

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF PROPOSED ACQUISITION OF EQUITY SHARES OF EXPO GAS CONTAINERS LIMITED–EXEMPTION APPLICATION FILED UNDER REGULATION 4 (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997

BACKGROUND

1. Expo Gas Containers Limited (hereinafter referred to as the target company) is a company incorporated under the Companies Act, 1956, having its Registered Office at 150, Sheriff Devji Street, Mumbai–400003. The equity shares of the target company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as BSE).

APPLICATION SEEKING GRANT OF EXEMPTION

2 Jawad Trading Company Private Limited (hereinafter referred to as the acquirer), vide letter dated January 25, 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) to Securities and Exchange Board of India (hereinafter referred to as SEBI) in respect of the proposed acquisition of 1,12,50,000 equity shares of the target company by way of conversion of 45,00,000 warrants into equity shares, on a preferential

basis at an acquisition price of Rs. 14.15/- (face value of Rs.4/- and a premium of Rs.10.15/-). In terms of the application, 100% shareholding in the acquirer is held by the promoters of the target company and that, the acquirer forms part of the promoter and promoter group of the target company. It was further stated that the acquirer currently does not hold shares of the target company. However, together with other promoters, the acquirer hold 21.42% of the total paid up capital of the target company. As per the application, the acquirer's shareholding in the target company, pursuant to the proposed acquisition would increase from 21.42% to 67.86%. In view of such increase, the present application is filed by the acquirer for seeking exemption from the applicability of Regulations 11(1) and 11(2) of the Takeover Regulations, *inter alia*, on the following grounds:-

- a) Due to severe recession, the target company's working was adversely affected and that it had started making losses from the year 2002 onwards. The target company had availed finance from Industrial Development Bank of India (hereinafter referred to as IDBI) and Union Bank of India (hereinafter referred to as UBI). Since the target company could not fulfill its obligation towards IDBI and UBI, cases were filed against the target company in the Debt Recovery Tribunal (hereinafter referred to as DRT). The target company finally negotiated with IDBI and UBI for a One Time Settlement (hereinafter referred to as OTS) and accordingly settled its dues.
- b) In order to honor the OTS commitments and for its survival, the target company had allotted warrants to the tune of Rs. 4,50,00,000 to the acquirer and the same was approved by the shareholders of the target company in an Extra-Ordinary General meeting held on March 2, 2009. In compliance of the requirement, the acquirer (allotees) brought in Rs. 1,12,50,000 being 25% of the total amount payable on the warrants.
- c) Subsequently, the target company undertook restructuring exercise whereby the equity of the target company was reduced by Rs. 4,67,18,400/- and such amount along with lying in the share premium account was utilized for wiping out the accumulated losses.

d) The exemption if granted would be in the interest of the target company and its minority public shareholders.

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

Shareholders' Category	No: 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 rights held	Number of shares/total voting rights held	% of shares/total voting rights held
Promoter Group	16	16,67,935	21.42	1,29,17,935	67.86
FIs/Banks	2	400	0.01	400	0.00
FIIs/NRIs/OCBs	57	5,22,971	6.72	5,22,971	2.75
Public	9,189	55,95,094	71.86	55,95,094	29.39
Total	9,264	77,86,400	100.00	1,90,36,400	100.00

4. Thereafter, vide letters dated February 9, 2010 and February 26, 2010, the acquirer submitted additional information/document as sought by SEBI.

RECOMMENDATION OF THE TAKEOVER PANEL

5. The aforesaid application along with the additional information/document submitted by the acquirer, vide letter dated February 9, 2010 and February 26, 2010 was forwarded to the Takeover Panel, by SEBI, in terms of the Takeover Regulations. The Takeover Panel, vide report dated March 27, 2010 has recommended as under:

“The panel observed that Target Company had started incurring losses since 2002 and its accumulated losses as on 31/3/2008 were to the tune of Rs.15.04 crore. In order to honor the OTS, the Promoters had brought in funds through preferential allotment of warrants to them. The Target Company had also undertaken restructuring

exercise whereby its equity was reduced pursuant to a scheme approved by the Hon'ble Bombay High Court. Considering the financial health of the Company and the peculiar circumstances under which the money was brought in by the Promoters to help the Company to meet its pressing financial obligations, the panel was of the view that the proposed conversion of warrants into equity would be in the interest of the Target Company and its shareholders. The panel therefore recommend the grant of exemption to the Acquirer as prayed by them subject to the compliance of all other regulatory requirements under the SEBI Regulations and other applicable laws, if any."

FINDINGS

6. I have considered the application dated January 25, 2010, other information/documents submitted by the acquirer, the recommendation of the Takeover Panel and other relevant material available on record.

7. I note that the target company has been incurring losses (accumulated losses as on March 31, 2008 was Rs. 15,40,00,000), over the past several years and consequently its effective capital is eroded. The target company had outstanding debts with IDBI and UBI, which could not be fulfilled from the funds generated from its operations. Therefore, the target company required fresh funds to repay the outstanding debt. To enable this, the acquirer/promoters of the target company were allotted 45,00,000 warrants to bring in fresh funds to honour the OTS with its bankers, IDBI and UBI. The shareholders of the target company had also approved the allotment of warrants. I further note that the acquirer/promoters, now, wish to convert the warrants at an acquisition price of Rs.14.15/- per share. By the said conversion, the shareholding of the acquirer/promoters in the target company would increase from 21.42% to 67.86%. I observe that the acquirer had to invest in the target company to revive and develop the target company and hence the said allotment is in the best interest of the target company and its minority shareholders. I also note that there would be no change in the control over the target company pursuant to such increase. Further, after the proposed transaction, the public shareholding in the target company would be at 32.14%. I also note that the

Takeover Panel has observed that the said increase in the shareholding of the acquirer would be in the interest of the target company and its shareholders. In view of the above, I agree with the recommendation of the Takeover Panel and consider the present case a fit one for granting exemption from the provisions of Regulations 11(1) and 11(2) of the Takeover Regulations.

ORDER

8. 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 acquirer, namely Jawad Trading Company Private Limited from complying with the provisions of Regulations 11(1) and 11 (2) thereof, with regard to the proposed acquisition of 1,12,50,000 equity shares (by way of conversion of 45,00,000 warrants) of Rs. 4/- each (face value) of the target company, namely Expo Gas Containers Limited.

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

- a) The statements/averments/facts or figures given in the application are true and correct to the best knowledge of the acquirer.
- b) The acquirer along with others in promoter group shall ensure compliance with the statements, disclosures and undertakings made in the application. The proposed acquisition 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.
- c) There shall be no reduction in the minimum level of public shareholding pursuant to the proposed preferential allotment and that

the target company shall maintain the minimum level of public shareholding, as required in terms of the listing agreement.

10. This exemption shall not be construed as exemption from 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.

11. The acquirers shall file a report with Securities and Exchange Board of India confirming compliance including the conditions specified in this order.

**DR. K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

**PLACE: MUMBAI
DATE: APRIL 27, 2010**