

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI  
CORAM: S. RAMAN, 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 THE MATTER OF BOMBAY RAYON FASHIONS LIMITED –

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Background –

- 1.1 Bombay Rayon Fashions Limited ("**Bombay Rayon**") is a company incorporated under the Companies Act, 1956, on May 21, 1992. The Registered Office of Bombay Rayon is at D-1<sup>st</sup> Floor, Oberoi Garden Estates, Chandivali Farms Road, Chandivali, Andheri (East), Mumbai-400072. The shares of Bombay Rayon are listed on BSE Limited ("**BSE**") and the National Stock Exchange of India Limited ("**NSE**").
- 1.2 Vide letter dated November 8, 2012, SEBI directed the CEO/Managing Director alongwith Company Secretary/Compliance Officer of Bombay Rayon to ensure adherence with the requirement of minimum public shareholding of 25%, in listed companies. The aforesaid letter *inter alia* stated -
1. "... Ministry of Finance vide Notifications dated June 4, 2010 and August 9, 2010, amended the Securities Contracts (Regulation) Rules, 1957 ("**SCRR**") to provide for minimum and continuous public shareholding requirements in listed companies. This was done with a view that a dispersed shareholding structure is essential for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices.
  2. Accordingly, all listed companies (other than PSUs) shall have minimum 25% public shareholding and whose public shareholding is less than 25%, shall raise the same to the minimum by June 3, 2013.
  3. Under Clause 40A of the Listing Agreement, SEBI has specified the following methods which listed companies can avail to achieve the said minimum public shareholding:
    - i. Issuance of shares to public through prospectus;
    - ii. Offer for sale of shares held by Promoters to public through prospectus;
    - iii. Sale of shares held by Promoters through the secondary market i.e. OFS through Stock Exchange;
    - iv. Institutional Placement Programme (IPP);

- v. *Rights Issues to public shareholders with Promoters/Promoter Group shareholders foregoing their rights entitlement;*
- vi. *Bonus Issues to public shareholders with Promoters/Promoter Group shareholders foregoing their bonus entitlement;*
- vii. *Any other method as may be approved by SEBI on a case-to-case basis."*

1.3 Vide letters dated January 21, 2013 and May 31, 2013, Bombay Rayon replied to the SEBI letter dated November 8, 2012, *inter alia* stating the following –

*"... The current shareholding of the Promoters and Non-Promoters in the Company is as under:*

<i>Shareholding (As on May 31, 2013)</i>			
	<i>Category</i>	<i>No. of shares held</i>	<i>% Shareholding</i>
1.	<i>Promoters</i>	12,53,79,660	93.15
2.	<i>Non – Promoters</i>	92,20,340	6.85
	<b><i>TOTAL</i></b>	<b><i>13,46,00,000</i></b>	<b><i>100.00</i></b>

*The company intended to increase the public shareholding to 25% in order to comply with the amendment to Rule 19A(1) of the SCRR pursuant to the Government notification dated June 04, 2010 whereby listed companies are required to maintain a public shareholding of at least 25%.*

*.....*

*"We hereby assure you that the Company shall comply with the requirement of MPS by June 03, 2013."*

***Ad-Interim Ex Parte Order dated June 4, 2013 –***

1.4 Vide an Order dated June 4, 2013 ("**Interim Order**"), SEBI issued the following directions against Bombay Rayon, which on the basis of details furnished by NSE and BSE, was found to have failed to meet the minimum public shareholding requirement by June 3, 2013 [Refer to point 2 of paragraph 1.2], –

17. *"Hence, in exercise of the powers conferred upon me by virtue of Section 19 and under Sections 11(1), 11(2)(j), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") read with Section 12A of Securities Contracts (Regulation) Act, 1956 ("**SCRA**"), pending passing of the final order in these cases, I hereby:*

- a. *Direct freezing of voting rights and corporate benefits like dividend, rights, bonus shares, split, etc. with respect to the excess of proportionate promoter/promoter group shareholding in the above mentioned non – compliant companies, till such time these companies comply with minimum public shareholding requirement.*

