

**DEPUTY GENERAL MANAGER
DIVISION OF CORPORATE RESTRUCTURING**

CFD/DCR/TO/MM/ 133490 /08
July 29, 2008

JM Financial Consultants Private Limited
141, Maker Chambers III, Nariman Point
Mumbai 400 021

Dear Sirs,

Sub.: Request for Interpretive Letter under the SEBI (Informal Guidance) Scheme, 2003

Ref: Your letters dated November 21, 2007, February 20, 2008 and June 27, 2008

- 1.0 Please refer to your letters under reference, seeking interpretative letter under the SEBI (Informal Guidance) Scheme, 2003. The interpretive letter has been sought on the availability of exemption in terms of Regulation 3(1)(e)(iii) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 {"the Takeover Regulations"} in respect of proposed indirect change in control from joint control to sole control in Britannia Industries Limited ("Target Company").
- 2.0 It is, *inter-alia*, informed by you in your letters under reference, that:-
 - 2.1 Leila Lands Limited (LL), a Wadia group company and Britannia Brands Ltd (BBL), UK, Groupe Danone own 50% each in a Joint Venture SPV known as ABI Holdings Limited (ABIH).
 - 2.2 ABIH owns 100% of Associated Biscuits International Limited which along with wholly owned subsidiaries hold 51% of Britannia Industries Limited (BIL/target company). BIL is therefore, a subsidiary of ABIL/ABIH.
 - 2.3 LL, BBL, ABIH, ABIL are all companies incorporated outside India while Target Company has been incorporated in India. ABIL holds directly 45.1% and through subsidiaries another 5.8% in Target Company.
 - 2.4 Target Company is listed on the stock exchanges in India.
 - 2.5 There is a Shareholders Agreement entered in September 1995 between LL Ltd. (Wadia group companies and Mr Nusli Wadia) [collectively referred to as "Indian Group"], BBL, Groupe Danone, Danone Holdings (UK) Limited, Danone Asia Pte Ltd (all belonging to Groupe Danone, collectively referred to as foreign Group), ABIH and ABIL.
 - 2.6 The agreement provides that-

- (i) ABIH's business is to hold directly or indirectly shares in Target Company.
 - (ii) The purpose of Agreement is to record and regulate their relationship.
 - (iii) Both Indian Group and Foreign Group have a right to appoint equal number of directors on ABIH and ABIL.
 - (iv) Indian Group and Foreign Group are entitled to propose an equal number of persons for appointment as directors of ABIH as representatives of ABIL.
- 2.7 ABIL along with its subsidiaries is in a position to have an equal number of directors of atleast three each representing Indian Group and Foreign Group on Target Company's board.
- 2.8 Foreign Group has supplied from time to time know-how/technology and technical support as was required by Target Company. Additionally, Target Company has been using trademark which belongs to Foreign Group.
- 2.9 The requirement of holding shares for a period of 3 years is satisfied as both Groups have held shares under the current structure for a period of over a decade.
- 2.10 Danone Asia Pte Limited, Singapore (belonging to the Foreign Group) owns 100% of BBL.
- 2.11 The proposed transaction is the acquisition of BBL (which holds 50% of ABIH) by LL.
- 2.12 Danone Asia Pte Ltd has held shares in BBL for more than last 3 years.
- 2.13 The proposed transfer would be from a foreign collaborator to a Qualifying Indian promoter as provided in the exemption under Regulation 3(1)(e)(iii)(a). By acquiring BBL, LL would along with its 50% direct holding in ABIH become the 100% beneficial shareholder of ABIH.
- 3.0 In view of the above circumstances you have sought the informal Guidance on the following:
 - 3.1 Whether the transfer of shares of BBL, currently, held by Danone Asia Pte. Limited to LL qualify for exemption under Regulation 3(1)(e).
- 4.0 Without necessarily agreeing with your analysis, our views on the proposed transaction as mentioned in para 3.0 above are as under -
 - 4.1 The proposed transaction will result in LL (belonging to Indian Group) gaining sole control over ABIH (through BBL's 50% and its own 50%) as against joint control previously exercised alongwith Foreign Group. As a result, there will be a change in indirect control (joint to sole) over Target Company also.

4.2 As per Regulation 2(1)(c), any transfer of joint to sole control would not be deemed as a change of control if the same is effected in accordance with Regulation 3(1)(e).

4.3 Regulation 3(1)(e) covers exemption available to transfer amongst group companies, relatives, qualifying promoters and a transfer between qualifying Indian promoters & foreign collaborators. The instant request seeks interpretative letter on applicability of Regulation 3(1)(e)(iii)(a)/(b).

4.4 As per Reg. 3(1)(e)(iii)(a)/(b) of the captioned Regulations, transfer of shares amongst promoters and foreign collaborators or amongst Promoters is eligible for exemption from the applicability of the regulations 10, 11 and 12 of the Regulations subject to the fulfillment of the following conditions:-

- i. The transferee(s) or transferor(s) are qualifying promoters in terms of provisions of Explanation to Regulation 3(1)(e)(iii)(b) of the Regulations or foreign collaborators ;
- ii. The acquirers collectively as well as transferors collectively have been holding shares in the target company for a period of at least three years prior to the date of acquisition;
- iii. The provisions of Chapter II of the Regulations have been complied with by both the acquirers and transferors;
- iv. The *inter se* transfer price does not exceed 25% of the price determined in terms of regulation 20(4) and 20(5) of the Regulations, as applicable.

4.5 In terms of regulation 3(3) of the Regulations, the acquirers in case of such *inter se* transfer should inform the stock exchanges at least 4 working days in advance of the date of proposed acquisition in case of acquisition exceeding 5% of the voting share capital of the target company.

4.6 In terms of regulations 3(4) of the Regulations, such acquirer is also under obligation to file a report with SEBI in the specified format within 21 days of the date of acquisition along with requisite fees prescribed under regulation 3(5) of the Takeover Regulations.

5.0 LL and Danone Asia Pte Limited {proposed acquirer and transferor, respectively} have been in indirect control over the Target Company and they had been indirectly holding share in the target company for a period of over a decade by virtue of a Shareholders Agreement entered in September, 1995. Therefore, LL and BBL can be classified as qualifying promoters and also can be stated to have indirectly held shares through their chain of subsidiaries in the Target Company for a period of minimum three years.

5.1 You have not represented and confirmed whether the provisions of Chapter II of the Regulations have been complied with by both the acquirers and transferors and/or any of their subsidiaries who are direct shareholders and the *inter se* transfer price in respect of the proposed acquisition does not exceed 25% of the price determined in terms of regulation 20(4) and 20(5) of the Regulations.

5.2 In view of the above, we advise as under –

In the facts and circumstances as stated above, the proposed transfer of shares of BBL from Danone Asia Pte to LL would be eligible for exemption under regulation 3(1)(e)(iii)(b), i.e., between Qualifying Promoters, if all the conditions mentioned in para 4.4 have been satisfied and the transferee (acquirer) shall be under obligation to make disclosure in terms of regulation 3(3) and also to file a report in accordance with regulations 3(4) and 3(5) of the Regulations.

- 6.0 The above position is based on the representation made to the Department as per your letter under reference. Different facts or conditions might require a different result. This letter does not express a decision of the Board on the question referred.
- 7.0 Please note that this position is only with respect to applicability SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and does not affect applicability of any law and other SEBI Regulations, Guidelines and circulars administered by SEBI or any other authority.

Yours faithfully

SOMA MAJUMDER