

**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 Gujarat Themis Biosyn Limited**

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1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") had 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. Gujarat Themis Biosyn Limited (hereinafter referred to as "the Company") was one such company against whom the *interim order* was passed. Pursuant to the personal hearing and on consideration of the replies and oral submissions of the Company including the Order dated January 12, 2012 passed by the Board for Industrial and Financial Reconstruction ("the BIFR") in respect of the Company, SEBI vide an Order dated November 05, 2013, had issued the following directions :

*"5. In view of the foregoing, 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 vacate the directions issued vide the interim order dated June 04, 2013 against Gujarat Themis Biosyn Limited, its directors, promoters and promoter group, with immediate effect. However, the directions issued vide the SEBI Order dated June 04, 2013, shall immediately be revived (without the need for passing of a separate order) against the said Company, its directors, promoters and the promoter group, if -*  
*a. the promoter shareholding in Gujarat Themis Biosyn Limited, is not reduced to 75% or less by March 31, 2014 being the end of the period till which the Hon'ble BIFR had given exemption; and*

*b. Gujarat Themis Biosyn Limited, fails to increase its public shareholding to the minimum 25% as stipulated under rule 19A of the SCRR, within the said time frame (i.e. on or before March 31,2014).*

*6. Further, the above directions would be without prejudice to the right of SEBI to initiate other appropriate action in accordance with law, if the company, Gujarat Themis Biosyn Limited, fails to reduce its promoter shareholding to 75% or less as directed by the Hon'ble BIFR, and increase its public shareholding to the minimum 25% as stipulated under rule 19A of the SCRR, within March 31, 2014."*

[Emphasis supplied]

3. Thereafter, the Company vide letters dated January 24, 2014 and February 05, 2014 *inter alia* submitted that the Company had filed a miscellaneous application (MA-530/BC/2013) praying for the following reliefs before the BIFR :

- a) To pass directions that the Order passed by SEBI on June 04, 2013 be kept in abeyance till 31.03.2014 or such other date as the BIFR may deem fit ;
- b) To permit the applicant (i.e., the Company) to raise the public shareholding either through private offer or public offer at a price which is in accordance with pricing guidelines of SEBI ;
- c) To permit (the Company) the increase of equity shares from 14,71,250 to 18,96,500 shares of ₹5/- each, fully paid-up, through private offer or through public offer or through any other mode as well as price as permitted under regulatory framework of SEBI ;
- d) To extend the time for increase in public shareholding within 270 days from the date of passing the Order pursuant to the said miscellaneous application ; and
- e) To pass such order/directions as the facts and circumstances of the case may warrant.

The Company submitted that the BIFR vide Order dated November 20, 2013 passed the following Order in respect of the afore-mentioned miscellaneous application :

*"(a) Extension of the time by 270 days is allowed, subject to no objection of SEBI.*

***(b) The company is on liberty to approach SEBI for extension of time beyond 31.03.2014 and SEBI is directed to consider the grant of extension of time as per SEBI guidelines specified for the same."***

[Emphasis supplied]

According to the Company, though the prayers made in (b) and (c) [as mentioned in paragraph 3 above], were principally agreed to by the BIFR, the same did not reflect in the proceedings of the hearing held on November 20, 2013 before BIFR. The Company had therefore moved another

miscellaneous application [in MA No.662/BC/2013] for reconsideration of the said reliefs. Thereafter, the BIFR in the hearing held on January 02, 2013 passed the following Order :

*"3. Having considered the submissions made, materials on records, the Bench allowed MA-662/2013, and allowed to increase in equity shares from 14,71,250 to 18,96,500 of Rs.5 each, fully paid up, through public offer or private offer or through any other mode as well as at price as permitted under regulatory frame work and pricing guidelines of SEBI as prayed in the Misc. application. The company has to comply SEBI guidelines. With this MA-662/BC/2013, filed the company is disposed off accordingly. "*

In line with the Orders dated November 20, 2013 and January 02, 2014, the Company has requested SEBI for an extension of time by 270 days from the passing of the BIFR Order dated November 20, 2013 and made the following submissions in this regard :

- (a) The primary and secondary stock markets are not very encouraging at present for the Company (especially when it is a BIFR referred company) to tap the capital market and make public issue successfully in order to comply with SEBI guidelines of 25% minimum public shareholding before March 31, 2014 ;
- (b) The overall Indian economy is witnessing sluggish phase and it is expected that the public issue may not fetch good takers ; and
- (c) In view of the forthcoming elections, the markets are not expected to stabilize before a new government is formed. The turnaround in the market may take minimum time between 6 to 9 months.

The Company has also requested SEBI to allow the increase in its equity shares from '14,71,250 to 18,96,500 of Rs.5 each, fully paid up, through public offer or private offer or through any other mode at price as permitted under regulatory frame work and pricing guidelines of SEBI', and submitted that –

- (a) The increase in number of shares is to comply with 25% public shareholding in the Company as per SEBI guidelines ;
- (b) The Company may be allowed to increase the public shareholding through public offer or private offer or through any other mode in order to save exorbitant cost involved in public issue especially when the public issue is to be made by a 'cash strived' BIFR referred company and
- (c) The Company being existing listed company, the issue price should be allowed as per SEBI's pricing guidelines.

4. As requested by the Company, an opportunity of personal hearing was afforded on March 12, 2014, when the Company's Chairman, Mr. Dinesh S. Patel and its Company Secretary, Mr. Prakash Nanrigekar appeared and made submissions. The representatives reiterated the request of the Company for extension of time by another 270 days, as allowed by the Hon'ble BIFR, for complying with the minimum public shareholding requirement. During the personal hearing, I had asked the representatives as to what the Company now proposes to do for complying with the MPS requirement which it was not able to do earlier. To this query, the representatives *inter alia* submitted that –

- (i) A new promoter (Themis Medicare Limited) has taken over the Company only in the previous year and has extended technology and infused funds into the Company.
- (ii) The Company wishes to issue shares to the public. It may either make a follow-on public offer or allot/issue shares in an Institutional Placement Programme (IPP).
- (iii) The Company has started to make profits during the last six months and has started to clear its debts and liabilities.
- (iv) If extension was granted, the Company's improved performance would boost investor confidence which would in turn help in the successful subscription of the Company's equity shares in the proposed offer to the public.

The Company was also granted liberty to file additional submissions regarding its plans as to how it proposes to comply with the MPS requirement within the further requested time period of 270 days. In response, the Company vide letter dated March 14, 2014, made the following submissions :

- (i) Themis Medicare Limited was named as a new promoter by BIFR vide its Order dated January 12, 2012. The said promoter has contributed by way of providing financial support like loans and advances, equipments, technology, business and participated in the equity of the Company by acquiring shares at premium.
- (ii) It was only after the BIFR Order dated January 12, 2012, that all the stake holders in the company like Bank, erstwhile collaborators etc. recognized Themis Medicare Limited as the new promoter. Thereafter, there was evidence of positive signs in the Company's performance.
- (iii) Further as per the BIFR order, Themis Medicare also brought in funds to increase its shareholding in the Company to support its operations.
- (iv) In line with the efforts made by Themis Medicare, turnaround in the financial results of the Company became evident from the quarter ended June 30, 2012. The following details were also provided :

(in lakhs)

Financial Year	Turn over	Profit/Loss	Net-worth
2012-2013	2862.85	106.98	(986.59)
<b>2013-2014 (quarterly)</b>			
1 <sup>st</sup> quarter	770.39	84.78	
2 <sup>nd</sup> quarter	793.90	121.96	
3rd quarter	730.60	110.88	

- (v) The Company also provided the following details to submit that the Company had a poor performance and financial conditions prior to Themis Medicare becoming a promoter in the Company :

(in lakhs)

Financial Year	Turn over	Profit/Loss	Net-worth
2007-08	1663.16	(176.05)	(745.57)
2008-09	1275.95	(363.52)	(1109.09)
2009-10	1563.59	(108.35)	(1217.43)
2010-11	1369.60	(327.68)	(1545.11)
2011-12	914.05	158.68	(1386.44)

- (vi) The Company is also regular in making payment to Banks as per the revised schedule of term loan repayment given by the BIFR.
- (vii) **Justification for seeking extension :** The Company *inter alia* stated that in view of the positive financial results of the Company, it expects to generate confidence in the general public to subscribe to the shareholding of 18,96,500 equity shares by following appropriate method under SCRR as suggested by SEBI vide letter dated April 15, 2013, best suited in the interest of the Company. An extension of 270 days, as requested, would give three more quarters to prove the Company's financial credentials which again will definitely help in boosting confidence in the investors.

5. As regards the extension of time, I have perused the Orders dated November 20, 2013 and January 02, 2014 passed by the Hon'ble BIFR. I note that the BIFR vide Order dated November 20, 2013 allowed extension by 270 days subject to 'no objection' on the same from SEBI. As per the said Order of the BIFR, the Company was at liberty to approach SEBI for extension of time beyond March 31, 2014 and SEBI was to consider the request as per SEBI guidelines specified for the same. I also note that as per the Order dated January 02, 2014, the BIFR has allowed the Company to increase in equity shares from 14,71,250 to 18,96,500 of ₹5/- each, fully paid up, through public offer or private offer or through any other mode as well as at price as permitted under regulatory frame work and pricing guidelines of SEBI. The Company has submitted that it would increase the

public shareholding by one of the modes prescribed by SEBI for the purpose. I have also considered the submissions made by the Company including the additional submissions wherein it has given its justification for seeking extension of time. I have also perused the statement of unaudited financial results for the 'quarter and six months' ended 30<sup>th</sup> September 2013' and for the 'quarter and nine months ended 31<sup>st</sup> December 2013'.

6. Considering the factors such as Themis Medicare Limited, becoming a new promoter in the Company from the year 2012, the Company being a BIFR referred company, the improvement in the financials of the Company as submitted by it, undertaking that the Company would make a public offer of shares in compliance with one of the methods prescribed by SEBI for complying with the MPS requirement and the other submissions made by the Company, I am of the view that SEBI may have no objection to the extension of 270 days granted to the Company by BIFR to increase its public shareholding to the minimum level of 25% and thereby comply with the MPS requirement. It is also noted that as per the miscellaneous application (MA-530/BC/2013) filed by the Company before BIFR, it has prayed for an extension of time (*for increasing the public shareholding*) by 270 days from the date of Order (in respect of the said MA) of the BIFR. The BIFR has allowed such extension (subject to no-objection from SEBI) vide its Order dated November 20, 2013. Therefore, this 270 days period would commence from the order date i.e., November 20, 2013.

7. Accordingly, 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, while indicating no-objection of SEBI for the extension of time allowed by the BIFR to the company, Gujarat Themis Biosyn Limited, hereby direct the Company to comply with the minimum public shareholding requirement as stipulated in rule 19A of the SCRR on or before August 19, 2014 (i.e., the date when the 270 day period expires reckoned from November 20, 2014).

8. Gujarat Themis Biosyn Limited shall comply with its undertaking of complying with the minimum public shareholding requirement by adopting any one of the methods prescribed by SEBI in that regard.

9. The directions issued vide the SEBI Order dated June 04, 2013, shall immediately be revived (*without the need for passing of a separate order*) against Gujarat Themis Biosyn Limited, its directors, promoters and the promoter group, if the company fails to comply with the minimum public shareholding as stipulated under rule 19A of the SCRR on or before August 19, 2014.

10. Further, the above directions would be without prejudice to the right of SEBI to initiate other appropriate action in accordance with law, if the company, Gujarat Themis Biosyn Limited, fails to comply with the minimum public shareholding norms as stipulated under rule 19A of the SCRR, on or before August 19, 2014.

11. 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 : March 28<sup>th</sup>, 2014  
Place : Mumbai**