

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

**IN THE MATTER OF PROPOSED ACQUISITION OF EQUITY SHARES OF
PASUPATI ACRYLON LIMITED—APPLICATION FILED UNDER
REGULATION 4(2) OF SECURITIES AND EXCHANGE BOARD OF INDIA
(SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS)
REGULATIONS, 1997**

1. Pasupati Acrylon Limited (hereinafter referred to as the target company) is a company incorporated under the Companies Act, 1956, having its registered office at Thakurdwara, Kashipur Road, Distt. Moradabad (Uttar Pradesh). The equity shares of the target company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as BSE). Gurukripa Finvest Private Limited on its behalf and on behalf of Sulabh Plantations and Finance Private Limited and Accurex Traders Private Limited (hereinafter collectively referred to as the acquirers), vide letter dated November 29, 2010, filed an application 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. In terms of the said application, the acquirers are holding 10,00,000 equity shares representing 1.40% of the total paid up capital of the target company. According to the application, acquisition of equity shares of total value of ₹18 crores is required to be brought in by the promoters as per the

sanction letters of the lending banks in respect of the proposed expansion. It was further stated that the Corporate Debt Restructuring (CDR) Empowered Group also stipulated the same. As per the application, the promoters propose to bring the said funds by way of a preferential allotment of 1,80,00,000 equity shares at par (at an issue price of ₹10/-) each to the promoters as against the running market price of ₹7/-. It was stated that, pursuant to the aforesaid preferential allotment, the shareholding of the promoters (including the acquirers) would increase from 57.25% to 65.88% of the total paid up capital of the target company. The aforesaid increase of 8.63% would trigger Regulation 11(2) of the Takeover Regulations and hence the present application seeking exemption from complying with the provisions of Regulation 11(2) of the Takeover Regulations *inter alia* on the following grounds:

- i. The proposed preferential allotment of equity shares is an allotment on account of compulsion and also CDR stipulation, so as to meet with the covenants imposed by the lenders for bringing in the funds required for funding the proposed expansion. If the promoters fail to meet the lenders stipulation, they would withdraw their financial support, which would hamper the expansion process of the target company, and the ultimate value to be derived by the stakeholders in the long run.
- ii. The proposed allotment of equity shares is with the intent to assist the target company in a speedy recovery from rough times that it has been through. The most feasible option available to the management of the target company, to meet the lenders stipulations is only by way of a preferential allotment.
- iii. Further, if the proposed power plant is installed and the proposed expansion activities are undertaken, the target company would certainly be benefited not only in terms of reduction in costs, but also by increase in production and turnover. This would give a double impetus to the performance of the target company, which would in the long run benefit its 61,000 shareholders.
- iv. Non implementation of the proposed plans would once again take the target company to the juncture of probable sickness.
- v. The proposed planning has also been approved by the CDR, which has directed the target company to infuse fresh equity by promoters into the company, as per SEBI laws.
- vi. There would be no change in control of the target company since the acquirers belong to the promoter group itself.
- vii. The public shareholding would continue to be higher than 25% and the target company would continue to be a clause 40A compliant company.

- viii. The proposed allotment is being done with the intent to undertake expansion of the production facility and installation of the Captive Power Plant.
- ix. The proposed allotment would be in the interest of the target company as it would help the target company to sail out the financial losses and offer it an opportunity for its better sustainability and viability, as a pre-condition imposed by the joint lender for sanctioning the loans.

2. The shareholding pattern of the target company (before and after the proposed allotment), as per the application is as under:

Allottees	Pre - preferential allotment holding		Proposed Allotment	Post - preferential allotment holding	
	No. of shares	%	No. of shares	No. of shares	%
PROMOTERS (a)					
Gurukripa Finvest Private Limited	10, 00,000	1.40	80,00,000	90,00,000	10.10
Sulabh Plantations & Finance Co. Private Limited	Nil	Nil	82,50,000	82,50,000	9.26
Accurex Traders Private Limited	Nil	Nil	17,50,000	17,50,000	1.96
Promoters (Other than the acquirers)	3,97,21,475	55.85	Nil	3,97,21,475	44.56
Sub total (a)	4,07,21,475	57.25	1,80,00,000	5,87,21,475	65.88
NON-PROMOTERS (b)					
FIs/ Banks	1,86,840	0.26	NIL	1,86,840	0.21
FIIs/NRIs/OCBs	48,20,174	6.78	NIL	48,20,174	5.41
Public	2,54,04,632	35.71	NIL	2,54,04,632	28.50
Sub total (b)	3,04,11,646	42.75		3,04,11,646	34.12
TOTAL	7,11,33,121	100		8,91,33,121	100

3. Subsequently, the acquirer filed information/documents, vide letters dated December 21, 2010, December 24, 2010, January 11, 2011, and February 23, 2011. The acquirer furnished a copy of the notice of the shareholders meeting along with the explanatory statement. It was *inter alia* clarified that Gurukripa Finvest Private Limited along with the other promoters of the target company holds approximately 99% of the capital of Sulabh Plantations & Finance Private Limited and that Gurukripa Finvest Private Limited and Sulabh Plantations & Finance Private Limited along with the other promoters of the target company hold the entire 100% of the paid-up capital of Accurex Traders Private Limited. Thereafter, the aforesaid application was

forwarded to the Takeover Panel. The Takeover Panel returned the application to SEBI for seeking certain clarification from the acquirers and the same was again placed before the Panel after obtaining the required clarification. Subsequently, the Takeover Panel, vide report dated May 12, 2011, has recommended as under:

“The Panel is satisfied that the CDR is in continuing and the condition imposed by the Banks that the promoters will infuse Equity Capital for power project is in the best interest of the shareholders. Panel also notice the Postal Ballot was conducted and as stipulated by WTD the Promoters, being interested did not participate in the voting, and as per independent Scrutinizer the Resolution No. 3 (for Preferential allotment of shares Sec 81(1) A of the Companies Act along with Postal Ballot Rules was passed with adequate majority.

Hence, the Panel recommended the proposal of acquiring 1,80,00,000 Equity Shares @Rs. 10/- (more than the book value and market value) and exemption be given from open offer.”

4. I have considered the application dated November 29, 2010, the subsequent submissions of the acquirers, the recommendations of the Takeover Panel and other relevant material available on record. I note from the application that the target company is engaged in the manufacture of Acrylic Staple Fibre. As per the application, since the beginning of the current decade, the target company started suffering huge losses mainly on account of dumping of acrylic fibre and high interest cost. Further, it is stated that, as a result, the target company's short-term liquidity deteriorated and it resorted to availing credit from high cost raw material creditors, which further had a negative impact on its profitability. According to the application, due to continuous losses, the entire networth of the target company got eroded, and in the year 2003, the target company was registered as a sick company with the Board of Industrial and Financial Reconstruction (BIFR). It was submitted that in the year 2004, the target company approached the Financial Institution and banks for restructuring of its debt under CDR Mechanism to make its operation

viable by reducing debt and interest burden, re-scheduling of loans, etc. CDR Empowered Group (CDR EG), after discussing the restructuring proposal, approved the same at its meeting held on November 9, 2004. The CDR package stipulated conversion of loans into equity shares, as a result of which the shareholding of the promoter group had increased from 47.43% to 56.93% in the enhanced equity capital of the target company. In respect of the said increase, SEBI, vide order dated December 30, 2005 granted exemption to the acquirer therein and the persons acting in concert from complying with the requirements in Regulation 11 of the Takeover Regulations, subject to certain conditions. It is stated in the application that, though the target company got itself de-registered from BIFR in the year 2006, it was still suffering losses and as on March 31, 2010, the accumulated losses was to the tune of ₹72.26 crores. It was submitted that the target company, although outside the purview of BIFR, is yet to recover financially and is still under the scanner of CDR and till date, is adhering to the interest and repayment schedules as per the CDR scheme. According to the target company, to overcome the situation and to attain sustainability and withstand competition with local and global players, it proposed to install an additional machinery at its factory in Moradabad, to expand the capacity by 12,000 MT per annum and attain economies of scale. As per the application, the estimated hard cost of the same is ₹45 crore, which was required to be infused into the target company, either in the form of own funds or borrowed funds. It is the submission that, for meeting the funding requirement, the target company approached the Allahabad Bank, Bank of Baroda, Bank of Maharashtra and UCO Bank (herein after referred to as joint lenders) for providing necessary loan amount. It has been stated that the joint lenders (vide their respective letters) have shown their willingness to fund the expansion plans and have agreed to fund to the extent of ₹27 crores, subject to the condition that funds to the extent of ₹18 crores [the total estimated project cost of ₹45 crores less the bank funding amount of ₹27 crores] shall be infused

by the promoters, in the form of fresh equity by way of promoters contribution. I also note that the monitoring committee (CDR), in their minutes of the meeting held on November 9, 2010 observed that under the circumstances, the expansion and installation of the power plant would add value to the target company, its stakeholders and would also enhance its competitiveness and therefore recommended the same to CDR EG for approval. Thereafter, CDR EG had, vide letter dated December 9, 2010 approved the target company's proposal for undertaking expansion of capacity by 12000 MT and installation of captive power plant of 8MW at a total cost of ₹ 51.60 crores. In terms of the said decision, the cost of project of ₹ 51.60 crores would be financed by promoters contribution (equity) of ₹18 crores; internal accruals of ₹6.6 crore and TLs of ₹ 27 crores from joint lenders (banks). In view of the above, it is proposed that funds to the extent of ₹18 crores be brought in by way of a preferential allotment of 1,80,00,000 equity shares at par (i.e. at an issue price ₹10/-) each to the promoters, as against the running Market price of ₹7/-. I note that the shareholders of the target company have approved the proposed preferential issue to the acquirers under Section 81(1A) of the Companies Act, 1956, on January 11, 2011 by way of postal ballot. I further note that pursuant to the proposed preferential allotment, the shareholding of the acquirers in the target company would increase from 1.40% to 21.32% and that of the promoter group (including the acquirers) would increase from 57.25% to 65.88%. As per the application, the said increase would not result in any change in control as the promoter group including the acquirers is already in control of the target company. I also note that one of the acquirers, Gurukripa Finvest Private Limited, has been disclosed as being part of the promoter and promoter group of the target company in the filings made with BSE. Further, the proposed preferential allotment of equity shares is on account of the aforesaid stipulation to meet with the covenants imposed by the joint lenders for bringing in the funds required for funding the target company's

expansion. It is stated that the same would assist the target company in a speedy recovery from the financial losses that it has been through. I also note that the public shareholding would continue to be higher than 25% which is required to meet the condition for continuous listing. Therefore, I agree with the recommendations of the Takeover Panel and consider the present case a fit one for granting exemption from the requirements of Regulation 11(2) of the Takeover Regulations.

5. In view of the above findings, 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 Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby grant exemption to the acquirers, Gurukripa Finvest Private Limited, Sulabh Plantations and Finance Private Limited and Accurex Traders Private Limited, from complying with the requirements of Regulation 11(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 with regard to the proposed acquisition of 1,80,00,000 equity shares at par i.e. ₹10.00/- per share of the target company, namely, Pasupati Acrylon Limited, through preferential allotment.

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

- (a) The statements/averments made or facts/figures given in the application are true and correct to the best knowledge of the acquirer and the person acting in concert.
- (b) The acquirers and the person acting in concert alongwith others in the promoter group of the target company, shall ensure compliance with the statements, disclosures and undertakings made in the application and subsequent letters.

- (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.

7. This exemption shall not be construed as exemption from the requirements of any 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**