WTM/KMA/CFD/317/11/2010

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER

ORDER

IN THE MATTER OF PROPOSED ACQUISITION OF EQUITY SHARES OF JAIHIND PROJECTS LIMITED–EXEMPTION APPLICATION FILED UNDER REGULATION 4(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997

1. Jaihind Projects Limited (hereinafter referred to as the target company) is a company incorporated under the Companies Act, 1956, having its registered office at 5th Floor, Shanti Arcade, 132 Ft. Ring Road, Near Saptak Party Plot, Naranpura, Ahmedabad-380013. The equity shares of the target company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as BSE) and the Ahmedabad Stock Exchange Limited (hereinafter referred to as ASE). Dcom Systems Limited (hereinafter referred to as the acquirer) filed an application dated July 6, 2010 with the Securities and Exchange Board of India (hereinafter referred to as SEBI) under Regulation 4 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the Takeover Regulations) in respect of its proposed acquisition of 24,90,000 equity shares of the target company, pursuant to the conversion of 24,90,000 warrants issued on preferential basis. It is stated in the said application that the acquirer belongs to the promoter group of the target company. It was further stated that the proposed acquisition would increase the voting rights of the acquirer in the target company from 14.19% to 36.06% and that of the promoter group (including the acquirer) would increase from 47.75% to 61.03%. Hence, the

exemption is sought from the applicability of Regulation 11 of the Takeover Regulations, *inter alia*, on the following grounds:

i. The proposed subscription by the acquirer is with the overall objective of infusing funds into the target company for meeting its critical and urgent financial need for financing the new overseas projects. As per the requirement of Financial Institution/banks, the target company has to maintain debt equity ratio at a desirable level. To meet the criteria, the target company has to bring the funds by way of share capital/owner's equity.

ii. With a view to fulfill the debt equity ratio and to meet the working capital requirements without any obstacle, the target company has sought the approval of the shareholders and stock exchange for issuance of 24,90,000 convertible warrants to the acquirer.

iii. The initial subscription of 25% of convertible warrants was utilized for regularizing one of its current accounts maintained with the State Bank of India. The additional funds through preferential allotment of shares would be beneficial to the shareholders of the target company as the additional capital including the premium amount would enhance the netwoth of the target company, improving its debt equity ratio and giving room for additional financial facility from its bankers. The enhancement of networth is very essential for making bids for tenders wherein the financial criteria clearly state the required networth and working capital to bid for the tenders. The funds would make the target company comfortable in procuring tenders of high value from overseas market.

iv. In order to fulfil the projects, funds are required which has led to opt for the present option. If the target company is unable to implement the project during the year, it would affect the profitability and other financial conditions and the same would have a major impact in the wealth of the present shareholders.

iv. The proposed acquisition would not result in any acquisition of control or changes in control in the target company, as the convertible warrants are subscribed by the promoter group.

iii. The acquisition would be beneficial to the public shareholders since the target company by undertaking the new project would be expanding its operations.

iv. The shareholding of public after proposed allotment would not fall below 25% of the enhanced capital and that the public holding after the proposed allotment would be at 38.97%.

v. Banks have also placed a requirement that the working capital gap arising in the course of the functioning shall be availed by the infusion of funds from equity.

vi. The infusion in target company through subscription would, on one hand enhance the net worth of the target company and on the other hand, give ample scope for availing financial facilities from its bankers. The target company is making bids for government tenders and the pre-requisite for big tenders is the net worth of the company. Thus, the additional equity would put the target company in a comfortable position.

2. The shareholding pattern of the target company before and after the proposed acquisition (as mentioned in the aforesaid application) is as under:

Shareholders' category	**Before the proposed acquisition**		**After the proposed acquisition**	
	Number of shares held	Percentage of shareholding held	Number of shares held	Percentage of shareholding held
Promoters Holding: Indian Promoters	3465068	47.75	5955068	61.03
Sub Total Non-Promoters Holding: Others:	3465068	47.75	5955068	61.03
Private Corp. Bodies	969831	13.36	969831	9.94
Indian Public	2747523	37.86	2757523	28.26
NRI/OCB's	75021	1.03	75021	0.77
Sub Total	3792375	52.25	3802375	38.97
Grand Total	**7257443**	**100.00**	**9757443**	**100.00**

3. Subsequently, further details were submitted vide letters dated July 14, 2010, July 26, 2010, August 4, 2010 and August 8, 2010. Thereafter, the application filed by the acquirer was forwarded by SEBI to the Takeover Panel in terms of Regulation 4(4) of the Takeover Regulations. The Takeover Panel, vide letter dated August 30, 2010 returned the aforesaid application to SEBI with a request to re-submit the same together with certain information sought by them. Thereafter, the target company submitted certain documents and

information, vide letter dated September 8, 2010. Subsequently, the Takeover Panel, vide report dated September 21, 2010 *inter alia*, observed the following:

> *".Justification for seeking exemption is based on the Company's need for funds to finance its new overseas projects and other projects outside State of Gujarat. Further, the Target Company is making bids for government tenders and the pre-requisites for big tenders is the net worth of a Company. According to the Target Company the additional equity would put the Target Company in comfortable position for raising finance from banks. The panel did not find any of the aforesaid as well as other reasons cited in the application adequate for grant of exemption. The panel did not consider the grant of exemption in favour of the public shareholders interest and consequently did not recommend any exemption."*

4. Subsequently, in terms of Regulation 4(6) of the Takeover Regulations, an opportunity of hearing was afforded to the acquirer on November 4, 2010, wherein Mr. Pradeep Sancheti, senior counsel appeared and made submissions. Mr. Shrinivas Deshmukh, Advocate, Mr. Dilip Motwani, Company Secretary and Mr. Mukesh Keswani, Director-Finance of the target company were also present during the hearing. The learned senior counsel *inter alia* submitted that the networth of the target company is ₹84.82 crores and that the object of issuance of convertible warrants is to enhance the same to ₹100 crores. According to the learned senior counsel, the banks have required the target company to increase its shareholders fund (particularly promoters) to achieve the required debt-equity ratio to enhance finance facilities to the target company, which is required for the expansion and new projects. It was further submitted that if an open offer is made, it would not have the desired effect of increasing the networth in the target company. The learned senior counsel further referred to the grounds mentioned in the application.

5. I have considered the application filed by the acquirer, the recommendation of the Takeover Panel, the submissions made on behalf of the acquirer during the hearing and other material available on record. It is an admitted fact that the acquirer belongs to the promoter group of the target company and that pursuant to the conversion of 24,90,000 warrants into equity

shares, the shareholding of the promoter group (including the acquirer) would increase in the target company from 47.75% to 61.03% and hence, the present application. It is the case of the acquirer that the aforesaid allotment was required as a major expansion programme that had been undertaken by the target company for a total cost of 1000 crore. As per the application, the said project had been appraised by its bankers who had part financed the cost of project by sanctioning corporate loans to the tune of ₹580 crore. As stipulated by the bankers, the promoters of the target company have to infuse balance by way of unsecured loan and equity participation to bridge the gap, required for implementing the projects undertaken by the target company. The source of finance are issuance of shares/warrants, short term corporate loan and unsecured loan by promoter and their relatives. As per the requirement of Financial Institution/banks, the target company has to maintain debt equity ratio at a desirable level. It is stated by the acquirer that for meeting the said criteria, the target company has to bring in funds by way of share capital/owner's equity. The learned counsel also submitted that if an open offer is made, it would not have the desired effect. However, I find that the target company's net worth would increase pursuant to the conversion of warrants irrespective of whether the open offer is made or not. Therefore, the said argument is not convincing. The acquisition of equity shares through preferential allotment route is not exempted automatically from the applicability of the provisions of the Takeover Regulations. Such an exemption is granted by SEBI, on a case-to-case basis, particularly, where the target company has become sick and infusion of funds by the promoters/acquirers is for rehabilitating a company or required under a Corporate Debt Restructuring (CDR) Package. The acquirer stated that 24,90,000 warrants were allotted with the view to finance various overseas projects and projects outside Gujarat of the target company. The target company is neither a sick company nor the infusion of funds pursuant to the conversion of 24,90,000 warrants is for the purposes of rehabilitating the target company under any CDR Package.

6. Further, the present application is against the resolution passed by the members of the target company. This is noticed from the minutes of the extra ordinary general meeting of the shareholders of the target company held on June 22, 2009, wherein it was resolved ***"…THAT in terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 the investors are required to and intend to make an open offer and comply with formalities related to an open offer for this preferential allotment."*** (Emphasis supplied). The said resolution pertains to the preferential allotment of 24,90,000 warrants to the acquirer. When the shareholders have resolved that the allottees would make an open offer and comply with formalities related to an open offer, it is surprising to note that the allotee (the acquirer) has made the present application for seeking exemption from the applicability of Regulation 11 of the Takeover Regulations, which mandates an open offer on triggering the shareholding limits prescribed therein. The same do not go together. There is another reason for not being convinced with the application for exemption. The present market price of the shares of the target company are quoted in range - ₹222.30/- and ₹250.20/-, whereas the warrants so allotted to the acquirer has a conversion price of ₹60/-, which included a premium of ₹50/-. If SEBI is to grant exemption to the acquirer which belongs to the promoter group, the same would be prejudicial to the interests of the public shareholders of the target company.

7. In view of the reasons stated above, I do not find the present case a fit one for grating exemption to the acquirer from complying with the requirements stipulated under Regulation 11 of the Takeover Regulations in respect of its acquisition of shares upon conversion of 24,90,000 warrants, in the interest of public shareholders of the target company. Therefore, I am in agreement with the recommendation of the Takeover Panel in not granting exemption to the acquirer.

8. 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, do not grant exemption to the acquirer, Dcom Systems Limited, from the applicability of Regulation 11(1) and (2) thereof, in respect of its proposed acquisition of 24,90,000 equity shares of the target company, Jaihind Projects Limited, pursuant to the conversion of 24,90,000 warrants. Accordingly, the application dated July 6, 2010 filed by the aforesaid acquirer is disposed of as rejected.

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

PLACE: MUMBAI
DATE: NOVEMBER 26, 2010