- i. For the purpose of above direction, proportionate promoter/promoter group shareholding shall be computed on the basis of the public shareholding in the company; e.g. if public shareholding in a company after the deadline is less than 25%, say 10%, in such case, the proportionate promoter shareholding would be 30% (i.e. three times the existing public shareholding). Thus the excess promoter/promoter group holding i.e. 60%, shall be frozen till the minimum public shareholding requirement is complied with.
- ii. In case of more than one entity in the promoter/promoter group in a company, the excess promoter holding for the purpose of taking action shall be computed on a proportionate basis. For illustrating the example above, if there are three promoters; A, B and C with shareholdings of 45%, 35% and 10% respectively; the excess promoter holding of 60% shall be allocated as follows:
  1. A:  $(60\% \text{ multiplied by } [45\%/45\%+35\%+10\%]) = 30.00\%$
  2. B:  $(60\% \text{ multiplied by } [35\%/45\%+35\%+10\%]) = 23.33\%$
  3. C:  $(60\% \text{ multiplied by } [10\%/45\%+35\%+10\%]) = 06.67\%$

Total = 60.00%

- b. Prohibit the promoter/promoter group and directors of these non – compliant companies from buying, selling or otherwise dealing in securities of their respective companies, either directly or indirectly, in any manner whatsoever, except for the purpose of complying with minimum public shareholding requirement till such time these companies comply with the minimum public shareholding requirement.
  - c. Restrain the shareholders forming part of the promoter/promoter group in the non – complaint companies from holding any new position as a director in any listed company, till such time these companies comply with the minimum public shareholding requirement.
  - d. Restrain the directors of non – compliant companies from holding any new position as a director in any listed company, till such time these companies comply with the minimum public shareholding requirement.
18. This order is without prejudice to the right of SEBI to take any other action, including the following against the non – compliant companies, their promoters and/or directors or issuing such directions in accordance with law:
- a. Levying monetary penalty under adjudication proceedings;
  - b. Initiating criminal proceedings by way of prosecution proceedings;
  - c. Moving the scrip to trade – to – trade segment;
  - d. Excluding the scrip from F&O segment;
  - e. Any other action/direction as may be deemed appropriate.

19. *The Board/Audit Committee of these non – compliant companies shall, at the end of each quarter, submit compliance report to the stock exchanges where the shares of company are listed, giving the extent to which compliance has been achieved and the efforts taken therefor. ...*
20. *The entities/persons against whom this Order is being passed may file their replies, if any, within 21 days from the date of this Order. The entities mentioned herein may also, if they so desire, indicate in their replies whether they wish to avail of the opportunity of personal hearing before SEBI on a date and time to be fixed on a specific request.*
21. *For the purpose of paragraph 18 above, this Order shall be treated as show cause notice.”*

**Confirmatory Order dated December 11, 2015 –**

- 1.5 Pursuant to the Interim Order dated June 4, 2013, Bombay Rayon filed its reply vide letter dated June 24, 2013, *inter alia* stating:

- a. *“The Company vide its letter dated May 31, 2013, had intimated SEBI about the steps taken by it for achieving the requirements of minimum public shareholding of 25%.*
- b. *The Company had made constant endeavours to ensure compliance with the minimum public shareholding norms, inter alia through offer for sale route.*
- c. *It is confident about achieving the requirement of minimum public shareholding by July 2013.”*

- 1.6 Thereafter, SEBI received a letter dated January 13, 2014, from the State Bank of India, Industrial Finance Branch (“SBI”), stating the following –

*“We would like to bring to your kind attention that Bombay Rayon has been facing financial stress resulting in delay in servicing its debt obligations. Consequently, the debt facilities of Bombay Rayon were restructured by Lenders numbering 24 Banks under the CDR mechanism and we, State Bank of India, have been appointed as the Monitoring Institution for the same. The Final CDR Package for Bombay Rayon was approved by the CDR Empowered Group (“CDR – EG”) and the Letter of Approval (LOA) was issued by the CDR Cell on 27<sup>th</sup> September, 2013.*

