

DEPUTY GENERAL MANAGER

DIVISION OF CORPORATE RESTRUCTURING

Tel: 26449380

April 9, 2008
CFD/DCR/TO/INF/AG/ 122788/08

Adhunik Metaliks Ltd
'Lansdowne Towers'
2/1 A, Sarat Bose Road,
Kolkatta - 700 020

Dear Sirs,

Sub: Request for interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 (the scheme) by Adhunik Metaliks Limited.(AML)(target company) on the applicability of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (Regulations)

- 1.0 Please refer to your letter dated 01.03.08, seeking 'Interpretive Letter' under SEBI (Informal Guidance) Scheme, 2003.
- 2.0 In your letter under reference you have *inter alia* represented as follows:-
- 2.1 Target Company is a public Ltd. company incorporated under the Companies Act, 1956. The equity shares of the company are listed on BSE and NSE.
- 2.2 On 04.12.07, the target company has executed an Investment Agreement and Investor Rights Agreement with Clearwater Capital Partners (Cyprus) Ltd. (investor), wherein the target company has issued and the investor has subscribed to 81,54,000 fully and compulsorily convertible debentures (FCDs) of the face value of Rs 122.64 convertible into 81,54,000 equity shares of the target company at the option of the investor prior to the expiry of 18 months, as per the provisions of the SEBI(DIP) Guidelines.
- 2.3 The promoters of the target company, along with the persons acting in concert currently hold 5,84,09,412 equity shares representing 64.02% of the total paid up share capital of the company.
- 2.4 To meet the additional funding requirements for future projects, the target company has issued and the promoters have subscribed to 1,1,10,249 zero coupon warrants at a price of 118/- per warrant, each convertible into one equity shares of the company.
- 2.5 The warrants shall be converted simultaneously with the conversion of the FCDs by the investor, and not prior to, or after the conversion of the FCDs.

- 2.6 Upon the simultaneous conversion of the FCDs and the warrants, the shareholding of the promoters, along with PACs would be effectively reduced from 64.02% to 62.9%.
- 2.7 The conversions mechanism of the warrants would not attract the provisions of regulation 11(2) of the Takeover Code, as this regulation would be applicable where an acquirer who is already holding 55% or more in a target company acquires additional shares or voting rights in the target company.
- 2.8 In the present case, with the simultaneous conversion of the warrants and FCDs, the promoters' shareholding along with PACs in the company would be reduced from 64.02% to 62.9% and hence, the provisions of regulation 11(2) will not be applicable and the promoters would not be required to make an open offer in accordance with Chapter III of the takeover code.
- 3.0 In view of the above submissions, you have sought the interpretive letter on the following:
- 3.1 Whether under the present facts and circumstances of the case, regulation 11(2) of the Takeover Code would be attracted?
- 3.2 Whether any other provisions of the Takeover Code be applicable?
- 4.0 Without necessarily agreeing with your analysis , our views on the issue raised by you are as under:-
- 4.1 Your reference may be drawn to the relevant provision of the Regulations as follows:
- Regulation 11(2): *"No acquirer, who together with persons acting in concert with him holds, fifty five per cent(55%) or more but less than seventy five per cent (75%) of the of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations."*
- 4.2 It is observed from your letter under reference that the warrants held by the promoters would be converted simultaneously only along with the FCDs of the investor. Pursuant to the acquisition of shares on the aforesaid simultaneous conversion of FCDs and zero coupon warrants, the shareholding of the investor would increase from 0.16% to 7.52% and the shareholding of the promoters along with PACs in the target company would be reduced from 64.02% to 62.9% in the target company.
- 4.3 In these circumstances, promoters along with PACs will not be able to exercise any additional voting rights in the target company pursuant to the acquisition of shares on the conversion of zero coupon warrants, therefore, the

provisions of regulation 11(2) will not be triggered and the promoters would not be required to make a public offer in accordance with Chapter III of the Regulations.

- 4.4 Please note that in terms of regulation 7 of the Regulations any acquirer who acquires share or voting rights amounting to five percent or more is required to inform his shareholding to the target company and the stock exchange(s) where the shares of the target company are listed. In your case it is observed that investor will be acquiring more than five percent of shares in the target company. Therefore investor will also be required to comply with regulation 7.
- 4.5 Your query mentioned at para 3.2 above does not cite the applicable legal provision and is general in nature. Therefore in terms of para 8(i) and 8(iii) of the scheme said query is not being responded.
- 4.6 This position is based on the representation made to the Division in your letter under reference. Different facts or conditions might require a different result. This letter does not express decision of the Board on the questions referred.
- 4.7 Please note that this position is only with respect to applicability of regulation 11(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and does not affect applicability of any law and other Regulations, Guidelines and circulars administered by SEBI or any other authority.

Yours faithfully,

(Soma Majumder)