL		11,22,07,682	100%

- (b) MEIL, which is classified as a part of the promoters and promoter group of the Target Company, currently holds 4.28% of the equity share capital in the Target Company. The equity shareholding pattern of MEIL, as on the date of filing the Application, is as under:

Sr. No.	Name of the Equity Shareholder	No of Equity Shares held	% of Shareholding and Voting rights Held
1	Mrs. Suman Khurana	41,850	18.20%
2	Mr. Puneet Khurana	51,850	22.54%
3	Mr. Pushkar Khurana	67,050	29.15%
4	Ms. Vandana Khurana	17,500	7.61%
5	Mr. Varun Khurana	51,750	22.50%
	Total	2,30,000	100%

- (c) KGPL, which is classified as a part of the promoters and promoter group of the Target Company, currently holds 15.88% of the equity share capital in the Target Company. The equity shareholding pattern of KGPL, as on the date of filing the Application, is as under:

Sr. No.	Name of the Equity Shareholder	No of Equity Shares held	% of Shareholding and Voting rights Held
1	Mrs. Suman Khurana	3,73,000	74.60%
2	Mr. Puneet Khurana	63,500	12.70%
3	Mr. Pushkar Khurana	63,500	12.70%
	Total	2,30,000	100%

- (d) The Acquirer Trust, viz., Pushkar Family Trust, registered vide trust deed dated November 17, 2022 (read together with the Supplemental Trust Deed dated November 28, 2023), is an irrevocable and discretionary private family trust, settled under the provisions of the Indian Trusts Act,

1882. The Settlor, Trustees and beneficiaries of the aforementioned Acquirer Trust are as under –

TABLE II: DETAILS OF ACQUIRER TRUST			
Name of Settlor	Names of the Trustees	Names of the Beneficiaries	Relationship of Beneficiaries with the Settlor
Mrs. Suman Khurana, Promoter of the Target Company	(i) Mr. Pushkar Kumar Khurana, Promoter of the Target Company	Mr. Pushkar Kumar Khurana	Son of the Settlor
	(ii) Mrs. Suman Khurana, Promoter of the Target Company	Mrs. Nishita Pushkar Khurana	Daughter in law of the Settlor and wife of Mr. Pushkar Kumar Khurana
		Mr. Agasthya Pushkar Khurana	Grandson of the Settlor and son of Mr. Pushkar Kumar Khurana
		Ms. Samiah Pushkar Khurana	Granddaughter of the Settlor and daughter of Mr. Pushkar Kumar Khurana

- (e) The Settlor of the Acquirer Trust, i.e., Mrs. Suman Khurana, proposes to transfer 2,20,115 shares (0.196%) in the Target Company to the Acquirer Trust by way of gift of shares. Further, the Settlor proposes to indirectly transfer shares and voting rights in the Target Company to the Acquirer Trust by way of gift of 13,325 shares in MEIL and 1,86,500 shares in KGPL, which are held by her, to the Acquirer Trust.
- (f) There would be no alteration to the total equity share capital or voting rights of Target Company as a result of the proposed direct and indirect acquisition of shares and voting rights by the Acquirer Trust. The shareholding pattern of Target Company (pre and post the proposed Acquisition) will be as follows:

Shareholders	Shareholding Before the proposed transfer		Proposed transaction		After the Proposed Transfer	
	No. of Shares	% holding	No. of shares	% holding	No. of Shares	% holding
Promoter and Promoter Group other than the Proposed Acquirer						
Suman Khurana	2,78,03,749	24.78%	(2,20,115)	0.196%	2,75,83,634	24.58%
Pushkar Kumar Khurana	1,02,39,973	9.13%			1,02,39,973	9.13%
Puneet Khurana	1,02,69,459	9.15%			1,02,69,459	9.15%
Varun Khurana	43,22,000	3.85%			43,22,000	3.85%
Nishita Pushkar Khurana	10,000	0.01%			10,000	0.01%
Pooja Puneet Khurana	1,000	0.001%			1,000	0.001%
MEIL	48,00,000	4.28%			48,00,000	4.28%
KGPL	1,78,18,629	15.88%			1,78,18,629	15.88%
Sonia Khurana	3,48,333	0.31%			3,48,333	0.31%
Acquirer (direct acquisition)						
Acquirer Trust	-	-	2,20,115	0.196%	2,20,115	0.196%
Public						
Public	3,65,94,539	32.61%	-	-	3,65,94,539	32.61%
Grand Total	11,22,07,682	100%	2,20,115	0.196%	11,22,07,682	100%

- (g) The direct transfer of 0.196% shares and voting rights of the Target Company by the Settlor to the Acquirer Trust by way of gift and indirect transfer of shares and voting rights of the Target Company by the Settlor to the Acquirer Trust by way of gift of 13,325 shares in MEIL and 1,86,500 shares in KGPL by the Settlor to the Acquirer Trust, which are currently held by the Settlor (Mrs. Suman Khurana), would attract the applicability of regulations 3(2) and 5(1) of the Takeover Regulations 2011. Vide the

Application, the Acquirer Trust has sought exemption from SEBI in respect of the same.

Grounds for seeking exemption –

4. The following grounds were cited while seeking the exemption:

- (a) Mrs. Suman Khurana, promoter of the Target Company, intends to carry out an internal reorganization and streamline succession of the Khurana Family, comprising of her sons, Mr. Pushkar Kumar Khurana and Mr. Puneet Kumar Khurana, and their spouses and their lineal descendants. Mrs. Suman Khurana has decided to settle and gift certain assets to the Acquirer Trust, for the welfare of her son, Mr. Pushkar Kumar Khurana, and his family.
- (b) The proposed transfers would be a non-commercial transaction without any consideration being paid for the transfer of shares, and it would not affect or prejudice the interest of the public shareholders or investors of the Target Company in any manner whatsoever. All share transfers forming part of the proposed transfer would be carried out by way of gift of shares by the transferor, Mrs. Suman Khurana, to the Acquirer Trust.
- (c) Certain members of the Promoter Group of the Target Company are currently in control of the Promoter Group Companies, namely MEIL and KGPL. Pursuant to the proposed transfer, the Acquirer Trust would acquire the shares of MEIL and KGPL from Mrs. Suman Khurana, a promoter of the Target Company. The control of the Promoter Group Companies would continue to remain with the promoter group of the Target Company, as the Acquirer Trust would be a part of the promoter group of the Target Company pursuant to the proposed transfer.
- (d) Pursuant to the proposed transfer, the shareholding of the Promoter Group Companies in the Target Company will remain the same.
- (e) There will be no change in the public shareholding of the Target Company pursuant to the Proposed Transfer. Furthermore, the Target Company would continue to be in compliance with the minimum public shareholding

requirements under the Securities Contracts (Regulation) Rules, 1957 and SEBI (Listing Obligations and Disclosure Requirements), 2015.

- (f) The trustees as well as the beneficiaries of the Acquirer Trust are either members of the promoter group of the Target Company, or lineal descendants of the members of the promoter group of the Target Company. Only the members of the Khurana Family, i.e., the family members of Mrs. Suman Khurana, would benefit from the proposed transfer. Further, no person who is not part of the promoter group of the Target Company will directly or indirectly acquire shares or voting rights in the Target Company, pursuant to the proposed transfer.
- (g) The proposed transfer would not result in any change in control or management of the Target Company, directly or indirectly. Pursuant to the proposed transfer, the pre and the post equity share capital of the promoters and promoter group including the persons acting in concert in the Target Company would remain the same. There would be no reduction in the shareholding percentage of the promoter and promoter group in the Target Company.
- (h) The proposed transfer would not have any adverse impact on the Target Company and would not alter the board of directors of the Target Company.
- (i) The proposed transfer comprises of a direct as well as an indirect acquisition of shares and voting rights of the Target Company exceeding the thresholds set out under regulations 3(2) and 5 of the Takeover Regulations 2011. As the Acquirer Trust does not fall within the categories specified under Regulation 10 of the Takeover Regulations 2011. Hence, the general exemptions are not applicable to the proposed transfer to the Acquirer Trust.
- (j) The Acquirer Trust would be a part of the promoter group of the Target Company. Further, since the Acquirer Trust has been set up for the benefit of certain members of the Khurana Family, i.e., the promoter family, the

trustees of the Acquirer Trust will exercise control only as a part of the promoter family. Therefore, regardless of whether the trustees exercise control in their individual capacity or as trustees, the promoter family would be in control of the Target Company to the extent of shares held by them.

- (k) The Acquirer Trust is a private trust, settled as a discretionary trust, for the benefit of certain members of the Khurana Family. The trustees and the ultimate beneficiaries of the Acquirer Trust are individuals from the promoter family, or their lineal descendants, and persons belonging to the category 'promoter and members of the promoter group'. The structure in no way results in lack of transparency and does not in any way impact the interest of the shareholders of the Target Company.

5. The Acquirer Trust, vide the Application read with other submissions, confirmed compliance with the following Guidelines outlined in the Schedule to the SEBI Circular No. SEBI/HO/CFD/DCR1/CIR/2017/131 dated December 22, 2017 (**"SEBI Circular dated December 22, 2017"**).

- i. The Acquirer Trust is in substance, only a mirror image of the promoters' holdings and consequently, there is no change of ownership or control of the shares or voting rights in the Target Company.
- ii. Only individual promoters or their immediate relatives or lineal descendants are Trustees and beneficiaries.
- iii. The beneficial interest of the beneficiaries of the Acquirer Trust has not been and shall not in the future, be transferred, assigned or encumbered in any manner including by way of pledge / mortgage.
- iv. In case of dissolution of the Acquirer Trust, the assets will be distributed only to the beneficiaries of the Acquirer Trust or to their legal heirs.
- v. The Trustees of the Acquirer Trust will not be entitled to transfer or delegate any of their powers to any person other than one or more of themselves.
- vi. Any change in the trustees / beneficiaries and any change in ownership or control of shares or voting rights held by the Acquirer Trust shall be disclosed

within 2 days to the concerned stock exchanges with a copy endorsed to SEBI for its record.

- vii. As far as the provisions of the SEBI Act, 1992 and the regulations framed thereunder are concerned, the ownership or control of shares or voting rights will be treated as vesting not only with the Trustees but also indirectly with the beneficiaries.
- viii. The liabilities and obligations of individual transferors under the SEBI Act, 1992 and the regulations framed thereunder will not change or get diluted due to transfer to the Acquirer Trust.
- ix. The Acquirer Trust shall confirm, on an annual basis, that it is in compliance with the exemption order passed by SEBI. The said confirmation shall be furnished to the company which it shall disclose prominently as a note to the shareholding pattern filed for the quarter ending March 31 each year, under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- x. The Acquirer Trust shall get its compliance status certified from an independent auditor annually and furnish the certificate to the Stock Exchanges for public disclosure with a copy endorsed to SEBI for its records.
- xi. The proposed transfer is in accordance with the provisions of the Companies Act, 2013 and other applicable laws.
- xii. The transferor, Mrs. Suman Khurana, is disclosed as promoter in the shareholding pattern filed with the Stock Exchanges for a period of at least 3 years prior to the proposed acquisition.
- xiii. There is no layering in terms of trustees / beneficiaries in case of the Acquirer Trust.
- xiv. The Trust Deed does not contain any limitation of liability of the trustees / beneficiaries in relation to the provisions of the SEBI Act, 1992 and all regulations framed thereunder.

6. Further, the Acquirer Trust, vide the Application read with other submissions, had submitted the following undertakings:

“The Pushkar Family Trust undertakes and confirms that Pushkar Family Trust Deed, along with any modification and / or amendments thereto are in compliance with the guidelines outlined in the Schedule to the SEBI Circular dated December 22, 2017 and will always remain in compliance with the aforesaid guidelines.”

“Pushkar Family Trust undertakes and confirms that SEBI can attach the shares transferred from respective transferors in case SEBI initiates any action against such transferors, in the same manner and to the same extent as it would or might have been continued against such transferors, if such transfer of shares had not been implemented”

7. Pursuant to the receipt of the abovementioned Application, SEBI vide email dated April 22, 2024, *inter alia*, informed the Acquirer Trust that the proposed transfer of shares to the Acquirer Trust did not meet the required eligibility criteria, as one of the beneficiaries of the Acquirer Trust was daughter-in-law of the Transferor. Vide the said email, SEBI returned the Application with an advice to re-submit the same as and when the abovementioned criterion was fulfilled.
8. Aggrieved by the abovementioned decision of SEBI, the Acquirer Trust filed an appeal (No. 319 of 2024) before the Hon’ble Securities Appellate Tribunal (“**SAT**”) challenging the said decision of SEBI. Subsequently, the Hon’ble SAT vide its order dated May 13, 2024 directed the Whole Time Member (“**WTM**”) of SEBI to hear the appellant afresh and dispose of the appeal within three months from the date of first appearance. The appellant was directed to appear before the WTM on June 13, 2024 without waiting for any notice.

