

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	SEPC LIMITED
PROPOSED ACQUIRER	MARK AB WELFARE TRUST

Background -

1. SEPC Limited (for convenience "*Target Company*") is a company incorporated under the provisions of Companies Act, 2013 on January 15, 1993 and has its registered office at 4th Floor, Bascon Futura SV IT Park, Venkatanarayana Road, Parthasarathy Puram, T Nagar, Chennai District- 600017, Tamil Nadu. 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 December 06, 2023 has been received from Mark AB Welfare Trust ("*Acquirer Trust/ Proposed Acquirer / Applicant*") along with emails dated January 04, 2024, January 05, 2024, January 08, 2024, January 16, 2024, January 20, 2024, February 05, 2024, February 13, 2024, March 05, 2024 and March 06, 2024, April 19, 2024, April 22, 2024, April 23, 2024 and April 24, 2024 seeking exemption from the applicability of regulations 3(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (for convenience "*Takeover Regulations, 2011*") in the matter of proposed direct acquisition of shares in the *Target Company*. The above-mentioned application, along with the emails mentioned above is hereinafter referred to as the *Application*.
3. *Acquirer Trust* vide its *Application* has submitted the following:

- (a) The issued, subscribed and paid up Equity Share Capital of the *Target Company* is INR 1409,81,36,330/- divided into 140,98,13,633 equity shares of INR 10/- each.
- (b) The *Target Company* operates in Engineering, Procurement and Construction (EPC) sector. The revenues of *Target Company* had been stagnating, in spite of good business potential in the Engineering, Procurement and Construction (EPC) sector due to constraints in the working capital.
- (c) Erstwhile promoter of the *Target Company* i.e. SVL Ltd. ("**Ex-Promoter**") had been infusing funds in the company which were mainly used for servicing debt rather than for the growth of the company. The *Target Company* was in urgent need of a strategic investor, with the objective to sustain growth and reduce debt levels by infusion of funds.
- (d) Due to default in the servicing of debts of its lead Banker – Punjab National Bank and other Banks of the lending consortium, the *Target Company* went into Resolution of Stressed Assets Framework as per Reserve Bank of India, circular dated June 07, 2019. In view of the foregoing, *Target Company* held discussions with a strategic investor, Mark AB Capital Investment LLC (Mark AB), an Investment Company established in Dubai. Mark AB manages USD 1.09 billion Assets Under Management (AUM) and has experience in the EPC space in Kuwait, UAE, North Africa and Russia. *Target Company* together with Mark AB, presented a Resolution Plan dated August 06, 2021 to the Lead Banker of Consortium – Punjab National Bank under the RBI Circular dated June 07, 2019. The key highlights of the Resolution Plan are as under:
 - i. Equity infusion of Rs. 350 crores by Mark AB through Preferential Issue of Equity shares resulting in Mark AB acquiring 26.48% stake in the paid up and equity share capital of the *Target Company*.
 - ii. Change of management and control of the *Target Company*.
 - iii. Conversion of Rs. 350 crores debt into redeemable / convertible instruments.

- iv. Banks to allow utilization of vacancy in Non- Fund Based Facilities and Fund based limits already sanctioned and available to the *Target Company*, post implementation of the plan.
 - v. Certain other concessions in Repayment of term loans and interest on balance debt.
 - vi. Corporate guarantee of SVL Ltd and SVL Trust shall be replaced with the Corporate Guarantee of Mark AB. The shares held by SVL Limited will be moved/ transferred to an Independent Trust controlled by Mark AB or its nominees through a Trustee structure.
- (e) Subsequent to the above, *Target Company* allotted 35,00,00,000 equity shares to Mark AB through preferential allotment, which was exempted under Regulation 10 of *Takeover Regulations, 2011*.
- (f) Further, erstwhile promoter, SVL Limited was reclassified as a public shareholder on February 02, 2023.
- (g) Pursuant to the preferential allotment, 6,58,49,462 shares were transferred through off market mode to *Acquirer Trust* from SVL Ltd. After a series of market sale by *Acquirer Trust*, rights allotment in the ratio of 53:2 on May 02, 2023, rights allotment in the ratio of 36:1 on December 22, 2023, purchase of 3,00,00,000 shares from SVL Ltd. on September 25, 2023 and further purchase of 5,00,00,000 equity shares on April 10, 2024., the shareholding of *Acquirer Trust* as on date stands at 8,01,46,361 shares.
- (h) As on date, the *Target Company* has a public shareholding of 69.49% and non-public shareholding of 30.51% which is entirely held by the promoters and the promoter group (Mark AB Group). The shareholding pattern of *Target Company* is as follows:

