

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
KINGS INDIA CHEMICALS CORPORATION LIMITED – EXEMPTION
APPLICATION FILED UNDER REGULATION 4(2) OF SECURITIES AND
EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES
AND TAKEOVERS) REGULATIONS, 1997.**

1.0 BACKGROUND

- 1.1 Kings India Chemicals Corporation Limited (hereinafter referred to as the target company) is a company incorporated under the Companies Act, 1956 and having its address at 14, Vyasar Street, T. Nagar, Chennai–17. The equity shares of the target company are listed on Bombay Stock Exchange Ltd. (BSE) and Madras Stock Exchange Ltd. (MSE).

2.0 APPLICATION FOR EXEMPTION

- 2.1 Mr. R.B. Rajkumar and Mr. T.R.B. Rajaa, vide letter dated June 5, 2008 filed an application dated May 20, 2008 with Securities and Exchange Board of India (hereinafter referred to as SEBI) under Regulation 4(2) read with Regulation 3(1)(I) 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 their proposed acquisition of 12,44,800 equity shares (14.30%) of the target

company from Indian Bank Mutual Fund. Mr. R.B. Rajkumar and Mr. T.R.B. Rajaa belong to the promoter group of the target company and they are hereinafter referred to as the acquirers.

2.2 As per the said application, the shareholding of the acquirers and the promoter group (including the acquirers) in the target company, is 2.45% and 27.25%, respectively, of its total voting capital and that the same would increase to 16.75% and 41.55% (respectively) of the enhanced capital of the target company, pursuant to the proposed acquisition. Since, the post acquisition shareholding of the promoter group (including the acquirers) would increase from 27.25% to 41.55% of the enhanced voting capital of the target company, the acquirers have sought exemption from the applicability of Regulation 11(1) of the Takeover Regulations, *inter alia* on the following grounds:

- a) The shares of the target company were subscribed to by Indian Bank Mutual Fund in the year 1992, at the time of the public offer.
- b) Mr. T.R. Baalu, promoter of the target company entered into an agreement with Indian Bank Mutual Fund to buy back shares as per the terms of the said agreement.
- c) The target company has accumulated losses and that its shares are not quoted in the stock exchanges. The target company is a Sick Industrial Company and a case is pending with the Board for Industrial and Financial Reconstruction (BIFR).
- d) Sale of shares to Indian Bank Mutual Fund would improve the net worth of Indian Bank Mutual Fund and thereby increase the net worth of the investors in Indian Bank Mutual Fund.

- e) The promoters are purchasing the shares of the target company at par out of their own resources knowing fully that its net worth is negative.
- f) There would not be any change in management of the target company and that additional investment would ultimately benefit the public shareholders of the target company.

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

Shareholders' category	Number of registered shareholders as on the date of application	Before the proposed acquisition		After the proposed acquisition	
		Number of shares/ total voting rights held	Percentage of shares/ total voting capital held	Number of shares/ voting rights	Percentage of shares/ total voting rights
Promoter group (Family members & friends) Other than acquirers		2159200	24.80%	2159200	24.80%
Acquirers (Promoters group)		213200	2.45%	1458000	16.75%
SUB TOTAL		2372400	27.25%	3617200	41.55%
FIs/Banks		1244800	14.30%	-	-
SUB TOTAL		3617200	41.55%	3617200	41.55%
FIIIs/NRIs/OCBs		-	-	-	-
Public		5086800	58.45%	5086800	58.45%
Total		8704000	100%	8704000	100%

3.0 RECOMMENDATION OF THE TAKEOVER PANEL

3.1 The application filed by the acquirers was forwarded by SEBI to the Takeover Panel in terms of Regulation 4 (4) of the Takeover Regulations. The Takeover Panel, vide report dated July 12, 2008, *inter alia* observed that the investment by the promoters might indirectly persuade them to make efforts for reviving the target company to recover their investments which in turn might prove beneficial to the

public shareholders. Accordingly, the Takeover Panel recommended grant of exemption from the provisions of the Takeover Regulations in respect of the proposed acquisition.

4.0 FURTHER SUBMISSIONS

- 4.1 Mr. Rajkumar (one of the acquirers) vide email dated July 23, 2008 *interalia* informed SEBI that the accumulated losses of the target company exceeded 100% of its paid up capital and free reserves. He further informed that the matter is pending with the BIFR. Mr. Rajkumar in his aforesaid email added that there are 31,000 public shareholders in the target company. Subsequently, vide letter dated August 19, 2008, Mr. Rajkumar informed SEBI that BIFR posted the case for hearing on September 10, 2008.

