

ORDER IN THE MATTER OF EXEMPTION SOUGHT BY SHRI MUKESH KUMAR AGARWAL UNDER REGULATION 4 (2) OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997 IN RESPECT OF HIS PROPOSED ACQUISITION OF SHARES OF COMP- U – LEARN TECH LTD.

WTMO/13/CFD/11/03

1.0 BACKGROUND

- 1.1 Comp – U – Learn Tech India Ltd. (hereinafter referred to as the “Target company”) is a company incorporated under the Companies Act, 1956 and having its registered office at 172, Vasavi Nagar Colony, Secunderabad, 500015. The main object of the target company is to carry on the business to promote, develop, and maintain computer coaching centres and software development.
- 1.2 The equity shares of the Target Company are listed at the Stock Exchange, Mumbai and the Hyderabad Stock Exchange Association Ltd.
- 1.3 Shri Mukesh Kumar Aggarwal [hereinafter referred to as ‘Acquirer’], together with associates hold 5,04,000 equity shares of Rs.10/- each representing 5.04% of the share capital of the company. The acquirer proposes to acquire 18,63,827 equity shares of the Target Company representing 18.63% the total paid up capital of the Target Company from the proposed seller, Shri KRC Shekhar at a price of Rs.3.50/- per share.

2.1 APPLICATION FOR EXEMPTION

- 2.2 The Acquirer made an application dated April 30, 2003 to the Securities and Exchange Board of India (hereinafter referred to as SEBI) under sub-regulation (2) of regulation 4 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “the Regulations”) seeking exemption from making a public offer in respect of the aforesaid 18,63,827 equity shares of the target company, in terms of Regulation 3(1)(i) from the applicability of Regulation 10 and 12 of the Regulations.
- 2.3 As per the application seeking exemption, the shareholding pattern of the Target Company, pre and post acquisition would be as under:

Shareholders' Category	Number of registered shareholders as on date of application	Before the proposed acquisition	After the proposed acquisition

		Number of shares/ total voting rights held	% of shares/total voting capital held	Number of shares/ voting rights	% of shares / voting rights
Promoter group	130	6152495	61.53	4288668	42.89
Acquirers	16	504000	5.04	2367827	23.68
Private Corporate Bodies	56	101049	1.01	101049	1.01
FII's / NRIs / OCBs	11	68450	0.68	68450	0.68
Public	5760	3174006	31.74	3174006	31.74
Total	5973	10000000	100.00	10000000	100.00

3.0 **SUBMISSIONS IN THE EXEMPTION APPLICATION**

In the aforesaid application and subsequent correspondence exchanged with SEBI, the Acquirer, inter-alia, submitted as under:

- 3.1 The intended transfer share is inter-se between the promoters and therefore the provisions of regulation 10 and 12 of the said regulations are not applicable.
- 3.2 It was already mentioned in the Prospectus that both the transferor and transferee are promoters. Sri KRC Sekhar is basically a businessman. In order to assist the promoters in setting up the project, he also joined as promoter of the company and contributed towards the capital. However, in view of the depressing markets for software industry for quite some time, he desired to dispose off his shares. In this regard Sri Mukesh Kumar Agarwal, who is another promoter, director functioning from USA has agreed to acquire those shares, as they are very cost effective for him. However, this transaction will not have any bearing on the management and control of the company.

4.0 **CONSIDERATION OF THE APPLICATION**

- 4.1 The said application dated April 30, 2003 was forwarded to the Takeover Panel in terms of sub-regulation (2) of regulation 4 of the Regulations. The Takeover Panel observed that the transferor and transferee have not been named as “promoters” in the prospectus dated June 8, 2000 for public issue of shares of the Target Company. Accordingly, an explanation was sought by SEBI from the acquirer. In its reply dated July 29, 2003 it was submitted that for brevity, the details of only one promoter viz. Shri Srinivasa Rao Donepudi were given in the prospectus. The Takeover Panel in its meeting held on August 7, 2003 considered the application and the aforementioned reply of the acquirer and on the basis of the admission of the acquirer that the intended transfer is not inter

se between the promoters, refused to grant any exemption to the acquirer as requested by him. The Takeover Panel observed that "The Acquirer made the application originally on the basis that the intended transfer of shares is inter-se between the promoters and the provisions of the Takeover Code are not applicable. However, on pursuing inquiry with the Acquirer, it is now evident and even admitted by the Acquirer that the intended transfer of shares is not inter-se between the promoters. This shows that the Acquirer originally sought exemption on the basis of statements which to the knowledge of the Acquirer, to say the least, were wrong. That apart, since no case for grant of exemption as sought is made, recommendation for grant of exemption from making open offer is not made".

4.2 SEBI vide its letter dated September 12, 2003 forwarded the copy of the recommendation of the Takeover Panel to the acquirer and also granted an opportunity of personal hearing on October 07, 2003. The acquirer vide his letter dated October 06, 2003 requested SEBI to adjourn the hearing and the same was adjourned to November 05, 2003. Shri A. N. Sarma, Company Secretary in practice, appeared before me on behalf of the acquirer and made the submissions.

4.3 The representative of the acquirer submitted before me that the transaction intended was between the promoters inter-se and therefore the acquirer is entitled to avail the benefit of exemption from regulation 10 and 12 of the said regulations. The representative of the acquirer has also submitted before me that the acquirer wanted to avail the benefit of the SEBI Regularisation Scheme 2002 for non compliance with regulation 6 and 8 of the said Regulations. It is also submitted before me that the target company had taken a demand draft in favour of SEBI for availing the same.

4.4 I have perused the relevant documents and the submissions made on behalf of the acquirer before me. It is noted that, apart from making a submission that the transfer is inter se between the promoters, the acquirer could not produce any evidence to that effect. On a perusal of the offer document of the target company it is observed that the name of the acquirer did not figure in the said document under the head 'PROMOTERS AND THEIR BACKGROUND'. One Shri Srinivasa Rao Donepudi is mentioned as the sole promoter of the target company. It is also observed that the acquirer is shown as one of the Directors in the offer document. I have also perused the Memorandum and Articles of Association of the target company and further noted that the acquirer is not a signatory to the same. The acquirer has failed to prove that he is indeed a promoter of the company and that the transfer is inter se between the promoters. The submissions made regarding participation in Regularisation Scheme are not relevant for the matter under consideration. The acquirer has not been able to adduce any satisfactory ground for availing the benefit of exemption from applicability of the provisions of regulations 10 and 12 of the

ORDER

- 5.1 Having regard to the above, and the recommendations made by the Takeover Panel and also in the interest of the public shareholders of the Target company, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act 1992 read with sub-regulation (6) of regulation 4 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 , hereby reject the application of Shri Mukesh Kumar Agarwal , the Acquirer seeking exemption from applicability of Regulations 10 and 12 of the said Regulations in respect of his proposed acquisition of the shares of Comp – U- Learn Tech India Ltd.
5. 2 This order shall come into force with immediate effect.

T. M. NAGARAJAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place : Mumbai

Dated : November 29, 2003