S.No.	Name of shareholder	Percentage of Shareholding (%)
Promoter and Promoter Group		
1.	Mark AB Capital Investment LLC	24.83%
2.	Mark AB Welfare Trust	5.68%
3.	Mark AB Capital Investment India Private Limited	-
	Total Promoters' Shareholding	30.51%

Public shareholders		
1	SVL Limited (erstwhile promoter of SEPC Ltd.)	8.05%
2	Banks	25.16%
3	Other Public shareholders	36.28%
	Public Shareholding	69.49%
	Total Shareholding	100%

- (i) *Acquirer Trust* holds 8,01,46,361 equity shares representing 5.68% of the equity and voting share capital of the *Target Company* and SVL Ltd. holds 11,35,41,894 representing 8.05% of the equity and voting share capital of the *Target Company*.
- (j) The Resolution Plan dated August 06, 2021, also proposes a transfer of entire shareholding of SVL Ltd. to Mark AB Welfare Trust. Such proposed transfer of shares from SVL Limited to *Acquirer Trust* will increase the shareholding of the promoter group of the *Target Company* (including the *Acquirer Trust*) from 30.51% to 38.56%.
- (k) The aforesaid transaction would trigger Regulation 3(2) of the *Takeover Regulations, 2011*.

4. Further, vide *Application* and subsequent communications, the *Applicant* have *inter-alia* provided following grounds for seeking exemption:

- (a) Based upon the structural shareholding and beneficial ownership of Mark AB Group, there will be no change in control and management in the *Target Company* pursuant to the Proposed Acquisition / transfer as *Acquirer Trust* is an Existing shareholder under the Promoter Group Category.
- (b) The proposed acquisition by the *Acquirer Trust* is one of the conditions of the Approved Resolution Plan under RBI circular dated June 07, 2019.
- (c) The proposed acquisition is in accordance with the provisions of the Companies Act, 2013 and other applicable laws.
- (d) The proposed transfer of shares is an off-market transaction which will not prejudice the interest of public shareholders of the *Target Company*.
- (e) The proposed transfer of shares of the *Target Company* is not to a Third party but to a Welfare Trust belonging to the Promoter Group.

CONSIDERATION

5. Before I proceed with my consideration, I find it appropriate to quote the relevant regulatory provisions of *Takeover Regulations, 2011*, for facility of reference:

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.

6. I have considered the *Application* submitted by the *Acquirer Trust* and other material available on record. Without reiterating the facts as stated above, the following is noted:

- (a) The *Application* submitted is in respect of the proposed direct acquisition of shares and voting rights in the *Target Company* i.e. **SEPC Limited**. The proposed acquisition as detailed above, which is to be undertaken by the *Acquirer Trust*, will attract the provision of Regulation 3(2) of the *Takeover Regulations, 2011*.
- (b) Pursuant to the proposed acquisition, the holding of *Acquirer Trust* and the Promoter (Mark AB Capital Investment LLC) would increase from 30.51% to 38.56% shares in the *Target Company*.
- (c) The proposed acquisition is pursuant to Resolution Plan dated August 06, 2021, which was instituted under 'Resolution of Stressed Assets Framework' of RBI vide circular dated June 07, 2019.
- (d) It is seen that the Resolution Plan provides for allotment of equity shares to Mark AB Capital Investment LLC through preferential allotment and transfer of stake from SVL Limited to an Independent Trust controlled by Mark AB capital or its nominees through a trustee structure. It may be noted that Regulation 10 (2B) provides exemption from making an open offer in cases of acquisition of shares or voting rights or control through preferential issue of the Target Company having stressed assets. While the former is covered under

general exemptions provided under Regulation 10(2B) of Takeover Regulations, the latter is not covered under the same. Hence, the application is considered under Regulation 11 of Takeover Regulations.

- (e) The Resolution plan also envisages that the corporate guarantee of SVL Ltd. and SVL Trust shall be replaced with the Corporate Guarantee of the Mark AB Group.
- (f) There will be no change in control of the *Target Company* pursuant to the proposed acquisition.
- (g) The pre-acquisition and post-acquisition shareholding of the promoter and promoter group in the *Target Company* is produced below for reference:

Particulars	Shareholding before the proposed acquisition		Proposed transaction		After the proposed acquisition	
	No. of shares	% holding	No. of shares	% holding	No. of shares	% holding
Promoters & Promoter group other than Acquirer(s)						
Mark AB Capital Investment LLC	35,00,00,000	24.83	-	-	35,00,00,000	24.83
Acquirer and PAC						
Mark AB Welfare Trust	8,01,46,361	5.68	11,35,41,894	8.05	19,36,88,255	13.73
Public						
SVL Limited#	11,35,41,894	8.05#	(11,35,41,894)	(8.05)	-	-
Banks	35,46,49,899	25.16	-	-	35,46,49,899	25.16
Other Public	51,14,75,479	36.28	-	-	51,14,75,479	36.28
Total	140,98,13,633	100.00	-	-	140,98,13,633	100.00

Out of the total Shares of SVL Limited, 6,24,89,592 equity shares representing 4.43% of the total share capital is pledged with PNB Investment Services Limited and 3,76,56,904 equity shares representing 2.67% of the total share capital is pledged with SBICAP Trustee Company Limited.

- (h) In the matter of *Diamond Power Infrastructure Limited* (2015), exemption was granted from making an open offer in case where Resolution plan for revival of the company, was approved under Joint Lender Forum (JLF) Mechanism of RBI. While granting the exemption in the aforesaid matter, Takeover Panel had noted the following:

“... the JLF mechanism has been instituted by RBI to address financial stress in companies and it is akin to CDR. It was also observed that the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (‘Takeover Regulations’) specifically provides general exemption from the requirement of making open offer for acquisitions pursuant to CDR scheme. The same exemption is currently not available for the JLF mechanism. It was also noted that JLF has been recently introduced by RBI in the year 2014. Further, the current market price of the shares of the company is approximately ₹40 whereas the conversion price applicable for the promoter group is more than ₹50 and hence, the promoter group is not acquiring shares at a price lower than the current market price. In view of the same, the Panel recommended the exemption as sought by the applicant.”

- (i) In the instant matter, *Applicant* has indicated that the *Acquirer Trust* would acquire shares from SVL Ltd. at market price through offline market mechanism. Hence the promoter group is not acquiring shares at a price lower than the current market price.
- (j) It is pertinent to note that the Framework for Revitalizing Distressed Assets in the Economy – Guidelines on JLF and Corrective Action Plan (CAP) was instituted by RBI on February 26, 2014 to address financial stress in companies. Under the framework, banks were advised that as soon as an account was reported by the lenders to Central Repository of Information on Large Credits (CRILC) as SMA-2 (principal or interest payment overdue between 61-90 days), they should mandatorily form a committee known as Joint Lenders Forum (JLF). The JLF would explore various options to resolve the stress in the account which include Rectification, Restructuring and Recovery.

- (k) However, the extant instructions on resolution of stressed assets including Framework for Revitalizing Distressed Assets through JLF was repealed and replaced with mechanism specified under RBI circular dated June 07, 2019. The framework was issued for early recognition, reporting and effective time bound resolution of stressed assets by lenders.
- (l) The Panel in the matter of *Diamond Power Infrastructure Limited*, had observed that the Takeover Regulations specifically provides general exemption from the requirements of making open offer for acquisition of shares pursuant to the CDR scheme and that the JLF mechanism instituted by Reserve Bank of India is akin to CDR.
- (m) Since mechanism specified under RBI circular dated June 07, 2019, has replaced the JLF mechanism, it can be considered akin to JLF mechanism as it provides a framework for early recognition, reporting and effective time bound resolution of stressed assets.
- (n) Regulation 10(1)(da) of Takeover Regulations exempts acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016, from the obligation of making an open offer. Instant transaction (transfer of shares from SVL Ltd. to Mark AB Welfare Trust) is a part of Resolution Plan under RBI circular June 07, 2019, approved by consortium of lenders for debt restructuring and resolution of stressed assets. The Resolution plan under RBI circular dated June 07, 2019 is akin to Resolution plan under IBC since both aim at resuscitating the operations of a stressed company.
- (o) 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.

7. 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

8. 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. **Mark AB Welfare Trust** from complying with the requirements of Regulation 3(2) of the *Takeover Regulations, 2011* with respect to the proposed direct acquisition in the *Target Company*, viz. **SEPC Ltd.**, by way of proposed transaction as mentioned in the *Application*.

9. The exemption so granted is subject to the following conditions:

- (a) The proposed acquisitions 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*.
- (e) The *Proposed Acquirer* shall also ensure that the covenants in the Trust Deeds are not contrary to the above conditions and undertaking provided by the transferor. In such case, the Trust Deeds shall be suitably modified and expeditiously reported to SEBI.

10. 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.

11. The exemption granted in this Order (at paragraph 9) from making an open offer in respect of 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 and cease to exist.

12. The Application dated December 06, 2023 read with other submissions filed by **Mark AB Welfare Trust**, is accordingly disposed of.

Place: Mumbai

Date: April 26, 2024

ASHWANI BHATIA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA