

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER**

ORDER

IN THE MATTER OF ACQUISITION OF SHARES OF KHARIKATIA TEA & INDUSTRIES LIMITED - EXEMPTION APPLICATION FILED UNDER REGULATION 3(1)(I) READ WITH REGULATION 4(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997.

Date of hearing: December 22, 2011

Mr. Bijay Kumar Garodia, Mr. Ramesh Kumar Sarawagi and Mr. Shankar Lall Ajitsaria
..... Applicants

Personal Appearance in the matter:

For the applicants:

1. Mr. S.K. Jain, Advocate and
2. Mr. Jagannath Kar, Practicing Company Secretary

For the Securities and Exchange Board of India:

1. Mr. Santhosh Shukla, Joint Legal Adviser,
2. Mr. Srikant Kumar Mishra, Assistant General Manager and
3. Mr. T. Vinay Rajneesh, Assistant Legal Adviser

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1. Kharikatia Tea & Industries Limited (hereinafter referred to as the target company) is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Chatterjee International Centre, 9th Floor, Suite No. A-1, 33A, J.L. Nehru Road, Kolkata – 700071. The equity shares of the target company are listed on the Calcutta Stock Exchange Limited (hereinafter referred to as the CSE).
 2. The applicants herein had filed an application dated April 28, 2011 with the Securities and Exchange Board of India (hereinafter referred to as SEBI), under Regulations 3(1)(I) and 4(2) of the Securities and Exchange Board of India (Substantial Acquisition of

Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the Takeover Regulations), seeking exemption from the provisions of Regulations 10, 11(1) and 11(2) of the Takeover Regulations in respect of their proposed acquisition of 8,21,300 equity shares (74.31% of the paid-up capital) of the target company.

3. It was submitted in the application that:

- a. the target company has a share capital of 11,05,200 fully paid-up equity shares with face value of ₹10/- each and that all the equity shares have uniform voting rights and rank pari passu with each other in every respect ;
- b. the target company is on a recovery path after incurring huge losses in the past and the running of the tea business and also the expansion of the same would require huge amount of fresh capital infusion into the business, which the promoters of the target company are finding difficult to do under the present scenario ;
- c. the existing promoters namely; Hi-Tech Holdings Private Limited, Luckydhan Vyapar Private Limited and Thirani Enterprises Private Limited hold 8,21,300 equity shares (74.31% of the paid-up capital) of the target company;
- d. in order to rehabilitate and expand business of the target company, the applicants have acquired control over the target company pursuant to a special resolution of the shareholders through postal ballot under section 192A of the Companies Act and also in a duly held Extra- Ordinary General Meeting of the target company;
- e. the existing promoters propose to sell their entire shareholding (74.31%) to the applicants who presently do not hold any shares in the target company ;
- f. the proposed acquisition, if completed, would increase the shareholding of the acquirers from 0% to 74.31%, thereby triggering the open offer obligations under regulations 10, 11(1) and 11(2) of the Takeover Regulations (*since repealed*).
- g. there are only 123 public shareholders in the target company, holding 25.69% of the total paid-up capital and in order to expedite the acquisition and

unwanted expenditure, exemption is sought from making public announcement and other procedural requirements under regulations 13, 14, 15 and 16 of the Takeover Regulations ;

- h. the applicants have not made any acquisition during the twenty six week period prior to the date of the application ;
- i. since the shares of the target company are infrequently traded , the minimum offer price is fixed at ₹111/- per share (being the negotiated price) as per Regulation 20(5) of the Takeover Regulations ;

4. As provided in the application, the shareholding pattern of the target company before and after the proposed acquisition, is given below:

Shareholders category	Number of registered shareholders as on the date of the application	Before the proposed acquisition		After the proposed acquisition	
		Number of shares/total voting rights held	% of shares/total voting capital held	Number of shares/voting rights	% of shares/voting rights
Promoter group	3	8,21,300	74.31	Nil	Nil
Applicants	Nil	Nil	Nil	8,21,300	74.31
FIs/Banks	Nil	Nil	Nil	Nil	Nil
FII/NRIs/OCBs	Nil	Nil	Nil	Nil	Nil
Public	123	2,83,900	25.69	2,83,900	25.69
Total	126	11,05,200	100	11,05,200	100

5. In terms of Regulation 4(4) of the Takeover Regulations, the application was forwarded to the Takeover Panel for their recommendations and the said Panel vide Report dated July 20, 2011, recommended as under:

“The Panel observed that the present proposal is similar to the earlier exemption application dated May 11, 2005 which was allowed by SEBI vide its order dated January 31, 2006. The only difference between the previous proposal and the present proposal is that the number of public shareholders has increased from 113 to 123 on account of certain shares being held by the erstwhile promoters (who have since become the public shareholders), and consequently the percentage

shareholding in public category has gone up from 0.62% to 25.69% of the company's total paid-up capital.

After careful consideration of the matter the panel agreed for recommending exemption to the Acquirers from requirement of making a public announcement as required under Regulation 10 read with Regulations 14, 15 and 16 of the Takeover Regulations and submission of the draft letter of offer to SEBI as required under regulation 18 of Takeover regulations subject to the conditions provided in para 6.4 of the aforesaid SEBI order dated January 31, 2006.

Unlike the previous exemption application, the Acquirers in the instant application have not undertaken to forward the offer letters to all the public shareholders individually. The Department may therefore like to procure such undertaking from the Acquirer before granting the exemption.”

6. An opportunity of personal hearing was granted to the applicants before me on December 22, 2011 when Mr. S.K. Jain, Advocate and Mr. Jagannath Kar, Practicing Company Secretary appeared for the applicants. While reiterating the submissions made in the application, the learned advocate for the applicants submitted that the applicants have taken control over the target company in compliance of condition with respect to special resolution through postal ballot and general meeting as provided in *proviso* to regulation 12 of the Takeover Regulations and hence they are not required to make public announcement under regulation 12. The learned advocate also submitted that out of 123 public shareholders, 113 public shareholders hold 6,900 equity shares constituting 0.62% of the voting rights in the target company. The remaining public shareholding is held by 10 shareholders who are the erstwhile promoters from whom the sellers in the proposed transaction had acquired control and voting rights. Since the shares of the target company are infrequently traded, the public shareholders do not have any exit option available. The learned advocate submitted that the applicants are willing to give exit opportunity to all public shareholders. He further submitted that SEBI may grant exemption on the lines of its earlier order dated January 31, 2006 issued in the matter of acquisition of shares of the target company by the present promoters and stipulate any other conditions as may be deemed necessary by SEBI. He undertook to submit a revised proposal which would describe the manner in which the applicants would provide exit opportunity to all public shareholders of the target company and requested time for submitting the same.

7. Thereafter, vide letter dated January 3, 2012, while agreeing for consideration of the application under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the New Takeover Regulations) which has repealed the Takeover Regulations, the applicants proposed that they would:
- a. make individual offer to all the public shareholders of the target company offering to buy their shareholding in the target company at the negotiated price of ₹111/- per equity share ;
 - b. send the offer notice to the shareholders at their registered address by registered post with acknowledgement due followed by newspaper publication informing the shareholders about the dispatch of the offer to them ;
 - c. publish the facts about the applicants proposing to acquire entire 74.31% of voting rights from outgoing promoters at negotiated price of ₹111/- per equity share and undertake to acquire further voting rights from other intending sellers at the same price. The publication is proposed to be made in two leading news papers with wide circulation, one in English and one in Bengali, being the vernacular language of the State of West Bengal in which the registered office of the target company is situated;
 - d. in the event the equity shares offered by the public together with the voting rights acquired in terms of the proposed negotiated deals exceeds the maximum permissible limit of 75%, the acquirers will offload the excess in accordance with the provisions of the Securities Contract (Regulation) Rules, 1957 ;
 - e. appoint a SEBI registered merchant banker to monitor and oversee the steps and the due compliance of the alternate mechanism ;
 - f. appraise and inform the Calcutta Stock Exchange Limited of all the steps to be undertaken by the acquirers ; and
 - g. comply with such other conditions as may be stipulated by the SEBI while deciding on the revised proposal.

8. I have considered the application, the submissions made on behalf of the applicants, the revised proposal of the applicants and other relevant material available on record. Since the Takeover Regulations have been repealed and the New Takeover Regulations have come into force with effect from October 22, 2011, I am considering this application in accordance with the New Takeover Regulations.
9. I note that the applicants have proposed to provide an exit opportunity to all 123 public shareholders of the target company and have only sought exemption from strict compliance of making public announcement under regulations 13, 14 and 15 and filing of letter of offer with SEBI under regulation 16 of the New Takeover Regulations. I am, of the view that the proposal of the applicants to make exit offer to all the public shareholders of the target company would be in line with the objective of the Takeover Regulations.
10. I note from the certified true copy of the resolution passed in the Extra-Ordinary General meeting of the shareholders of the target company held on January 5, 2011, that the shareholders have consented for the change in management and control of the target company in favour of the applicants and/or their nominees. I, therefore, find that there would be no change in control / management of the target company pursuant to the proposed acquisition. The shares of the target company are listed only on the CSE and are infrequently traded. In my view, in the facts and circumstances of the case, the revised proposal of the applicants is reasonable and, the proposed acquisition merits exemption from the strict compliance of procedure of making public announcement in accordance with regulation 13, 14 and 15 and filing letter of offer with SEBI under regulation 16 of the New Takeover Regulations.
11. The applicants have proposed to provide exit opportunity to public shareholders at the price of ₹111/- per equity share being the negotiated price between applicants and seller promoters. In this regard, I am of the view that in the interest of the investors, the offer price in this case should also be determined in terms of regulation 8 of the New

Takeover Regulations and the applicants should offer the price so determined or ₹111/- per equity share, whichever is higher.

