

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER**

ORDER

IN THE MATTER OF PROPOSED ACQUISITION OF SHARES OF MSD PROPERTIES LIMITED-EXEMPTION APPLICATION FILED UNDER REGULATION 3(1)(I) READ WITH REGULATION 4(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997.

Date of hearing: December 22, 2011

Mr. Vinod Kumar Agrawal and Mr. Subash Chand Agrawal (the acquirers) along with persons acting in concert, R. N. Commotrade Private Limited and Singhal General Traders Private Limited.

..... Applicants

Personal Appearance in the matter:

For the applicants:

1. Mr. S.K. Jain, Advocate and
2. Mr. Jagannath Kar, Practicing Company Secretary

For the Securities and Exchange Board of India:

1. Mr. Santhosh Shukla, Joint Legal Adviser,
2. Mr. Srikant Kumar Mishra, Assistant General Manager,
3. Mr. T. Vinay Rajneesh, Assistant Legal Adviser and
4. Ms. Chitra Bhandari, Assistant Manager

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1. MSD Properties Limited (hereinafter referred to as the target company) is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 40, Weston Street, 3rd Floor, Kolkata - 700012. The equity shares of the target company are listed on the Calcutta Stock Exchange Limited (hereinafter referred to as CSE).
 2. The applicants herein filed an application dated October 17, 2011 with the Securities and Exchange Board of India (SEBI) 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') in respect of their proposed purchase of 15,34,200 equity shares (constituting 33.85% of the equity capital) of the target company from select public shareholders of the target company. The proposed acquisition, if completed, would increase the shareholding of the acquirers from 18.94% to 52.78% and would attract open offer obligations under regulation 11(1) of the Takeover Regulations (*since repealed*).

3. The applicants have sought exemption from the obligation of making a public announcement and other compliances as stipulated under Regulations 13, 14, 15, 16 and 18 thereof. It is submitted in the application that -
 - a. the target company has a share capital of 45, 32,750 fully paid-up equity shares with face value of ₹10/- each and its shares have uniform voting rights ranking *pari passu* with each other. Mr. Vinod Kumar Agrawal and Mr. Subash Chand Agrawal (acquirers) hold 8, 58, 300 equity shares (18.94%) which were issued to them by the target company pursuant to a scheme of arrangement, between the target company, Shinshon India Limited and Bhagwati Abasan Limited, sanctioned by the Hon'ble Calcutta High Court;
 - b. the target company has incurred huge losses in the recent past due to lack of any business and it needs further capital infusion to start some new ventures and to expand its areas of operation;
 - c. the applicants have very rich experience in various business modules and have resources and are willing to infuse funds to revive and expand the business of the target company;
 - d. the applicants have already taken over the management and control of the target company under regulation 12 of the Takeover Regulations by obtaining the requisite approval from its shareholders through postal ballot under section 192A of the Companies Act, 1956 and also in a duly held extra-ordinary general meeting of the target company;
 - e. the applicants are willing to consolidate their holding in the target company by acquiring further shares from select public shareholders;

- f. there are only 288 public shareholders in the target company;
 - g. the applicants propose to purchase 15,34,200 equity shares (33.85%) of the target company from select public shareholders of the target company at the price of ₹2/- per share;
 - h. besides holding of shares as stated in para 3(a) herein, the applicants have never acquired any shares in the target company ;
 - i. the applicants have not made any acquisition during the twenty six week period prior to the date of the application, therefore, this parameter of determining the offer price under regulation 20(5)(b) of the Takeover Regulations has not been considered;
 - j. since the shares of the target company are infrequently traded, the minimum offer price is fixed at ₹2/- per share (the negotiated price) as per regulation 20(5)(a) of the Takeover Regulations and that the said offer price is determined after considering the net worth, earnings per share (EPS) and other financial parameters as prescribed under regulation 20(5)(c); and
 - k. the exemption is sought only from procedural compliances and to save expenditure.
4. In terms of the application, the shareholding pattern of the target company before and after the proposed acquisition is as follows:

Shareholders category	Number of registered shareholders as on the date of the 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
Promoters(Acquirer/PACs)	13	8,58,300	18.94	23,92,500	52.78
FIs/Banks	nil	nil	Nil	nil	nil
FII/NRIs/OCBs	nil	nil	Nil	nil	nil
Public	288	36,74,450	81.06	21,40,250	47.22
Total	301	45,32,750	100.00	45,32,750	100.00

5. While the application was being examined by SEBI, the Takeover Regulations was repealed by the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the New Takeover Regulations) with effect from October 22, 2011. By virtue of regulation 35 of the New Takeover Regulations, the application was examined in accordance with regulation 11 thereof. Considering the facts and circumstances of this case and in exercise of the discretion under the proviso to the regulation 11(5), the application is considered without referring the same to the Panel.
6. An opportunity of hearing was afforded to the applicants before me on December 15, 2011. After seeking adjournment, the authorised representatives of the acquirers, Mr. S.K. Jain, Advocate and Mr. Jagannath Kar, Practicing Company Secretary, appeared before me on December 22, 2011. While reiterating the submissions made in the application, the learned authorised representatives of the applicants submitted that the applicants, being in control of the target company, are the promoters of the target company. There is no liquidity in the shares of the target company. The applicants (promoters) are interested in making further investment in the target company at a price of ₹ 2/- per equity share as against the book value per share at ₹ 13.53/-. The promoters intend to increase their holding in the target company and diversify its areas of operation. The shareholders of the target company hold the shares in physical mode. Some of the public shareholders have approached the acquirers (promoters) to sell their stakes in the target company at a price of ₹ 2/- per share as against the book value of ₹ 13.53/- per share. There is no exit option available to the public shareholders since the shares of the target company are infrequently traded. The promoters may be allowed to buy the shares from the intending shareholders and may be exempted from making a public announcement and from strictly complying with the requirements of regulations 13, 14, 15, 16 and 18 of the Takeover Regulations and the corresponding provisions of the New Takeover Regulations.
7. The learned authorised representatives submitted that the applicants do not intend to deprive the other public shareholders of any exit opportunity and they will make individual offer to all the public shareholders of the target company to buy their

shareholding in the target company. It was submitted that the applicants shall directly approach all the public shareholders through Registered Post A.D. and publish a newspaper advertisement about the offer. The learned authorised representatives also submitted that the applicants undertake to comply with conditions as may be stipulated by SEBI. They requested to file revised proposal of the applicants to provide exit opportunity to all public shareholders and sought time for the same.

8. Vide letter dated January 3, 2012, while agreeing for consideration of the application under the New Takeover Regulations, the applicants proposed that they would:
 - a. make individual offer to all the public shareholders of the target company offering to buy their shareholding in the target company at the negotiated price of ₹2/- each equity share;
 - b. send the offer notice to the shareholders at their registered address by registered post with acknowledgement due followed by newspaper publication informing the shareholders about the dispatch of the offer to them;
 - c. publish the facts about the applicants proposing to acquire entire 33.85% of voting rights from intending sellers at negotiated price of ₹2/- for each equity share and do undertake to acquire further voting rights from other intending sellers at the same price. The publication is proposed to be made in two leading news papers with wide circulation, one in English and one in Bengali, being the vernacular language of the State of West Bengal in which the registered office of the target company is situated;
 - d. in the event the equity shares offered by the public together with the voting rights acquired in terms of the proposed negotiated deals exceeds the maximum permissible limit of 75%, the acquirers will offload the excess in accordance with the provisions of the Securities Contract (Regulation) Rules, 1957;
 - e. appoint a SEBI registered merchant banker to monitor and oversee the steps and the due compliance of the alternate mechanism;
 - f. appraise and inform CSE of all the steps to be undertaken by the acquirers; and
 - g. comply with such other conditions as may be stipulated by the SEBI while deciding on the revised proposal.

9. I have considered the application, the submissions made on behalf of the applicants, the revised proposal of the applicants and other relevant material available on record. Since the Takeover Regulations have been repealed and the New Takeover Regulations have come into force with effect from October 22, 2011, I consider this application in accordance with the New Takeover Regulations.
10. From the certified copy of the resolution passed at the Extra-Ordinary General Meeting of the shareholders of the target company held on June 27, 2011, I note that Mr. Vinod Kumar Agarwal and Mr. Subhas Chand Agarwal (the acquirers) had acquired control over the target company in terms of Regulation 12 of the Takeover Regulations and the other two applicants are the persons acting in concert with them. From the certified copy of the Annual Report of the target company for the Financial Year ended March 31, 2011, I note that the company is a loss making company. I further note that the networth of the target company is ₹6,13,22,520/-, the book value per share is ₹13.53/-, percentage return on networth is negative and earnings per share is 0.02.
11. I note that although the applicants have expressed their willingness to revive and expand the business of the target company and intend to consolidate their shareholding by the proposed acquisition as submitted in the application, no fresh fund would be infused in the target company by the proposed acquisition. Further, one of the objectives of the Takeover Regulations and also that of the New Takeover Regulations is equality of treatment to all shareholders. In my view, under the facts and circumstances of the case as stated in the application, grant of exemption from open offer requirements with respect to the proposal to acquire shares from select public shareholders would defeat that objective.
12. However, from the revised proposal of the applicants submitted during the proceedings, I observe that the applicants have now proposed to provide exit opportunity to all the public shareholders of the target company and consolidate their shareholding without compromising on the interests of the public shareholders. They have only sought exemption from strict compliance of making public announcement

under regulation 13, 14 and 15 and filing of letter of offer with SEBI under regulation 16 of the New Takeover Regulations. I am of the view that the revised proposal of the applicants to make exit offer to all the public shareholders of the target company would be in line with the objective of the Regulations as stated above.

13. I find that there will be no change in control / management of the target company pursuant to the acquisition of shares by the applicants from the public shareholders since the applicants have already acquired control of the target company. The shares of the target company are listed only on the CSE and are infrequently traded. The applicants have submitted that there are only 288 public shareholders in the target company. In my view, therefore, the revised proposal of the applicants is reasonable and in the facts and circumstances of the case the proposed acquisition merits exemption from strict compliance of procedures relating to the public announcement under regulation 13, 14 and 15 and filing of letter of offer with SEBI under regulation 16 of the New Takeover Regulations.
14. As regards the offer price, I am of the view that the public shareholders should be given exit opportunity at the best offer price to be determined in accordance with the New Takeover Regulations. In this case, the book value per share of the target company is ₹ 13.53/- per share. I, therefore, find that the offer price of ₹2/- per equity per share is not justified in terms of regulation 8 of the New Takeover Regulations. In the interest of the investors, the offer price should be determined by an independent merchant banker registered with SEBI who shall also monitor and supervise the entire process in compliance of this order. Further, in order to ensure information disclosure to all shareholders, the proposed public offer should be given wide publication and information about the same should be disseminated to the public through public notice and the disclosure to CSE.
15. I also note that depending upon the response from public shareholders to the open offer of the applicants, the target company may breach the mandatory requirements of maintaining minimum level of public shareholding (25%) stipulated in rule 19A of the Securities Contract (Regulation) Rules, 1957 and Clause 40A of the Listing Agreement.

In that eventuality, the applicants shall comply with the provisions of regulation 7(4) of the New Takeover Regulations.

16. In view of the above, 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 and 35 of the New Takeover Regulations, hereby grant relaxation/exemption to the applicants, namely, Mr. Vinod Kumar Agrawal, Mr. Subash Chand Agrawal, R. N. Commotrade Private Limited and Singhal General Traders Private Limited, from making a public announcement as required under regulation 3(1) read with regulations 13, 14 and 15 and from the obligation to file the letter of offer under regulation 16(1) of the New Takeover Regulations, in respect of their revised proposal to acquire equity shares of the target company, MSD Properties Limited. However, the relaxation/exemption is granted, subject to the compliance of the following conditions:

- i. The applicants shall appoint a merchant banker in terms of regulation 12 of the New Takeover Regulations for the purposes of monitoring and supervising the entire process and compliance of the conditions stipulated herein ;
- ii. The applicants and the merchant banker appointed as above shall determine the offer price in accordance with the provisions of regulation 8 of the New Takeover Regulations ;
- iii. The applicants shall send individual offers to all the public shareholders of the target company by directly addressing offer letters offering to buy their shareholding in the target company. Such letters of offer shall be sent to each of such shareholders by registered post with acknowledgement due at their addresses available on record of the target company ;
- iv. The applicant shall intimate CSE about their offer to the public shareholders of the target company and mode thereof before sending offer letters to the public shareholders and the CSE shall immediately on receipt of such intimation disseminate the same to the public;

- v. Simultaneously, while sending the individual offer letters to public shareholders, the applicants shall issue public notice in two newspapers having nationwide circulation; one in English and one in Bengali, being the vernacular language of the State of West Bengal, informing the public shareholders, all the details of offer including the details of the target company, acquirers, the proposed acquisition, the offer price, offer size, mode of payment, etc. The said public notice shall also mention that individual offer letters have been despatched to all the public shareholders to their addresses available on record of the target company and the shareholders may tender their shares in response to the public notice also;
- vi. The offer shall be completed within 3 months from the date of this order and on completion of the offer, the applicants shall submit a certificate of the merchant banker to SEBI and CSE, within 7 days of completion of the acquisition certifying compliance with the above conditions of this order ;
- vii. In the event shares accepted in the open offer are such that the aggregate shareholding of the applicants exceeds the maximum permissible non-public shareholding, the applicants shall comply with the stipulation mentioned under regulation 7(4) of the New Takeover Regulations.

17. The application dated October 17, 2011 filed by the aforesaid applicants is hereby disposed off, accordingly.

18. A copy of this order shall also be sent to the Calcutta Stock Exchange Limited for information and compliance of condition at paragraph 16(iv) and for monitoring and ensuring compliance of Rules 19 and 19A of the Securities Contracts (Regulation) Rules, 1957 and Clause 40A of the Listing Agreement, consequent to the acquisition in the matter.

Date: 19.01.2012

Place: Mumbai

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA