

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1) AND SECTION 11(2)(h) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11(5) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011. IN THE MATTER OF PROPOSED ACQUISITION OF SHARES AND VOTING RIGHTS IN -

TARGET COMPANY	VODAFONE IDEA LIMITED
ACQUIRER	GOVERNMENT OF INDIA

Background

1. Vodafone Idea Limited (hereinafter referred to as "*Target Company / VIL*") was incorporated in 1995. The *Target Company's* registered office is Suman Tower, Plot No. 18, Sector no. 11, Gandhinagar - 382011, India. The *Target Company* was listed on BSE and NSE on March 09, 2007. The *VIL* is engaged in providing telecommunication service. It offers services under two heads of Customer services and Business Enterprise Solutions.
2. An Application dated May 10, 2022 (hereinafter referred to as "*Application*") seeking exemption from the applicability of Regulation 3(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "*Takeover Regulations, 2011*") in the matter of proposed direct acquisition of shares in the *Target Company* was received by SEBI from IDBI Capital Markets & Securities Ltd. (IDBI) on behalf of Department of Economic Affairs - Ministry of Finance, Government of India ("**GoI**") (hereinafter referred to as "*Acquirer / Applicant*").
3. Regulation 3(1) of the *Takeover Regulations, 2011* states as under -

“Substantial acquisition of shares or voting rights.

3(1) *No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.*

4. The submissions made by the *Applicant* in the *Application* are as under:
- (a) The issued, subscribed and paid up Equity Share Capital of the *Target Company* is INR 3,21,18,84,78,850/- divided into 32,11,88,47,885 equity shares of INR 10/- each. *Target Company* has a public shareholding of 25.01% and the remaining non-public shareholding of 74.99% is entirely held by the promoters and the promoter group.
 - (b) The proposed transaction involves issue of 1,613,31,84,899 Equity Shares to the GoI / *Acquirer* on preferential basis by way of order under sub-section 62(4) of Companies Act, 2013. Pursuant to the above transaction, the shareholding of the GoI / *Acquirer* in the *Target Company* will increase from Nil to 33.44%.
 - (c) Department of Economic Affairs (DEA), Ministry of Finance (MoF) vide Office Memorandum no. 3/2/2021 - PPU dated October 13, 2021 issued guidelines on payment of interest amount on account of protection of Net Present Value (NPV) on deferred Spectrum Auction dues and Adjusted Gross Revenue (AGR) related dues.
 - (d) In the backdrop of the performance of the telecom sector in meeting COVID-19 challenges, with huge surge in data consumption, online education, work from home, interpersonal connect through social media, virtual meetings etc., the GoI had announced several reform measures to boost the proliferation and penetration of the broadband and telecom connectivity.

- (e) In order to provide relief, in public interest, by easing liquidity and cash flow to the Telecom Service Providers (TSPs), and to help various banks having substantial exposure to the Telecom sector, the following suggestive measures for the TSPs were announced:
- Moratorium/Deferment for four years of annual payments of dues arising out of the AGR judgement of the Hon'ble Supreme Court of India, however, the NPV of the such amounts due being protected.
 - Moratorium/Deferment on the liabilities/dues of the payments towards the spectrum purchased in the past auctions (excluding the auction of 2021) for up to four years, with NPV protected at the interest rate stipulated in the respective auctions.
 - The TSPs shall be given the option to convert the interest amount, arising out of protection of NPV on account of deferred spectrum and AGR dues, pertaining to the moratorium period, into a loan and against the said loan to issue equity to the President of India.
- (f) The Government has decided that the TSPs shall be provided with the opportunity to upfront exercise the option for conversion of the said outstanding interest dues into equity. The TSP may choose to pay the interest in cash, along with deferred amount, or by way of equity. The procedure for a listed company to convert the interest that would accrue on the instalments/ payments during the moratorium period into equity is as under:
- The necessary order for invoking Section 62 (4) of the Companies Act will be issued by the competent department, based on proposal from DoT, directing that the present value of the interest on the deferred AGR-related and Spectrum auction dues during the moratorium period shall be treated as a

loan to the Company and then be converted from loan to equity shares in the company.

- The equity shares would be issued by the company to the Government on preferential basis.
- (g) In terms of the aforesaid Office Memorandum of DEA dated October 13, 2021, the Board of Directors of *VIL*, at meeting held on 10th January, 2022, have approved the conversion of the full amount of such interest related to spectrum auction instalments and AGR Dues into equity.
- (h) *VIL* has, through an Extra-Ordinary General Meeting dated March 26, 2022 got approval for amendment of Articles of Association of *VIL* to reduce Qualifying threshold for each Promoter and Promoter Group from 21% to 13% in order to protect right of existing Promoter and Promoter group to appoint Directors on the Board of *VIL*. Thereby, the current promoters/promoter group of *VIL* have continued to exercise control over the *VIL* as a result of reduction of threshold for exercising certain governing rights.
- (i) Subsequent to the exercise of option to convert AGR related dues and Spectrum Auction Installments amounting to INR 16,133.19 crores as on date of exercise of option by *VIL*, i.e. January 10, 2022, to equity, approximately 1,613,31,84,899 shares may be issued to the GOI on preferential basis, at a price of INR 10/- per share, in the name of President of India and these shares shall be placed with Department of Investment and Public Asset Management (DIPAM), MoF.
- (j) The acquisition of the aforesaid shares of *VIL* by GoI would result in the shareholding of the GoI in the *VIL* increase from Nil to 33.44% post the issue of such equity holding in *VIL*. This proposed acquisition by GoI in *VIL* would trigger obligation to make an open offer in terms of regulation 3(1) of *Takeover*

Regulations, 2011 as the shareholding of GoI would breach the threshold limit of 25%.

Grounds for seeking exemption

5. The *Applicant* has sought exemption vide *Application* on the following grounds:
- (a) An open offer will require an additional investment for acquisition of further Equity Shares by GoI. Such a requirement renders the conversion of the outstanding dues to equity untenable. The purpose of the Telecom Relief is defeated and will have a negative impact on investors of *VIL* and public at large. The sole intent behind the relief package was, in larger public interest, to enable the TSPs to continue servicing their customer base and increasing telecom penetration in India.
 - (b) The open offer may result in acquisition of further Equity Shares of *VIL* by GoI which will result in cash outflow by GoI and GoI shareholding potentially becoming equivalent to Promoter and Promoter group shareholding of *VIL* which is not the intent of GoI Telecom Relief package.
 - (c) GoI has no intent to participate in the management or the Board of the *VIL*. Holding of GoI in *VIL* shall be classified as Public Shareholding.
 - (d) Under Regulation 10 1 (i) of Takeover Regulations, exemption is provided from the obligation to make an open offer under regulation 3 and regulation 4 of *Takeover Regulations, 2011* in case of acquisition of shares pursuant to conversion of their debt as part of a debt restructuring plan is implemented in accordance with the guidelines specified by the Reserve Bank of India. In this case, GoI is a creditor of *VIL* and *VIL* was not able to meet its obligations to GoI. Thus, issuance of equity shares by *VIL* to GoI will amount to conversion of dues payable by *VIL* to GoI which will be akin to conversion of debt into equity between a debtor and a creditor.

- (e) *VIL* has through Extra-Ordinary General Meeting dated March 26, 2022 got approval for amendment of Articles of Association of *VIL* to reduce Qualifying threshold for the Promoter and Promoter Group company in order to protect right of existing Promoter and Promoter group to appoint Directors on the Board of *VIL*. This demonstrates intent of Promoters to continue to exercise control even after issue of shares to GoI.

Consideration

6. I have considered the *Application* submitted by the *Acquirer* and other material available on record. Without reiterating the facts as stated above, the following is noted:

- (a) The proposed acquisition by the GoI in the instant case is intended to provide relief, in public interest, by easing liquidity and cash flow to the TSPs. GoI has approved the Moratorium/Deferment of four years in annual payments of dues arising out of the AGR judgement and has allowed for conversion of the interest amount into equity arising out of protection of NPV.
- (b) *VIL* has opted for the conversion of interest dues payable by it to GoI into equity. Interest Dues amounting to INR 16,133,18,48,990/- are thus to be converted into issuance of equity shares. Equity shares will be issued to GoI on preferential basis through issue of order under sub section (4) of Section 62 of Companies Act, 2013.
- (c) Pursuant to the above transaction, the shareholding of GoI in the *VIL* shall increase from Nil to 33.44%. Such increase in shareholding of the GoI would trigger open offer under regulation 3(1) of *Takeover Regulations, 2011*. Pre-Acquisition and post-Acquisition Shareholding of *VIL* is tabulated below:

Particulars	Shareholding before the proposed acquisition		Proposed Transaction	After the proposed acquisition	
	No. of shares	% holding	No. of shares allotted on preferential basis	No. of shares	% holding
A. Promoter and Promoter Group					
Promoters & Promoter Group other than Acquirers	24087376727	74.99	-	24087376727	49.92
B. Public Shareholders					
Acquirers and PAC – GoI	-	-	16133184899	16133184899	33.44
Public	8031471158	25.01	-	8031471158	16.64
Total	32118847885	100	16133184899	48252032784	100

- (d) The acquisition of shareholding by GoI in *VIL* is proposed with the sole intent of saving the larger public interest. Moreover, GoI has no intent to participate in the management or the Board of the *VIL* and there is going to be no change in control of the *VIL*. Further, such holding of GoI shall be classified as Public Shareholding.
- (e) *Takeover Regulations, 2011* provide automatic exemption under regulation 10(1)(d)(iii) from making an open offer in cases of an acquisition of a target company pursuant to National Company Law Tribunal (NCLT) approved schemes. Further, under regulation 10(1)(i) of the *Takeover Regulations, 2011*, acquisition of shares by lenders pursuant to conversion of their debt as a part of debt restructuring scheme implemented in accordance with the guidelines of Reserve Bank of India is also exempted from open offer.
- (f) Therefore, it will be appropriate to treat *VIL*'s proposed decision to convert its outstanding interest dues payable to GoI into equity at par with NCLT

approved scheme and debt restructuring scheme as envisaged under the *Takeover Regulations, 2011*.

- (g) In view of the peculiar facts of this matter, the public policy and public interest involved in the entire transaction and taking into cognizance various steps taken by GoI in easing liquidity and cash flow to the TSPs as well as to help various banks having substantial exposure to the Telecom sector, I note that Proposed Acquisition has a merit for consideration. Considering the fact that a substantial sum of money is due to be paid to the GoI by the *VIL*, which may place a potential burden on the financials of the *VIL* and also an open offer obligation on the part of GoI involves huge sums of cash outflow from the GoI, I find that it would be apt to grant exemption to the *Acquirer* from open offer requirements as laid down in the regulations 3 (1) of the *Takeover Regulations, 2011*.

Order

7. I, in exercise of the powers conferred upon me under Section 19 read with Section 11 (1) and Section 11 (2) (h) of the SEBI Act, 1992 and regulation 11(5) of the *Takeover Regulations, 2011* hereby grant exemption to the Proposed Acquirer, Government of India, from complying with the requirements of regulations 3(1) of the *Takeover Regulations, 2011* with respect to the proposed direct acquisitions in the *Target Company*, viz. **Vodafone Idea Limited**, by way of proposed transactions as mentioned in the *Application*.

8. The exemption so granted is subject to the following conditions:

- (a) The proposed acquisitions shall be in accordance with the relevant provisions of the Companies Act, 2013 and other applicable laws.
- (b) On completion of the proposed acquisitions, the Proposed *Acquirer* shall file a report with SEBI within a period of 21 days from the date of such acquisition, as provided in the *Takeover Regulations, 2011*.

- (c) The statements / averments made or facts and figures mentioned in the Application and other submissions by the Proposed Acquirers are true and correct.

9. The exemption granted above is limited to the requirements of making open offer under the *Takeover Regulations, 2011* and shall not be construed as exemption from the disclosure requirements under Chapter V of the aforesaid Regulations; compliance with the SEBI (Prohibition of Insider Trading) Regulations, 2015, Listing Agreement / SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 or any other applicable Acts, Rules and Regulations.

10. The *Application* dated January May 10, 2022 read with other submissions, filed by *Acquirer*, are accordingly disposed of.

Place: Mumbai

Date: May 25, 2022

-Sd-

S.K. Mohanty

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA