

**SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER**

IN RESPECT OF THE PROPOSED ACQUISITION OF SHARES OF SOUTHERN PETROCHEMICAL INDUSTRIES CORPORATION LIMITED—EXEMPTION APPLICATION FILED UNDER REGULATION 4(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997

1. Southern Petrochemical Industries Corporation Limited (hereinafter referred to as the target company) is a company incorporated under the Companies Act, 1956, having its registered office at 73, Armenian Street, Chennai-600001. The equity shares of the target company are listed on the National Stock Exchange of India Limited (hereinafter referred to as NSE). The target company, vide letter dated June 1, 2010, filed an application on behalf of FICON Holdings Limited, Mauritius (hereinafter referred to as the acquirer), with the Securities and Exchange Board of India (hereinafter referred to as 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). It is stated in the application that the acquirer is an overseas body incorporated in the Republic of Mauritius as a private company with limited liability, on November 30, 1995. It is further stated that the acquirer, forming part of the promoter group (Dr M.A. Chidambaram group), holds 2,24,59,128 equity shares (17.12% of the paid up share capital) of the target company. It is also stated that as the target company was going through a critical financial position, it had availed the Corporate Debt Restructuring (hereinafter referred to as CDR) mechanism in the year 2003. As a result, the entire secured debt portfolio of the target company was restructured. Subsequently, over the next three years, Asset Reconstruction Company India Limited (hereinafter referred to

as ARCIL), registered as a securitization and reconstruction company under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, acquired approximately 84% of the assignment rights from the secured lenders of the target company. The target company, under the aegis of the CDR mechanism, is in continuous discussion with ARCIL for further restructuring its loan liability to a sustainable level. It is further stated that, to augment the finances, the promoter group of the target company, at the request of ARCIL, agreed to infuse a sum of ₹50 crores against the issue of Fully and Compulsorily Convertible Preference Shares (hereinafter referred to as FCCP Shares), which were progressively convertible into equity shares of the target company. Accordingly, the acquirer, remitted a sum of ₹50 crores and was allotted 2,77,77,777 FCCP Shares of ₹18/- each, in two tranches (2,25,19,962 FCCP Shares on March 30, 2010 and 52,57,815 FCCP Shares on March 31, 2010), with each FCCP Share compulsorily and mandatorily convertible into 1 equity share of ₹10/- each, fully paid, inclusive of a premium of ₹8/- per share. It is further stated that, in accordance with the terms and conditions of the issue of FCCP Shares and the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, 65,58,676 equity shares of face value of ₹10/- each, fully paid up, constituting 5% of the post-converted equity share capital of the target company, were allotted to the acquirer on March 31 2010, at a premium of ₹8/- per share, by converting and extinguishing 65,58,676 FCCP Shares of ₹18/- each, out of the 2,77,77,777 FCCP Shares allotted, as per the consolidation of holding procedure allowed under Regulation 11 of the Takeover Regulations. As per the application, post-allotment of the first tranche of equity shares by conversion/extinguishment of 65,58,676 FCCP Shares; 2,12,19,101 FCCP Shares allotted to the acquirer, are still outstanding for conversion into equity. It is stated in the application that in order to comply with the stipulation of CDR Cell, that the promoters of the target company should infuse ₹150 crores towards the target company's equity share capital, a preferential allotment of 4,34,78,260 equity shares of ₹10/- each, at an issue price of ₹23/- (inclusive of premium of ₹13/- per share) to the acquirer was also proposed. Pursuant to the said conversion and the

proposed preferential allotment, the shareholding of the acquirer would increase from 17.12% to 44.50% of the equity capital of the target company and that of the promoter group (including the acquirer) would increase from 37.29% to 58%. The aforesaid application has been filed seeking exemption from the applicability of Regulation 11(1) of the Takeover Regulations with respect to the proposed acquisition of 6,46,97,361 equity shares [by conversion of the outstanding 2,12,19,101 FCCP shares of ₹10/- each at an issue price of ₹18/- each (inclusive of premium of ₹8/- per share) and the proposed preferential allotment of 4,34,78,260 equity shares of ₹10/- each, at an issue price of ₹23/- (inclusive of premium of ₹13/- per share)] of the target company, *inter alia*, on the following grounds:

- (a) Need for infusion of funds by the promoters is critical for the revival of the target company. The Urea and Ammonia plants of the target company have been lying closed since March 2007, because of lack of working capital. Only infusion of interest-free funds as equity share capital by the promoter group as stipulated under CDR mechanism can help resumption of operations at the target company.
- (b) The Government of India through Ministry of Chemicals and Fertilizers and Ministry of Petroleum and Natural Gas has assisted the target company towards recommencement of the Ammonia and Urea Plants of the target company. The Indian Oil Corporation Limited (hereinafter referred to as IOC) has also executed a supply agreement with the target company for settlement of its dues to IOC and for the resumption of supply of naphtha and fuel to enable start-up operations. The contribution of ₹50 crore made by the promoters was utilized to settle part-dues of IOC in accordance with the aforesaid supply agreement and similarly the preferential issue was made with an objective of facilitating the resumption of supplies by IOC.
- (c) The CDR cell sanctioning the restructuring package, has stipulated that the promoter group should bring in ₹150 crores to the equity capital of the target company.
- (d) Infusion of funds to an extent of ₹150 crores by the promoter to the target company's share capital at this critical juncture when other option of raising capital like right issue, public issue etc. are not readily available to the target company in view of its poor financial health, demonstrates the faith of the promoters in the long term viability of the target company.
- (e) Investment by promoters would benefit the target company and its stakeholders.
- (f) The proposed allotment would not result in any change in control or management of the target company.

(g) Post acquisition, the public shareholding in the target company would not fall below the minimum level of 25% of enhanced paid up capital of the target company.

2. Thereafter, SEBI sought various clarifications/information with respect to the aforesaid application from the target company and the same were submitted by it, vide letters dated June 21, 2010, July 12, 2010 and August 9, 2010. In the aforesaid letters, the target company *inter alia* confirmed that there are no other persons acting in concert along with the acquirer in respect of the proposed preferential allotment. The target company also submitted the certified statements relating to compliance with the requirements of Chapter II, Regulations 7 and 8(A) of the Takeover Regulations. The target company also stated that the acquirer as part of the promoter group, had in the year 2005, infused a sum of ₹20 crores in the equity share capital of the target company, as stipulated by the CDR cell and that the said acquisition was exempted by SEBI from the requirement of public announcement under Regulation 11(1) of the Takeover Regulations. It was further stated that the promoter group did not acquire any shares or voting rights of the target company during the period April 1, 2009 to March 31, 2010, except the acquisition of 65,58,676 equity shares pursuant to the conversion of FCCP Shares on March 31, 2010 which was in accordance with the consolidation of holdings procedure provided for in Regulation 11 of the Takeover Regulations. The target company also confirmed that the acquirer holds only equity shares and FCCP Shares in the target company and the said FCCP Shares are not entitled to dividend. Accordingly, the applicant also provided the shareholding pattern of the target company (including equity shares and preference shares) before and after the proposed allotment and conversion of FCCP Shares (no. of shares and percentage of voting rights) as under:-

Shareholding pattern of the target company	Pre - preferential allotment holding				Proposed Allotment	Post - preferential allotment holding			
	Equity shares		Preference Shares		No. of shares	Equity Shares		Preference Shares	
In case the acquirer is a promoter	No of shares	%(shareholding)	No of shares	% (shareholding)		No of shares	% (shareholding)	No of shares	% (shareholding)
A. Promoter Holding									
Acquirers	22459128	17.12	NIL	NIL	64697361	87156489	44.50	NIL	NIL
FICON Holding Ltd.									
Other	26456281	20.17	NIL	NIL		26456281	13.50	NIL	NIL
(A) Total	48915409	37.29	NIL	NIL		113612770	58.00	NIL	NIL
B. Non promoter Holding									
Public	77482098	59.07	1150000	92.00	NIL	77482098	39.56	1150000	92.00
Financial institutions	4776031	3.64	100000	8.00	NIL	4776031	2.44	100000	8.00
(B) Total non-	82258129	62.71	1250000	100.00	NIL	82258129	42.00	1250000	100.00
TOTAL (A+B)	131173538	100.00	1250000	100.00		195870899	100.00	1250000	100.00

3. Subsequently, the aforesaid application was forwarded to the Takeover Panel, by SEBI, in terms of Regulation 4(4) of the Takeover Regulations and the Takeover Panel, vide report dated August 30, 2010 has recommended as under:

“.....out of the aforesaid investment of Rs. 2,77,77,777 Fully and Compulsorily Convertible Preference Shares of Rs. 18/- each (“FCCP Shares”) of the Target Company, 65,58,676 FCCP Shares were converted into 65,58,676 equity shares, as per the terms of the issue, on 31st March, 2010, constituting 5% (five percent) of the post-converted Equity Share capital of the Target Company of 13,11,73,538 equity shares as on 31st March, 2010. The said conversation is stated to be in accordance with the consolidation of holdings as per Regulation 11. Since the said 65,58,676 FCCP shares have already been converted into equity shares the proposal for considering exemption shall be restricted to the balance 2,12,19,101 FCCP shares out of the 2,77,77,777 FCCP shares and proposed acquisition of 4,34,78,260 equity shares of Rs. 23/- per shares up to the value of Rs. 100 crore.

.....the proposed equity acquisition of shares by the promoters is in compliance with letter dated March 13, 2010 of Corporate Debt Restructuring Cell (CDR Cell) in terms of which the promoter group is required to infuse Rs. 50 crore on or before March 15, 2010 and Rs. 100 crore on or before September 15, 2010 by way of CCPS.

The acquirer will have to comply with the timelines stipulated by CDR cell or seek relaxation from them. It was also noted that the Urea and Ammonia Plant of the Target Company have been lying closed since March 2007 because of non-availability of working capital. Infusion of funds by the promoters therefore is critical for revival of the Target Company when other routes for raising capital through rights issue, public issue, etc., are not easily available due to poor financial health of the Company. Further, public shareholding of the Target

Company ever after proposed allotment of equity shares to the promoters will not fall below the minimum threshold limit of 25%. Considering all these factors, the panel recommended grant of exemption to the acquirer from compliance with regulation 11(1) of SAST Regulations.”

4. I have considered the application dated June 1, 2010, the recommendation of the Takeover Panel, additional submissions (including the letter dated September 8, 2010) made by the target company on behalf of the acquirer and other relevant material available on record. I note that the conversion of 2,12,19,101 FCCP shares of ₹18/- each (inclusive of premium of ₹8/- per share) and preferential allotment of 4,34,78,260 equity shares of ₹10/- each, at an issue price of ₹23/- (inclusive of premium of ₹13/- per share) proposed to be made to the acquirer by the target company is pursuant to the CDR mechanism. I note from the CDR Cell's letter dated March 13, 2010 that the instant restructuring package is as per its stipulation that the promoter group of the target company should bring in ₹150 crores to the equity capital of the target company. In the application, the target company has stated that the acquirer belongs to its promoter group. Though, the acquirer is a part of the promoter group of the target company in terms of Regulation 2(1)(h)(b) and clause (b)(ii) of the Explanation I to Regulation 2(1)(h) of the Takeover Regulations, I note that its name has not been disclosed in the quarterly shareholding pattern filed by the target company. The target company has only been disclosing the aggregate shareholding of Dr. M A Chidambaram group (promoter group) and not the individual shareholding of the twelve entities belonging to the said group, which is required in terms of Form 1(b) of Clause 35 of the Listing agreement, in the quarterly shareholding pattern filed with NSE. Therefore, it appears that the target company has not duly complied with the provisions of clause 35 of the Listing Agreement. In this regard, I note that the target company, vide letter dated September 8, 2010, has given an undertaking that it would disclose the names of promoters and their shareholding, under Clause 35 of the Listing Agreement from the quarter ending September 2010. Notwithstanding the aforesaid observation, I note that the acquirer does fall under the definition of promoter and is currently holding 37.29% together with the other promoters of the target company. Pursuant to the proposed acquisition, the

shareholding of the promoter group (including the acquirer) would increase to 58% of the expanded share capital of the target company. I also note that there would not be any change in control pursuant to the proposed acquisition, as the acquirer being the part of the promoter group is already in control of the target company. I further note that the proposed acquisition of shares by the acquirer is pursuant to the stipulation of the CDR cell, which requires the promoter group to infuse funds (in total ₹150 crores) in the target company. I also note that it has been undertaken and submitted by the target company that it would implement the entire CDR package within the prescribed time period after getting the necessary approvals from SEBI and other regulatory authorities. The proposed allotment of shares has already been approved by the shareholders of the target company at their Extra-ordinary General Meeting held on February 22, 2010 and May 19, 2010 in respect of ₹ 50 crores in 2,77,77,777 FCCP shares of ₹18/- each and ₹100 crores through preferential allotment of 4,34,78,206 equity shares of ₹23/- each, respectively. I also note that even after the proposed acquisition, the public shareholding in the target company would remain above 25% as required under the Listing Agreement. In light of the above, I am satisfied that the proposed acquisition by the acquirer is in the interest of the target company and its shareholders. Therefore, I agree with the recommendation of the Takeover Panel and consider the present case a fit one for granting exemption from the applicability of Regulation 11(1) and 11(2) of the Takeover Regulations.

5. 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 FICON Holdings Limited from complying with the provisions of Regulation 11(1) and 11(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 with respect to the proposed acquisition of 6,46,97,361 equity shares [by conversion of the outstanding 2,12,19,101 FCCP shares of ₹10/- each at an issue price of ₹18/-

each (inclusive of premium of ₹8/- per share) and the proposed preferential allotment of 4,34,78,260 equity shares of ₹10/- each, at an issue price of ₹23/- (inclusive of premium of ₹13/- per share)] of the target company namely, Southern Petrochemical Industries Corporation Limited proposed to be made to the said acquirer, pursuant to the Corporate Debt Restructuring scheme.

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

- (a) The statements/averments made/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 the promoter group shall ensure compliance with the statements, disclosures and undertakings made in the application and subsequent correspondence.
- (c) 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.

7. This exemption shall not be construed as an exemption from the requirements of any other provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations (e.g. disclosure requirements under Chapter II), the Listing Agreement or any other law.

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

PLACE: MUMBAI
DATE: SEPTEMBER 28, 2010