9. In compliance with the abovementioned direction of the Hon'ble SAT, the Acquirer Trust, through its authorized representative, attended a personal hearing before me on June 13, 2024. During the hearing, the authorized representative submitted a written submission which reiterated the grounds stated in the Application for grant of exemption. It was further contended in the said written submission that Ms. Nishita Khurana, the daughter-in-law of Mrs. Suman Khurana (transferor promoter) was herself an individual promoter and there was no condition / criteria in the SEBI Circular dated December 22, 2017 that the beneficiary of the Acquirer Trust was also required to be an immediate relative of the transferor. It was also contended that SEBI, in the recent past, had granted exemption in similar cases. The authorized representative submitted a list of three cases in support of its contentions and made oral submissions on similar lines.

Consideration –

10. I have considered the Application submitted by the Acquirer Trust, other material available on record and the submissions made during the personal hearing before me.
11. In this regard, reference is drawn to regulations 3(2) and 5(1) of the Takeover Regulations 2011, which 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.

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.”

12. Without reiterating the facts as stated above, the following is noted:

- (a) The Application submitted is in respect of the proposed direct and indirect acquisition of shares and voting rights in the Target Company, i.e., **Everest Kanto Cylinders Limited**. The proposed acquisition as detailed above, which is to be made by the Acquirer Trust, will attract the provisions of regulations 3(2) and 5(1) of the Takeover Regulations 2011.
- (b) The proposed acquisitions are in furtherance to an internal reorganization within the Promoter Family and is intended to streamline succession and promote welfare of Promoter Family. The proposed acquisitions would be non-commercial transactions which would not affect or prejudice the interests of the public shareholders of the Target Company in any manner.

- (c) The trustees and the beneficial owners of the Acquirer Trust are either individual promoters or their immediate family relatives or lineal descendants.
 - (d) There will be no change in control of the Target Company pursuant to the proposed acquisition, as stipulated under the SEBI Circular dated December 22, 2017.
 - (e) The pre-acquisition and post-acquisition shareholding of the promoters and promoter group in the Target Company will remain the same.
 - (f) There will be no change in the public shareholding of the Target Company.
 - (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.
 - (h) The Acquirer Trust has confirmed that it is in compliance with the Guidelines outlined in the Schedule to the SEBI Circular dated December 22, 2017 (as reproduced at paragraph 5 above).
13. I note that the provisions of the Circular dated December 22, 2017, applicable to cases involving trust as an acquirer, provide, *inter alia*, the following condition to be met by the applicant trust, expressly in the trust deed:
- “Only individual promoters or their immediate relatives or lineal descendants are trustees and beneficiaries”.*
14. I note that Mrs. Nishita Pushkar Khurana, the daughter-in-law of the transferor promoter (Mrs. Suman Khurana), is an individual promoter and declared as such to the stock exchanges for last three years. I find that she meets the condition provided in the abovementioned clause in SEBI Circular dated December 22, 2017.

15. Considering the aforementioned, I am of the view that exemption as sought for in the Application (read with further submissions) may be granted to the Proposed Acquirer, subject to certain conditions as ordered herein below.

Order –

16. 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., **Pushkar Family Trust**, from complying with the requirements of regulations 3(2) and 5(1) of the Takeover Regulations 2011 with respect to the proposed direct and indirect acquisition in the Target Company, viz., **Everest Kanto Cylinders Limited**, by way of proposed transaction as mentioned in the Application.
17. The exemption so granted is subject to the following conditions:
- i. The proposed acquisition shall be in accordance with the relevant provisions of the Companies Act, 2013 and other applicable laws.
 - ii. 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.
 - iii. The statements / averments made or facts and figures mentioned in the Application and other submissions by the Proposed Acquirer are true and correct.
 - iv. The Proposed Acquirer shall ensure compliance with the statements, disclosures and undertakings made in the Application. The Proposed Acquirer shall also ensure compliance with the provisions of the SEBI Circular dated December 22, 2017.
 - v. The Proposed Acquirer shall also ensure that the covenants in the Trust Deed are not contrary to the above conditions and undertaking provided

by the transferor. In such case, the Trust Deed shall be suitably modified and expeditiously reported to SEBI.

18. 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.
19. The exemption granted in this Order (at paragraph 16) from making an open offer in respect of the proposed acquisitions shall remain valid for a period of 1 year from the date of this Order and the Proposed Acquirer shall complete the implementation of the proposed acquisition within such period, failing which the granted exemption shall lapse and cease to exist.
20. The Application dated January 15, 2024 read with other submissions, filed by Pushkar Family Trust, are accordingly disposed of.

PLACE: MUMBAI

DATE: AUGUST 14, 2024

ASHWANI BHATIA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA