

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM : PRASHANT SARAN, WHOLE TIME MEMBER**

ORDER

Under sections 11(1), 11(2)(j), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with section 12A of the Securities Contracts (Regulation) Act, 1956 in the matter of non-compliance with the requirement of minimum public shareholding by listed companies

In respect of Essar Ports Limited

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") passed an *interim order* dated June 04, 2013 (hereinafter referred to as "*the interim order*") with respect to 105 listed companies who did not comply with the Minimum Public Shareholding ("MPS") norms as stipulated under rules 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "SCRR") within the due date i.e., June 03, 2013. The *interim order* was passed without prejudice to the right of SEBI to take any other action, against the non-compliant companies, their promoters and/or directors or issuing such directions in accordance with law. The *interim order* was to be treated as a show cause notice by those companies for action contemplated in *paragraph 18* thereof.

2. Essar Ports Limited (hereinafter referred to as "the Company") is one such company against whom the *interim order* was passed. The equity shares of the Company are listed on the Bombay Stock Exchange Limited ("BSE") and the National Stock Exchange of India Limited ("NSE").

3. The Company filed its replies to the *interim order* vide letters dated June 05, 2013, June 20, 2013 and June 25, 2013. An opportunity of personal hearing was afforded to the Company on July 24, 2013, when Mr. Shailesh Sawa, Director-Finance of the Company and Mr. Manoj Contractor, Company Secretary, appeared and made submissions. The Company also filed its written submissions vide letter dated July 30, 2013.

4. The Company submitted that in order to comply with the MPS norms, it had undertaken an Offer for Sale ("OFS") of 2,28,06,018 equity shares (*constituting 5.33%*) held by the promoters of the Company, which increased the public shareholding to 20.96%. The Company also submitted that SEBI, vide letter dated March 26, 2013, had permitted the Company to convert 52,666 Global Depository Shares ("GDS") held by Port of Antwerp International UK Limited ("the Port of Antwerp") and that on conversion, such equity shares could be included as part of the public shareholding. The aforesaid GDS represented 1,74,32,446 equity shares constituting

4.07% of the paid-up equity share capital of the Company on a diluted basis. It is the submission of the Company that it intimated Port of Antwerp about SEBI's approval and thereafter on May 15, 2013 its Board agreed for such conversion of GDS into equity shares. As a demat account was required for the credit of the equity shares pursuant to the conversion, Port of Antwerp had to open a demat account. It was submitted that for the purposes of opening a demat account, Permanent Account Number (PAN) and certified copy of the PAN card is a pre-requisite and therefore, Port of Antwerp applied for a PAN card and the same was obtained on June 11, 2013. On receipt of the PAN card, a demat account was opened on June 12, 2013. The Company also submitted that the conversion was completed on June 20, 2013 in accordance with the procedure laid down by the GDS depository (viz., The Bank of New York Mellon). The Company submitted that following the conversion, the public shareholding in the Company had increased to 25.03% of the paid-up capital. The Company further submitted that it took sincere efforts to comply with the MPS norms but could not do so within the stipulated date due to various administrative issues which delayed the conversion of GDS. The Company also represented that it is now compliant with the MPS norms and requested SEBI to drop the actions taken vide the *interim order*.

5. During the personal hearing, the representatives submitted that the delay with respect to the conversion of the GDS was mainly because of the approvals required by Port of Antwerp. It was also submitted that Port of Antwerp is a government owned port in Europe and that the percentage of equity shares sold under the OFS was fixed on the basis of the equity shares that would come into existence post conversion of the GDS held by Port of Antwerp. The representatives further submitted that the GDS was issued to Port of Antwerp during May 2011.

6. I have considered the submissions of the Company. The Company had sufficient notice for three years with respect to compliance with the MPS norms. However, it undertook its first OFS on May 30, 2013 and as the same was not fully successful, it undertook the second OFS on June 03, 2013. It can be seen that the Company undertook the two offers for sale only close to the deadline of June 03, 2013 for partially complying with the norms. As regards the time taken for the conversion of GDS (*taken up towards complying with the MPS norms*), I note that SEBI vide letter dated March 26, 2013 approved the same. However, the final conversion happened only on June 20, 2013. Thus, the Company became compliant with the MPS norms only on June 20, 2013 though the due date for such compliance under law was June 03, 2013. Therefore, for such non-compliance within the stipulated time frame, it is necessary and proper that I warn the Company and advise it to ensure compliance with all the applicable laws and regulations administered by SEBI, in letter and spirit. I have also perused the disclosure (*made in BSE*) of the shareholding pattern of the Company for the quarter ended June 2013 and note that the public shareholding is at 25.03%. Considering the facts and circumstances of the case as submitted by the Company and the fact that it has now complied with the MPS norms, I do not propose to

initiate further action against the Company, its directors, promoter and promoter group, as contemplated in paragraph 18 of the *interim order*.

7. With the above observations, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11(1), 11(2)(j), 11(4) and 11B thereof and section 12A of the Securities Contracts (Regulation) Act, 1956, hereby revoke the directions issued vide the *interim order* dated June 04, 2013 against the company, Essar Ports Limited, its directors, promoters and promoter group, with immediate effect.

8. Copy of this Order shall be served on the stock exchanges and depositories for their information and action that may deem fit and necessary in this case.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date : August 12, 2013
Place : Mumbai