

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

**IN THE MATTER OF PROPOSED ACQUISITION OF SHARES OF INDUS
FILA LIMITED-APPLICATION FILED UNDER REGULATION 4(2) OF THE
SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL
ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997**

1. Indus Fila Limited (hereinafter referred to as the target company) is a company incorporated under the Companies Act, 1956, having its Registered Office at Survey No-285, 37th KM Stone, Tumkur Road, Kasaba Hobli, T. Begur, Nelamangala-562123, Karnataka. The equity shares of the target company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as BSE) and the National Stock Exchange of India Limited (hereinafter referred to as NSE). Mr. Nitin N Mandhana for himself and on behalf of Mr. Shashikant Mandhana, Mr. Prakash G Mandhana, Ms. Kavita S Mandhana, Ms. Savita N Mandhana and Ms. Sneha A Mandhana (hereinafter collectively referred to as the acquirers), filed an application dated February 2, 2011 (which was subsequently revised vide letter dated April 20, 2011), under Regulation 4(2) read with Regulation 3(1)(i) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the Takeover Regulations) with the Securities and Exchange Board of India (hereinafter referred to as SEBI). It is stated in the application that the acquirers, belong to the promoter group of the target company. As per the application, acquirers are holding 83,41,282 equity shares of the target company constituting 43.02% of the paid up capital. It is also stated in the application that the acquirers propose to acquire 29,71,070 equity shares by way of preferential allotment, thereby increasing the holding of the acquirers along with the promoter group from 43.02% to 50.60% of the post

issue equity shares triggering Regulation 11(1) of the Takeover Regulations. It is further stated in the application that the target company has a consortium lending arrangement with Canara Bank, Corporation bank, Karnataka Bank Limited and Axis Bank Limited and that the target company has restructured its debt under the Corporate Debt Restructuring (CDR) mechanism seeking concessional rate of interest and longer repayment period for the term loans. In terms of the application, one of the critical conditions of the CDR is to convert the unsecured loans of the promoters and promoter group as per the book of account of the company into equity shares and to pledge them with bankers on *pari-passu* basis. As per the application, the promoter group had advanced an amount of ₹13.79 crores during 2006 as non-interest bearing unsecured loan at the request of the target company so as to meet debt equity ratio as stipulated by the bankers. It is stated that the target company has received a directive from Canara Bank (consortium lender), vide letter dated October 8, 2010 to convert ₹8.91 crores of unsecured loans of the promoters into 29,71,070 equity shares at ₹30/- per share. The present application is filed seeking exemption from the applicability of the said Regulations *inter alia* on the following grounds:

- a. The target company on account of economic slowdown and foreign exchange fluctuation has been incurring substantial loss for last two years. To revive the financial position and to meet short term and long term working capital requirement, it has been decided by the target company in the Annual General Meeting of its members held on September 28, 2010 to convert the unsecured loans into equity shares by way of preferential allotment to the acquirers.
- b. The proposed allotment is being made with the sole purpose of meeting the obligations of the promoters and promoter directors to offer security by way of pledge as per the CDR proposal of the target company. The same is being achieved by converting short term unsecured loans of promoters group to long term permanent equity and thereby retaining the funds in the company.
- c. There will be no resultant change in control due to the proposed preferential allotment as the acquirers are already in control.
- d. The allotment shall be in due compliance with SEBI (Issue of Capital and Disclosure Requirement) Regulation, 2009 and all other provisions

governing preferential allotment. The allotment does not in any way prejudice the interest of any shareholder or creditors of the target company.

2. The acquirers had stated that the increase in their holding in the target company would be from 43.02% to 50.60% of the post issue equity. However, it was observed from the website of BSE that the holding of the promoter group in the target company is 47% of the paid up capital. In this regard, the target company, vide letter dated May 27, 2011 stated that the acquirers hold 83,41,282 equity shares constituting 43.02% of the paid up capital and that there are other entities (who are not related to the acquirers) in the promoter group who hold 7,64,182 shares (constituting 3.95%). Therefore, the collective holding of the promoter group, prior to the proposed preferential allotment to the acquirers herein, would be 47% of the paid up capital and the same would increase to 54.04% post the preferential allotment. The acquirers requested that the increase from 43.02% to 50.60% mentioned in the application may be read as the increase in the holding of the 'acquirer and main promoter'. Thus, the shareholding pattern of the target company (before and after the proposed allotment) is as follows:-

Allottees	Pre - preferential allotment holding		Proposed Allotment	Post - preferential allotment holding	
	No. of shares	%	No. of shares	No. of shares	%
PROMOTERS					
Nitian Mandhana	9829	0.05	1613800	1623629	7.26
Shashikant Mandhana	1562	0.01	460900	462462	2.07
Prakash Mandhana	1563	0.01	65700	67263	0.30
Kavita Mandhana	10108	0.05	677340	687448	3.07
Savita Mandhana	Nil	0	63330	63330	0.28
Sneha Mandhana	Nil	0	90000	90000	0.4
Narayandas C. Mandhana	8000	0.04	Nil	8000	0.04
Kamal Kishor Finvest private Limited	6013657	31.02	Nil	6013657	26.90
Andrew Finvest Private Limited	2296563	11.85	Nil	2296563	10.27
Promoter other than Acquirer	764182	3.95	Nil	764182	3.41
Sub total	9105464	47	2971070	12076534	54.04

NON-PROMOTERS					
FIs/ Banks	100	0.00	Nil	100	0.00
FIIs/NRIs/OCBs	354912	1.83	Nil	354912	1.59
Public	9914680	51.17	Nil	9914680	44.37
Sub total	10269692	53	Nil	10269692	45.96
TOTAL	19375156	100	2971070	22346226	100

3. Thereafter, the aforesaid application dated April 20, 2011 was forwarded to the Takeover Panel, by SEBI, in terms of Regulation 4(4) of the Takeover Regulations. The Takeover Panel, vide report dated May 12, 2011, has recommended as under:

“.....The acquisition is pursuant to the conversion of the unsecured loan given by the acquirers to the target company being a part of the CDR Scheme.

It is noted that allotment will be made @Rs 30 per share which is more than the price as certified by statutory auditors in accordance with regulations. It is also noted that the Board Resolution recommending the proposed issue of equity share by way of preferential allotment was duly passed as Special Resolution in AGM held on September 28, 2010.

Panel after considering the application recommended the exemption applied for under regulation 4 of the SEBI (SAST) Regulation from Regulation 11(1).”

4. I have considered the application dated April 20, 2011, the additional submissions made by the target company, the recommendation of the Takeover Panel and other material available on record. I note that the preferential allotment of 29,71,070 shares is proposed to be made to the acquirers, by the target company pursuant to the CDR scheme. In this regard, I note that CDR Cell, vide letter dated November 10, 2010 addressed to the target company had referred to the decision taken by the CDR Empowered Group at its meeting held on October 22, 2010 to convert ₹8.91 crore of unsecured loans of the promoters and promoters' group into 29,71,070 equity shares subject to the compliance of all statutory guidelines and the applicable rules thereof and pledging the same to CDR lenders on *pari passu* basis. I find that the allotment of the said equity shares is only pursuant to the said CDR stipulation. I note that the acquirers are part of the promoter group of the target company, which

currently holds 47% of the equity capital in the target company. Pursuant to the proposed acquisition, the shareholding of the promoter group (including the acquirers) would increase to 54.04% of the enhanced equity capital of the target company. The said increase would trigger Regulation 11(1) of the Takeover Regulations. As per the application, the proposed allotment would convert the unsecured loans into long term permanent equity and thereby retain funds in the target company. I also note that the Board of directors of the target company in their meeting held on August 31, 2010 considered and recommended the proposed issue of equity shares by way of preferential allotment. The members of the target company, in the Extra Ordinary General Meeting (EGM), have also approved the proposed preferential issue, on September 28, 2010 through a special resolution. I note that there would not be any change in control pursuant to the proposed preferential allotment as the promoter group including the acquirers is already in control of the target company. The target company continues to be in compliance with the minimum public shareholding requirement as specified in Clause 40A of the Listing Agreement, even after the proposed preferential allotment of equity shares to the acquirers. Therefore, in present facts and circumstances of the case, I agree with the recommendations of the Takeover Panel and consider the present case a fit one for granting exemption to the acquirers from complying with the requirements of Regulation 11(1) of the Takeover Regulations.

6. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 4(6) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby grant exemption to the acquirers, namely, Mr. Nitin Mandhana, Mr. Shashikant Mandhana, Mr. Prakash G Mandhana, Ms. Kavita S Mandhana, Ms. Savita N Mandhana and Ms. Sneha A Mandhana, from complying with the requirements of Regulation 11(1) of the Securities and Exchange Board of India (Substantial

Acquisition of Shares and Takeovers) Regulations, 1997 in respect of their proposed acquisition of 29,71,070 equity shares of face value of ₹30.00 /- each, of the target company, namely, Indus Fila Limited, through preferential allotment.

7. The exemption is granted subject to the following conditions:

- (a) The statements/averments made or facts/figures given in the application and in subsequent correspondence are true and correct to the best knowledge of the acquirers.
- (b) The acquirers and the persons acting in concert along with the others in the promoter group of the target company shall ensure compliance with the statements, disclosures and undertakings made in the application and in the subsequent correspondence.
- (c) The proposed allotment shall be in accordance with the relevant provisions of the Companies Act, 1956, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2009, the Listing Agreement and other applicable laws.

8. This exemption shall not be construed as exemption from the requirements of other provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (e.g. disclosure requirements under Chapter II), the Listing Agreement or any other law.

DR. K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

PLACE: MUMBAI
DATE: JUNE 27, 2011