5.0 FINDINGS

- 5.1 An opportunity of hearing was granted by SEBI, in terms of Regulation 4(6) of the Takeover Regulations to the acquirers on September 16, 2008 to make their submissions. Mr. Rajkumar and Mr. A.Soundararajan (Auditor of the target company) appeared before me and made submissions on behalf of the target company and the acquirers. They *interalia* submitted before me that the net worth of the target company is negative and a case is pending with BIFR. Mr. Rajkumar added that the buy-back of shares of the target company by the acquirers is not pursuant to any scheme offered to / passed by the BIFR. According to him, the proposed acquisition is on the basis of the agreement entered into between one of the promoters (father of the acquirers) of the target company and the Indian Bank Mutual Fund in the year 1992. He further

stated that the proposed acquisition is to clear off the obligation on the part of the promoters and that the acquirers do not have sufficient funds to fulfill the obligation of the open offer.

5.2 I have considered the application filed by the acquirers, the recommendations of the Takeover Panel, oral submissions made on behalf of the acquirers/target company and materials available on record.

5.3 I note that the acquirers belong to the promoter group of the target company which presently holds 27.25% of the total voting capital of the target company. Pursuant to the proposed acquisition, the shareholding of the promoter group (including the acquirers) would increase to 41.55% of the enhanced voting capital of the target company. As per the application filed by the acquirers, there would not be any change in management in the target company, even after the proposed acquisition. The submission of the acquirers is that the proposed acquisition of the shares of the target company is not on the basis of any revival package submitted by the target company before the BIFR. I note that the said proposed acquisition is solely on the basis of the agreement entered into between one of the promoters (father of the acquirers) of the target company and Indian Bank Mutual Fund in the year 1992. In terms of the said agreement, the said promoter had undertaken to buy-back 12,50,000 equity shares of the target company on the expiry of three years from the date of the said agreement at par or at market rates whichever was higher.

5.4 I note, as per the application filed by the acquirers that there are 31,000 public shareholders in the target company and that the shares of the target company are not being traded in the stock exchanges. The

objective of the public announcement as contemplated in the Takeover Regulations is to provide the shareholders of the target company, an exit opportunity, in case, an acquirer acquires substantial stake in the target company or control over the target company. If the acquirers are exempted from complying with the provisions of the Takeover Regulations, in respect of their proposed acquisition, the large number of public shareholders of the target company would be denied of an opportunity, as provided under the provisions of the Takeover Regulations. The public shareholding in the target company (as per the application) is substantial (about 58.45%), even after the proposed acquisition. Considering such large number of public shareholders, I do not consider that, the grant of exemption in respect of the proposed acquisition from one particular shareholder would be in the interest of the other public shareholders. On the other hand, if, an open offer is made by the acquirers in respect of the proposed acquisition, it would benefit all the public shareholders of the target company as they would get an exit opportunity, especially when the shares of the target company are not traded on the stock exchanges. The contention that the acquirers do not have sufficient funds to make an open offer by itself, is not sufficient enough to grant exemption from complying with the provisions of the Takeover Regulations, in the facts and circumstances of the case. Further, the proposed acquisition is not pursuant to any scheme made to or passed by BIFR.

- 5.5 The grounds specified in the application filed by the acquirers or the subsequent submissions made on behalf of the target company/ acquirers are not convincing enough to grant exemption, as sought by the acquirers. In the facts and circumstances of the present case, I do not find this as a fit case for grant of exemption to the acquirers, namely

Mr. R.B. Rajkumar and Mr.T.R.B. Rajaa from complying with the provisions of the Takeover Regulations, in respect of their proposed acquisition of 12,44,800 equity shares of the target company, Kings India Chemicals Corporation Limited. In view of the above findings, I do not agree with the recommendations of the Takeover Panel.

6.0 ORDER

6.1 In view of the above findings, I, in exercise of the powers conferred upon me by virtue of section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 4(6) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby dispose of the application filed (vide letter dated June 05, 2008) by the acquirers, namely, Mr. R.B. Rajkumar and Mr.T.R.B. Rajaa, in respect of the proposed acquisition of 12,44,800 equity shares of the target company, namely, Kings India Chemicals Corporation Limited, from Indian Bank Mutual Fund.

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

Place: Mumbai

Date: September 17, 2008