12. Further, in order to ensure information disclosure, the proposed public offer should be given wide publication and information about the same should be disseminated to the public through public notice as well as disclosure to the CSE. The reason why such wide publicity is to be given is only to ensure that the public shareholders come to know of the offer and avail the exit opportunity available to them. In this regard, I note from the copy of the status report dated June 2, 2006 (received from the merchant banker with respect to the activities done pursuant to the aforesaid SEBI Order dated January 31, 2006.), that though letters of offer were sent to 113 public shareholders at their addresses available with the target company by registered post with acknowledgement due, there was no response from such public shareholders till the date specified for acceptance or rejection of the offer.
13. I also note that depending upon the response from public shareholders to the open offer of the applicants, the target company may breach the mandatory requirements of maintaining minimum level of public shareholding (25%) stipulated in rule 19A of the Securities Contracts (Regulation) Rules, 1957 and Clause 40A of the Listing Agreement. In that eventuality, the applicants shall comply with the provisions of regulation 7(4) of the New Takeover Regulations.
14. In view of the above, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with regulations 11 and 35 of the New Takeover Regulations, hereby grant relaxation / exemption to the applicants, namely, Mr. Bijay Kumar Garodia, Mr. Ramesh Kumar Sarawagi and Mr. Shankar Lall Ajitsaria, from making a public announcement as required under regulation 3(1) read with regulations 13, 14 and 15 and from the obligation to file the letter of offer under regulation 16(1) of the New Takeover Regulations, in respect of their revised proposal to acquire equity shares of the target company, Kharikatia Tea & Industries

Limited. However, the relaxation/exemption is granted, subject to the compliance of the following conditions:

- i. The applicants shall appoint a merchant banker in terms of regulation 12 of the New Takeover Regulations for the purposes of monitoring and supervising the entire process and compliance of the conditions stipulated herein ;
- ii. The applicants and the merchant banker appointed as above shall determine the offer price in accordance with the provisions of regulation 8 of the New Takeover Regulations and the offer price to the public shareholders shall be the highest of the price determined under regulation 8 of the New Takeover Regulations or ₹111/- per equity share being the negotiated price ;
- iii. The applicants shall send individual offers to all the public shareholders of the target company by directly addressing offer letters offering to buy their shareholding in the target company. Such letters of offer shall be sent to each of such shareholders by registered post with acknowledgement due at their addresses available on record of the target company ;
- iv. The applicant shall intimate the CSE about their offer to public shareholders and the mode thereof before sending offer letters to the public shareholders and CSE shall immediately on receipt of such intimation disseminate the same to public ;
- v. Simultaneously, while sending the individual offer letters to public shareholders, the applicants shall issue public notice in two newspapers having nationwide circulation; one in English and one in Bengali, being the vernacular language of the State of West Bengal, informing the public shareholders all the details of offer including the details of the target company, the acquirers, the proposed acquisition, the offer price, offer size, mode of payment, etc. The said public notice shall also mention that individual offer letters have been despatched to all the public shareholders to their addresses available on record of the target company and that the shareholders may tender their shares in response to the public notice also;

- vi. The offer shall be completed within a period of 3 months from the date of this order and on completion of the offer, the applicants shall submit a certificate of the merchant banker to SEBI and CSE, within 7 days of completion of the acquisition, certifying compliance with the above conditions of this order ;
 - vii. In the event shares accepted in the open offer are such that the aggregate shareholding of the applicants exceeds the maximum permissible non-public shareholding, the applicants shall comply with the stipulation mentioned under regulation 7(4) of the New Takeover Regulations.
15. The application dated April 28, 2011 filed by the aforesaid applicants is hereby disposed off, accordingly.
16. A copy of this order shall also be sent to the Calcutta Stock Exchange Limited for information and compliance of condition at paragraph 14(iv) and for monitoring and ensuring compliance of Rules 19 and 19A of the Securities Contracts (Regulation) Rules, 1957 and Clause 40A of the Listing Agreement, consequent to the acquisition in the matter.

Date: 19.01.2012
Place: Mumbai

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA