

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

ORDER

**IN THE MATTER OF INCREASE IN SHAREHOLDING AND VOTING
RIGHTS IN MOREPEN LABORATORIES LIMITED- APPLICATION FILED
UNDER REGULATION 4(2) OF THE SECURITIES AND EXCHANGE
BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND
TAKEOVERS) REGULATIONS, 1997**

1. The Honourable Securities Appellate Tribunal (hereinafter referred to as the Honourable SAT), vide Order dated August 30, 2011 in Appeal No.122 of 2011 (Morepen Laboratories Limited vs. National Stock Exchange of India Limited and others) directed the appellant (Morepen Laboratories Limited) and/or its promoters to move an application before the Securities and Exchange Board of India (hereinafter referred to as SEBI) seeking exemption from the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the Takeover Regulations). The Honourable SAT also directed SEBI to take a decision thereon in accordance with law within four weeks from the date of such receipt. Pursuant to the said directions, an entity, Square Investments & Financial Services Private Limited along with the persons acting in concert with it, submitted an application dated September 5, 2011 to SEBI under Regulations 3 and 4 of the Takeover Regulations in respect of certain acquisition of shares in Morepen Laboratories Limited (hereinafter referred to as the target company). As per the said application, the target company is incorporated under the Companies Act, 1956 and is having its registered office at Morepen Village, Nalagarh Road, Near Baddi, District Solan, Himachal Pradesh-173205. The equity shares of the target company are listed on the National Stock Exchange of India Limited (hereinafter

referred to as NSE) and the Bombay Stock Exchange Limited (hereinafter referred to as BSE). The aforesaid application sought exemption from complying with the provisions of the Takeover Regulations in respect of the following acquisitions:

(a) The acquisition of 5,10,00,000 equity shares on October 27, 2005, pursuant to the conversion of 510 warrants allotted on May 19, 2004 to Square Investment & Financial Services Private Limited (the acquirer) and persons acting in concert, namely, Mr. Sushil Suri, Ms. Kanta Suri, P.L. Suri Sons (HUF), Mr. Sanjay Suri, K.B. Suri Sons (HUF), Ms. Shalu Suri, Mr. P.L. Suri, Mr. Varun Suri, Sushil Suri Sons (HUF), Ms. Sonia Suri, Ms. Mamta Suri, Ms. Sunita Suri, Ms. Gulfi Suri, Mr. Arun Suri, Sanjay Suri Sons (HUF), Mr. Anubhav Suri, Ms. Aanchal Suri, Mr. Kanak Suri, Ms. Sara Suri, Ms. Annandi Suri, Mr. Arjun Suri, Arun Suri Sons (HUF), Solace Investment & Financial Services Private Limited, Brook Investment & Financial Services Private Limited, Concept Credits & Consultants Private Limited, Scope Credits & Financial Services Private limited, Mid Med Financial Services Private Limited, React Investment & Financial Services Private Limited, Solitary Investment & Financial Services Private Limited, Epitome Holdings Private Limited and Seed Securities & Services Private Limited (hereinafter collectively referred to as 'the acquirers during the year 2005'). The said acquirers belong to the promoter group of the target company and pursuant to the said acquisition, the shareholding of the promoter group increased from 12.88% to 33.94% of the then expanded equity share capital, thereby triggering Regulation 10 of the Takeover Regulations; and

(b) The acquisition of 10,00,00,000 equity shares on December 28, 2007 pursuant to the conversion of 1000 warrants allotted to Square Investment & Financial Services Private Limited (the acquirer) and persons acting in concert, namely, Solace Investment & Financial Services Private Limited, Brook Investment & Financial Services Private Limited, Concept Credits & Consultants Private Limited, Scope Credits & Financial Services Private

limited, Mid Med Financial Services Private Limited, React Investment & Financial Services Private Limited, Solitary Investment & Financial Services Private Limited, Epitome Holdings Private Limited and Seed Securities & Services Private Limited (hereinafter collectively referred to as 'the acquirers during the year 2007'). The said acquirers belong to the promoter group of the target company and pursuant to the said acquisition, the shareholding of the promoter group increased from 24.88% to 43.23% of the expanded equity share capital, thereby triggering Regulation 11(1) of the Takeover Regulations.

2. The persons/entities mentioned at (a) and (b) above are collectively referred to as the acquirers. The present application has been filed seeking exemption from the applicability of Regulation 10 and 11(1) of the Takeover Regulations in respect of the aforesaid acquisitions, *inter alia* on the following grounds:

- a. As on September 30, 2003, the target company had debts of ₹928 crores and accumulated losses of ₹173 crores and that no financial institutions and/or banks were ready to make any further loans into the target company for lack of security and already existing loans. In such a vicious position when all options of the revival for the target company became too bleak, the acquirers had no alternate but to infuse money themselves in the best of the interest of the target company.
- b. It was only in furtherance to the financial restructuring scheme and formulation of CDR scheme that the acquirers had contributed funds as they enabled and without conditions, to the tune of ₹166 crores as against allotment of 16 crore equity shares.
- c. If the contributions had not been made by the acquirers, no bank or financial institution would have reposed their confidence in the target company and may not have agreed for the financial restructuring.
- d. The allotment of 5,10,00,000 equity shares against conversion of 510 warrants and further allotment of 10,00,00,000 equity shares against conversion of 1,000 warrants had been pursuant to the ongoing financial restructuring and under the approved Corporate Debt Restructuring Scheme.
- e. As per the provisions of Regulation 3(1)(j) of the Takeover Regulations, the schemes of restructuring are exempted from the provisions of Regulations 10, 11 and 12 of the Takeover Regulations. On the basis of the views of consultants, the acquirers were, at the time of allotment, under a bonafide opinion that the scheme of CDR as being undertaken by the target company was within the exempted category of Regulation 3(1)(j)(ii) and thoroughly believed that the

provisions of Regulations 10, 11 and 12 of the Takeover Regulations were not attracted in the said allotments.

- f. The Stock Exchanges had contended at the time of application for listing that the schemes under CDR are not exempted under Regulation 3(1)(j)(ii) of the Takeover Regulations. The acquirers had on the insistence of the stock exchange filed an application for consent order in terms of SEBI Circular dated April 20, 2007. The said application was for settling of the issues, if any, and for enabling the Stock Exchanges to proceed with listing. Thereafter, the target company filed an appeal before the Honourable Securities Appellate Tribunal against the NSE and BSE for the pendency in listing of shares. During the course of the hearing before the Honourable SAT, it was discovered that the consent application has been rejected by SEBI. The Hon'ble SAT, vide the Order dated August 30, 2011, directed the acquirers/target company to file an exemption application; hence the present application was filed.
- g. The allotments were made with the due approvals of the shareholders of the target company at the general meetings held and resolutions and ratification resolutions passed by the majority shareholders as present in the meeting so held on February 20, 2004, September 27, 2006 and December 16, 2008.
- h. The target company managed to raise funds from the foreign investor, GL Mauritius India Limited, to the tune of ₹77.06 crores only subsequent to the contributions made by the acquirers.
- i. Without the contributions made by the acquirers and subsequent allotments made to the acquirers, the target company would have surely landed itself in the basket of sick companies registered with the Board for Industrial and Financial Reconstruction (BIFR) and the large number of public shareholders would have lost their investments in entirety. The allotments resulted in safeguarding the interests of public investors.
- j. The target company is a widely held company with a strong shareholder base of more than 1,40,000 shareholders and more than 65% of the issued equity share capital of the target company is held by public at large (as on June 30, 2011), including 13.01% held by NRIs/OCBs and 1.47% held by banks and financial institutions.
- k. The allotment of shares has been made to the acquirers as against their contribution of ₹166 crores for the sole purpose of steering the target company out of troubled waters and to protect the interest of all the stakeholders. Had there not been allotments to the acquirers against their contribution, the low promoters shareholding on account of invocation of pledge by the banks, the consequent destabilization of the management would have resulted into total confusion and utter chaos causing deep distress amongst the lenders, creditors and other stakeholders, including the 1300 families to whom the company is giving direct or indirect employment.
- l. There had not been any change in control or management of the target company with the allotments so made.
- m. The target company has always maintained its public shareholding well above the levels as prescribed under Clause 40A of the Listing Agreement.

The acquirers submitted that in the backdrop of the facts and circumstances and also the grounds for exemption, have filed the application seeking “post facto” exemption from the applicability of Regulations 10 and 11 of the Takeover Regulations.

3. The aforesaid application was forwarded to the Takeover Panel by SEBI and the Panel, vide Report dated September 28, 2011, recommended as under:

“The Panel observed that the proposed application is for seeking exemption from the applicability of Regulation 10 and 11(1) in respect of shares already acquired by the Acquirers in two tranches i.e. on October 27, 2005 and on December 28, 2007. Since the application for exemption is in respect of shares already acquired by the Acquirers, the Panel carefully examined the provisions of Regulation 4 so as to take a view as to whether the Panel could consider such an application. After considering the provisions of Regulation 4(2), the Panel was of the view that currently the provisions of regulation 4(2) permit exemption application only in respect of the proposed acquisition and hence, it could not consider exemption application in respect of acquisitions already made by the Acquirers unless SEBI (SAST) Regulations are amended. The Panel further observed that it has been taking this view consistently in all the cases in past and there was no reason for it to deviate from the said consistent approach adopted by it till date.

Without going into merits of the case, the Panel also noticed that the acquisition on October 27, 2005 was prior to the CDR Package which was approved on July 27, 2006 and hence prima facie the said acquisition was not covered by the said CDR Package as claimed by the Acquirers. The second tranche of acquisition in December, 2007 also appeared to be in excess of the promoters contribution of ₹10 crore stipulated in the CDR Package. The Acquirers seem to have acquired 10 crore equity shares of the face value of ₹2 per share thus making the promoters contribution as ₹20 crore instead of ₹10 crore stipulated in the CDR Package. SEBI may like to verify the said factual position and also procure a copy of relevant shareholders resolution (which does not seem to be on record), if SEBI decides to look into merits of the case, though legally speaking such exemption application is not maintainable.”

4. As the matter was under consideration pursuant to the receipt of the Takeover Panel's Report and since the Honourable SAT had directed SEBI

to take a decision on the application within four weeks from the date of receipt, a miscellaneous application was filed in Appeal No. 122 of 2011 praying the Honourable SAT to extend the time frame fixed for passing the order in the matter by a period of six weeks and the same was allowed by the Honourable SAT.

5. On receipt of the Report from the Takeover Panel, a letter dated October 13, 2011 enclosing therewith a copy of the said Report was sent to Mr. Sushil Suri (who was representing the acquirers in the matter), affording an opportunity of personal hearing to the acquirers before me on October 31, 2011. However, on receipt of a request from the acquirers, the said hearing was adjourned to November 2, 2011, when Mr. Pradeep Sancheti, Senior Advocate represented the acquirers and made submissions. Mr. Sushil Suri, promoter of the target company and one of the acquirers was also present during the hearing. Subsequently, the acquirers filed the written submissions on November 4, 2011, wherein the submissions made during the hearing were reiterated. As the matter required consideration of various documents, a request was made by SEBI before the Honourable SAT for extension of time for taking a decision in the matter and the Honourable SAT granted a further period of two weeks.

6. I have considered the application of the acquirers seeking grant of exemption, the recommendation of the Takeover Panel, submissions made during the hearing, the written submissions dated November 4, 2011 and other relevant material available on record. In terms of the application, the promoter group's shareholding had increased in two tranches—from 12.88% to 33.94% on October 27, 2005 pursuant to the allotment of 5,10,00,000 equity shares (on conversion of 510 warrants) and from 24.88% to 43.32% on December 28, 2007 pursuant to the allotment of 10,00,00,000 equity shares (on conversion of 1000 warrants). The first allotment had triggered Regulation 10 of the Takeover Regulations and the second allotment had

attracted Regulation 11(1) of the Takeover Regulations. The application has been made seeking “post facto” exemption for the aforesaid increase in the shareholding of the acquirers/promoter group.

7. One of the observations of the Takeover Panel was that Regulation 4(2) of the Takeover Regulations permits exemption application only in respect of proposed acquisitions and hence it could not consider the application filed by the acquires in respect of their acquisitions which were already made. During the course of hearing, the learned senior counsel submitted that in terms of Regulation 3(1)(j)(ii) of the Takeover Regulations, any increase of shareholding pursuant to a scheme of arrangement or reconstruction including amalgamation or merger or demerger under any law or regulation, would not require the acquirers to make a public announcement. The learned counsel further submitted that the target company came under severe financial crisis during the year 2003 and that it became indebted to several banks/financial institutions and some of the banks had referred the case of the target company to the CDR Cell and that a Flash Report was submitted to the CDR Cell. According to him, as per the said Flash Report, the promoters were to bring ₹36 crores by way of equity in three tranches in the second, third and fourth years. He also submitted that other funds to the tune of ₹66 crores were to be brought in as GDR proceeds and in case it was not available, the promoters of the target company were supposed to bring in the required funds. It was also submitted that the allotments of warrants (90 and 510) were resolved and authorized by the shareholders on February 20, 2004 and that subsequently during August (90 warrants into 90,00,000 shares-aggregate amount of ₹9.90 crores) and October 2005 (510 warrants converted into 5,10,00,000 share-aggregate amount of ₹56.10 crores), the warrants were converted into equity shares. It was also submitted that in this manner, funds to the tune of ₹66 crores were infused by the promoters into the target company. During the hearing, the learned senior counsel also submitted a note to show the

financial position of the target company for the period 2003-2011, pre and post financial restructuring under the CDR. The learned senior counsel submitted that unless funds came in, the target company would have become sick and would have been referred to the Board for Industrial and Financial Reconstruction (BIFR). According to him, the target company at that stage had two choices – either to go to banks or allow it to become sick. He further submitted that pursuant to the infusion of funds, the bank loans reduced from ₹750 crores to ₹340 crores and that the resolution passed in the year 2006 for warrants issue was pursuant to the CDR approved restructuring package. According to him, the promoters had brought in ₹100 crores and another ₹70 crores came from a strategic investor. Thus, according to him, after the infusion of such funds, the target company was prevented from becoming sick and that the shareholders' interests were taken care of.

8. Regulation 3(1) of the Takeover Regulations contain clauses listing out certain modes of acquisition of shares or voting rights, which do not attract Regulations 10, 11 and 12 of the Takeover Regulations. It is the submission that the acquirers were under the bonafide belief that their acquisition was in terms of the CDR process would be covered by Regulation 3(1)(j)(ii) of the Takeover Regulations and hence the acquirers did not apply for exemption. According to the senior counsel, the expression “including” used in Regulation 3(1)(j)(ii) would make the scope wide to cover the aforesaid acquisitions of the acquirers. Takeover Panel in their Report dated September 29, 2011 had observed that the acquisition on October 27, 2005 was prior to the CDR Package which was approved on July 27, 2006 and hence the said acquisition was not covered under the said CDR Package. Therefore, obviously, the argument of the acquirers that the increase in shareholding (in so far as the first acquisition was concerned) was pursuant to the CDR package would fail. Further, allotment of shares in furtherance of a CDR Package does not fall under the categories mentioned

under Regulation 3(1) of the Takeover Regulations. It was only in the present Takeover Regulations (notified in the year 2011) that acquisitions pursuant to a scheme of corporate debt restructuring are exempted from the obligation to make an open offer, as stated therein. Thus, any acquisition of shares through preferential allotments made for the purposes of satisfying the conditions laid down in the CDR Package do not get exemption automatically and therefore such acquirers are required to seek specific exemption from SEBI, in terms of Regulation 3(1)(l) of the Takeover Regulations read with Regulation 4 of the Takeover Regulations. As noted by the Takeover Panel, the provisions of Regulation 4(2) of the Takeover Regulations permit exemption applications to be filed for a "proposed acquisition". The said provision is reproduced herein below for reference:

".....

(2) For seeking exemption under clause (l) of sub-regulation (1) of regulation 3, the acquirer shall file an application supported by a duly sworn affidavit with the Board, giving details of the **proposed acquisition** and the grounds on which the exemption has been sought.

....."

[Emphasis supplied]

Thus, in terms of Regulation 4(2) of the Takeover Regulations, the application itself is not maintainable as the subject acquisitions have already been completed and the shareholding of the acquirers/promoter group of the target company and the attendant voting rights have increased already. It is to be noted that there has been active acquisitions by the acquirers/promoter group. The acquirers have, in their application, also mentioned the earlier Orders of SEBI in the matters of Jayaswal Neco Limited and Sea Horse Hospitals Limited to submit that their application may also be treated in the same manner. Having perused the said Orders, the provisions of Regulation 4(2) of the Takeover Regulations does not allow me to consider applications post facto. Regulation 4(2) is clear and

unambiguous. In the present case, it was the submission that the acquirers had acquired the shares of the target company, as per the Flash Report circulated during March 2004. However, I find that the warrants were allotted to the acquirers on May 19, 2004 and the same were converted into equity shares during October 2005. Similar was the case with the second allotment, where the warrants were allotted during October 2006 and the same were converted only in December 2007. The acquirers had ample time at their disposal to file an application to SEBI seeking exemptions before conversion. They did not do so. In the recent past, SEBI had disposed off cases taking a stand that an application under Regulation 4(2) is maintainable only in respect of proposed acquisitions. Even, Regulation 11 (3) of the Takeover Regulations notified in the year 2011 allows application to be made only in respect of a proposed acquisition. As stated above, Regulation 4 of the Takeover Regulations is applicable only in respect of "proposed acquisitions", I am unable to consider the grounds made out in the application (which was filed post acquisition) and the submissions made therein. In view of the above, I am inclined to agree with the recommendations of the Takeover Panel and reject the application on the ground of non-maintainability of the application under Regulation 4(2) of the Takeover Regulations.

9. 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 Regulations 11(5) and 35(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, hereby reject the application dated September 5, 2011 filed by the acquirers, Mr. Sushil Suri, Ms. Kanta Suri, P.L. Suri Sons (HUF), Mr. Sanjay Suri, K.B. Suri Sons (HUF), Ms. Shalu Suri, Mr. P.L. Suri, Mr. Varun Suri, Sushil Suri Sons (HUF), Ms. Sonia Suri, Ms. Mamta Suri, Ms. Sunita Suri, Ms. Gulfi Suri, Mr. Arun Suri, Sanjay Suri Sons (HUF), Mr. Anubhav Suri, Ms. Aanchal Suri, Mr. Kanak Suri, Ms. Sara Suri, Ms. Annandi

Suri, Mr. Arjun Suri, Arun Suri Sons (HUF), Solace Investment & Financial Services Private Limited, Brook Investment & Financial Services Private Limited, Concept Credits & Consultants Private Limited, Scope Credits & Financial Services Private limited, Mid Med Financial Services Private Limited, React Investment & Financial Services Private Limited, Solitary Investment & Financial Services Private Limited, Epitome Holdings Private Limited and Seed Securities & Services Private Limited, seeking exemption from the Securities and Exchange Board of India from complying with the provisions of Regulation 10 and 11(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 in respect to their increase in shareholding and voting rights from 12.88% to 33.94% on October 27, 2005 pursuant to the allotment of 5,10,00,000 equity shares (on conversion of 510 warrants) and from 24.88% to 43.32% on December 28, 2007 pursuant to the allotment of 10,00,00,000 equity shares (on conversion of 1000 warrants).

10. Accordingly, the application dated September 5, 2011 made by the aforesaid acquirers is disposed off.

**PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

**PLACE: MUMBAI
DATE: NOVEMBER 29, 2011**