*In accordance with the CDR Guidelines, the pledge of the following shares has been stipulated as part of the CDR package in the LOA:*

- *17,00,000 equity shares held by Ms. Vinita Agarwal – currently exclusively charged to SBI.*
- *40,00,000 shares owned by Reynolds Shirting Ltd. currently exclusively charged to SBI.*
- *17,50,000 shares owned by B. R. Machine Tools Pvt. Ltd. – currently exclusively charged to Axis Bank.*
- *Pledge of 97,24,207 unencumbered shares of Bombay Rayon owned by the Indian Promoters.*

*We would like to state that the present Promoter/Promoter Group shareholding in the Company is 92.27%. As per Rule 19(2)(b) and Rule 19(A) of SCRR amended in 2010, at least 25% of each class or kind of equity shares or debentures convertible into equity shares issued by a listed company should be held publicly. Hence, the maximum permissible shareholding for the Promoter/Promoter Group is 75%. Due to financial distress, the Company has been unable to comply with the stated guidelines despite sustained efforts. We understand that due to the non – adherence, the Company is barred from pledging Promoter/Promoter Group shares.*

*In the last Joint Lenders Meeting held on 23.12.2013, the Lenders mandated the Monitoring Institution, State Bank of India, to formally appeal to SEBI for relaxation on this score to ensure Pledge for successful implementation of CDR...*

*The aforementioned pledge of shares has been stipulated in accordance with the CDR Guidelines to give greater control to the lenders and to ensure financial discipline.*

*... In view of the same, we would like to request you to kindly allow the company to avail an exemption from the debarring of pledge of promoter/promoter group shares. We strongly appeal you to grant an approval for pledging the shares held by the promoters/promoter group to protect the interest of the Lenders.”*

- 1.7 Vide a reply dated February 4, 2014, SEBI informed SBI that for any request for exemption from the requirement of Rule 19(2)(b) and Rule 19A of SCRR, the application has to be made by Bombay Rayon since the Interim Order dated June 4, 2013, was still pending against the Company and its Promoters. In compliance with the same, an application dated June 5, 2014, was filed by Bombay Rayon with SEBI seeking necessary exemption from the requirement of Rule 19(2)(b) and Rule 19A of SCRA to the Promoters/Promoter Group of the Company for pledging their free holding in the Company in favour of CDR Lenders to comply with the stipulations of CDR – EG.
- 1.8 Vide letter dated July 2, 2014, SEBI replied to the aforementioned application dated June 5, 2014, informing Bombay Rayon that since the directions issued vide the Interim Order were continuing, the request for grant of exemption as made by the Company, could not be acceded to.

1.9 Vide letter dated August 27, 2014, Bombay Rayon replied to SEBI stating the following –

*“We have made substantial efforts from January 2013 to July 2013 to bring down Promoter shareholding by way of OFS (Offer for Sale) and issue of fresh shares by way of Private Placement. However, the same did not crystallize because of prevailing market conditions.*

*In July 2013, we approached our lenders for debt restructuring through Corporate Debt Restructuring (“CDR”) Forum. The restructuring package was approved by CDR – EG in its meeting held on September 27, 2013 and LOA was issued by CDR Cell on September 27, 2013. Significant time and efforts of the management were devoted for putting place the CDR Scheme, which has further delayed the process of achieving minimum public shareholding.*

*...*

*Meanwhile, we are also in discussion with the lenders for a proposal of conversion of a part of debt into equity. As per CDR Master Circular, the lenders have right to convert Working Capital Term Loan (“WCTL”) and Funded Interest Term Loan (“FITL”) into equity any time during the restructuring period and the same has been mentioned in LOA issued by CDR Cell. ... As per the said note, we will be able to comply with minimum public shareholding criteria if lenders agree to exercise the right of conversion of a part of debt (Non-TUFS-FITL, WCTL-FITL and a part of WCTL) into equity. This proposal is by way of a very initial draft document put up for discussion before the Monitoring Committee held on August 21, 2014. ...*

*The proposal of conversion of WCTL and FITL to equity was not part of restructuring scheme approved. The said facilities have defined repayment schedule with 2 years of moratorium and 8 years of repayment. We propose to approach CDR EG through Monitoring Institution i.e. SBI, with a fresh proposal for equity conversion.*

*In view of the above, we put our request for the following –*

- 1. To provide us a further period of 12 months (upto 30<sup>th</sup> September, 2015) for compliance with the (requirement) of achieving minimum public shareholding.*
- 2. Not to take any penal action for the non – compliance as per paragraph 18 of the (Interim Order) dated June 4, 2013.*
- 3. To exempt the Directors other than Promoter Directors (Independent, Nominee or professional) from the implication of paragraph 17 of the above Order. As per Companies Act, 2013 provisions, we have to appoint additional 2 Independent Directors and 1 female Director.*
- 4. We seek your guidance regarding the date to be considered as Relevant Date for the purpose of determining price for equity conversion.”*

1.10 Vide letter dated March 25, 2015, SBI reiterated its request to SEBI *“to please consider permitting the pledge of shares by the Promoters of (Bombay Rayon) because the pledge is pursuant to the CDR package approved as per the RBI norms in respect of loans raised much earlier and not for any fresh loans being raised.”*

- 1.11 Upon a consideration of the aforementioned SBI letter dated March 25, 2015, SEBI vide letter dated April 30, 2015, intimated the Bank that since proceedings initiated against Bombay Rayon were continuing, any decision on its request would be subject to the outcome of the said proceedings.
- 1.12 An opportunity of personal hearing was granted to Bombay Rayon on June 12, 2015.
- 1.13 Vide letter dated June 19, 2015, Bombay Rayon submitted a proposal for conversion of partly restructured debt into equity and allot 3,08,00,000 equity shares to the lenders (bankers) and requested for approval for the same from SEBI. The Company proposed to approach CDR – EG through monitoring institution i.e. State Bank of India, with a fresh proposal of equity conversion. It was also submitted that the Company will be able to comply with the MPS criteria, if the lenders agree to the right of conversion of a part of debt into equity. In support of the same, the Company submitted that as per the CDR Master Circular, the lenders (bankers) have the right to convert WCTL and FITL into equity and the same has been mentioned in LOA issued by CDR Cell.
- 1.14 Thereafter, SEBI received a letter dated November 10, 2015, from SBI wherein the following was stated –

*“We may submit that the restructuring package in respect of the captioned account was approved by the lenders on 08.07.2013. Flash Report was filed by SBI with CDR on 25.07.2013 (with cut – off date fixed as 01.04.2013) and the related LOA for the CDR Package was issued by CDR – EG on 27.09.2013.*

*Further as per the CDR package and the LOA issued by CDR – EG, lenders have the right to convert the amount of WCTL and FITL, provided as per the package, at any time during the restructuring period (in addition to conversion into equity of upto 20% of the Term Debt outstanding beyond 7 years as also entire/part of any interest/principal amount in default). The Joint Lenders’ Forum (JLF) which met on 4<sup>th</sup> November 2015, has ‘in principle’ agreed that conversion of outstanding WCTL and FITL into equity may be undertaken, as per SEBI Guidelines, treating the date of JLF meeting i.e. 4.11.2015 as the ‘Reference Date’. While the JLF members are in the process of obtaining approval of their respective authorities to this proposition, we seek your concurrence for the proposed course of action viz. conversion of WCTL and FITL into equity... It would be ensured that conversion of WCTL and FITL into equity is undertaken to the extent that the Promoters’ shareholding comes down to 75% (or lower) in one go. In fact, if the lenders decide to convert the entire WCTL and FITL, the Promoters’ shareholding would fall to 65-66%.”*

1.15 Subsequent to the aforementioned opportunity of personal hearing being granted to Bombay Rayon, the following directions were issued vide SEBI's Order dated December 11, 2015 ("**Confirmatory Order**") –

17. *"In view of the non-compliance by the Company with the MPS requirements, till date, in the breach of the Rule 19A of the SCRR and Clause 40A of the Listing Agreement read with Section 21 of the SCRA, such non-compliance being continuous in nature and also the fact that the Company has failed to take concrete steps towards the compliance of MPS requirements, it becomes necessary, for the proper regulation of the securities market, to confirm the directions issued against the Company, its directors and promoters/ promoter group. Further, considering the non-compliance by the Company with the MPS norms and also the fact that such violations are being continued by them, SEBI may also initiate other action, as appropriate in law, against the Company, its directors and promoters.*
18. *I also note that the State Bank of India vide its letter dated November 10, 2015, while requesting permission for pledging the shares of the promoters of the Company to the lenders has submitted that the 'Joint Lenders' Forum' on November 4, 2015, has 'in principle' agreed to undertake conversion of outstanding Working Capital Term Loan and Funded Interest Term Loan into equity, as per the SEBI Guidelines, treating November 4, 2015, as the 'reference date'.  
I note that one of the main objectives of the CDR framework is to provide for timely and transparent mechanism for restructuring of the corporate debts, so that losses to the lenders can be minimized through an orderly and co-ordinated restructuring programme. CDR Empowered Group in the instant case has restructured the debt of the Company for its sound growth, which in effect will benefit its shareholders also.*
19. *In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the SEBI 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 confirm the directions issued vide the Interim Order dated June 4, 2013, against Bombay Rayon Fashions Limited. It is clarified that the said direction shall not affect the rights of the lenders in any manner."*

***Proceedings pursuant to the Confirmatory Order dated December 11, 2015 –***

1.16 In Bombay Rayon's letter to SEBI dated February 5, 2016, the following was stated –

*"Vide your Order dated December 11, 2015, you have confirmed that the lenders' right shall not be affected pursuant to Interim Order dated June 4, 2013.*

*... We wish to state that CDR – EG vide its letter dated February 3, 2016, has conveyed its decision*

–



- for conversion of WCTL of ₹712.67 Crores and FITL of ₹221.58 Crores aggregating ₹934.26 Crores into equity in favour of lenders, subject to compliance of SEBI/RBI Guidelines;
- Refer Date – 4<sup>th</sup> November, 2015;
- Conversion price would be ₹165.88 per shares as per SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“ICDR”) pricing calculation guidelines;
- Approximate 5.63 Crores number of equity shares will be issued.

In your Interim Order dated June 4, 2013, you have given reference of Circular No. CIR/CFD/DIL/10/2010 dated December 16, 2010, mentioning the following methods for complying with the requirement of minimum public shareholding –

- Issuance of shares to public through prospectus;
- Offer for sale of shares held by Promoters to public through prospectus;
- Sale of shares held by Promoters through the secondary market i.e. OFS through Stock Exchange;

Further, the following three methods were added pursuant to Circular dated August 29, 2012, –

- Rights Issues to public shareholders with Promoters/Promoter Group shareholders foregoing their rights entitlement;
- Bonus Issues to public shareholders with Promoters/Promoter Group shareholders foregoing their bonus entitlement;
- Any other method as may be approved by SEBI on a case-to-case basis.

We understand that the above provisions are now in force by way of SEBI Circular no. CIR/CFD/CMD/14/2015 dated November 30, 2015.

...

We hereby request for –

- Approving the aforesaid method of conversion of debt into equity as the method for increasing the public shareholding under the criteria ‘Any other method as may be approved by SEBI, on a case-to-case basis’ pursuant to your Circular dated November 30, 2015 (the proposed increase in public shareholding on account of the said conversion would be from 7.90% to 35.08% while the consequent reduction in Promoter and Promoter Group shareholding would be from 92.10% to 64.92%);
- Exemption from the provisions of Regulation 72(1)(c) of SEBI ICDR Regulations, which reads as “the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed” to issue and allot shares to the lenders; ...”

1.17 In SBI's letter to SEBI dated February 9, 2016, the following was stated –

3. *"... SEBI vide Interim Order dated 4<sup>th</sup> June 2013, prohibited the Promoters/Promoter Group of Bombay Rayon from buying, selling or otherwise dealing in securities of Bombay Rayon, either directly or indirectly, in any manner whatsoever, except for the purpose of complying with the minimum public shareholding requirement. The said Interim Order was confirmed on 11<sup>th</sup> December 2015. However, in the said Order, it was clarified that the said direction shall not affect the rights of the lenders in any manner, quoting our letter dated 10<sup>th</sup> November, 2015...*
4. *... The restructuring package for the Company was approved by the lenders on 8<sup>th</sup> July, 2013, flash report was filed by SBI with CDR on 25<sup>th</sup> July, 2013 (with cut-off date fixed as 1<sup>st</sup> April, 2013) and the LOA for the CDR package was on 27<sup>th</sup> September, 2013.*
5. *As per the package, the lenders have the right to convert the amount of WCTL and FITL at any time during the restructuring period (in addition to conversion into equity of upto 20% of the Term Debt outstanding beyond 7 years as also entire part of any interest/principal amount in default).*
6. *The JLF on 4<sup>th</sup> November, 2015, has 'in principle' agreed to undertake the conversion of outstanding WCTL and FITL into equity. Accordingly, we approached you vide our letter dated 10<sup>th</sup> November, 2015...*
7. *A note was put up to CDR – EG by SBI as Monitoring Institution with recommendation for approval of conversion of FITL and WCTL outstanding of ₹934.26 Crores into equity. CDR – EG vide letter dated 3<sup>rd</sup> February, 2016, conveyed their approval of the said proposed conversion, subject to compliance of SEBI/RBI Guidelines. Based on CDR – EG decision, lenders intend to convert the entire WCTL and FITL outstanding with a conversion price of ₹165.88 considering the reference date of 4<sup>th</sup> November, 2015. With the conversion price of ₹165.88 per share, approximate 5.63 Crore equity shares will be issued. Post conversion of debt into equity, the Promoters' shareholding would come to around 65-66%.*
8. *Further, one of the conditions of the approved CDR package was for the Promoters to pledge the shares held by them in Bombay Rayon.*
9. *In the backdrop... we request the following:*
  - *To permit the Company to issue further equity shares to the lenders under conversion of debt into equity as per CDR package;*
  - *To consider the lenders' shareholding (post conversion) as part of public shareholding to enable Bombay Rayon to comply with minimum public shareholding norms;*
  - *To consider permitting the pledge of shares by the Promoter of Bombay Rayon after conversion of debt into equity as per the pledge is pursuant to the CDR package approved as per the RBI norms in respect of loans raised much earlier and not for any fresh loans being raised."*

1.18 Vide letter dated February 27, 2016, Bombay Rayon reiterated the request contained in its letter dated February 5, 2016.

1.19 Upon a detailed consideration of Bombay Rayon's letters dated February 5, 2016 and February 27, 2016 and also SBI's letter dated February 9, 2016, SEBI (vide letter dated March 21, 2016) informed Bombay Rayon as under –

2. *"... the condition of compliance with the continuous listing requirement specified under Regulation 72(1)(c) of SEBI (ICDR) Regulations is relaxed with a view to enable Bombay Rayon's lenders to convert part of the debt into equity. The equity shares may be issued to the lenders through Preferential Allotment.*

3. *Further, since the conversion of debt into equity would increase the public shareholding, the same would be considered as compliance with minimum public shareholding requirements in terms of Clause 2(vii) of the SEBI Circular dated November 30, 2015."*

1.20 Pursuant to the aforesaid approvals granted by SEBI, Bombay Rayon vide letter dated July 12, 2016 and e-mail dated August 10, 2016, submitted the following –

*"We wish to inform you that the company has made the following allotments to the lenders on receipt of in – principle approval from NSE (on May 24, 2016) and BSE (on June 1, 2016):*

SR. NO.	LENDER	SHARES	% AS TO TOTAL CAPITAL
<b>Allotment made on June 15, 2016 – First Tranche converting ₹783,57,82,030 of FITL &amp; WTCL into equity.</b>			
1.	State Bank of India	23196889	12.68
2.	State Bank of Patiala	3188449	1.74
3.	Central Bank of India	1997226	1.09
4.	State Bank of Hyderabad	1872345	1.01
5.	Export Import Bank of India	1620955	0.89
6.	Allahabad Bank	1149023	0.63
7.	State Bank of Mysore	895828	0.49
8.	Axis Bank Limited	11586959	6.33
9.	Karur Vysya Bank Limited	418977	0.23
10.	State Bank of Travancore	405714	0.22
11.	State Bank of Bikaner & Jaipur	345246	0.19
<b>Allotment made on June 16, 2016 – Second Tranche converting ₹9,28,99,933 of FITL &amp; WTCL into equity.</b>			
12.	Indian Overseas Bank	560043	0.31
<b>Allotment made on June 27, 2016 – Third Tranche converting ₹19,31,86,737 of FITL &amp; WTCL into equity.</b>			
13.	Punjab National Bank	1164618	0.64
<b>TOTAL</b>		<b>48402272</b>	<b>26.45</b>

*Shareholding pattern as on 30<sup>th</sup> June, 2016 –*

SHAREHOLDING			
	CATEGORY	NO. OF SHARES HELD	% SHAREHOLDING
1.	Promoters and Promoter Group	12,38,87,180	67.70
2.	Public (after the allotments)	59,115,092	32.30
	<b>TOTAL</b>	<b>183,002,272</b>	<b>100.00</b>

*Pursuant to the aforesaid shareholding... the Company is compliant with the requirement of minimum public shareholding of 25%. ...”*

1.21 BSE, vide an e-mail dated August 10, 2016, confirmed to SEBI that Bombay Rayon complied with Regulation 38 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR”) [erstwhile Clause 40A of the Listing Agreement].

1.22 SEBI was also in receipt of letter dated September 16, 2016, from SBI, wherein *inter alia* the following was stated –

4. *“The lenders have subsequently converted partial debt into equity, which has reduced the Promoters’ shareholding to less than 75% and comply with the minimum public shareholding norms of SEBI. The Debt Equity conversion has been executed in June 2016. We also refer to the letter dated 12.06.2016 by Bombay Rayon to SEBI, wherein details of conversion was informed to you ...*

5. *One of the conditions of the approved CDR package was for the Promoters to pledge the shares held by them in Bombay Rayon. Now that the Company has complied with the SEBI norms of minimum public shareholding, we request on behalf of all the 24 lenders to release the restrictions put by SEBI on Bombay Rayon shares so that the lenders will be able to pledge the Company shares and complete perfection of security as per CDR – EG guidelines.”*

1.23 An opportunity of personal hearing was granted to Bombay Rayon on November 29, 2016, which was attended by the authorised representatives of the said company.

1.24 During the course of the hearing and vide written submissions dated December 2, 2016, Bombay Rayon submitted as under –

*“...The SCRR was amended vide Circular dated 4<sup>th</sup> June, 2010, with a further clarification provided vide Circular dated 9<sup>th</sup> August, 2010. ... The shareholding of the Promoters and Promoter Group of the Company as on 30<sup>th</sup> June, 2010, was 35.08% of the total paid up capital.*

*Due to conversion of GDRs into equivalent number of equity shares by one of the existing shareholder of the Company i.e. AAA United B. V., open offer was triggered in the F. Y. 2011 –*

12. By virtue of that, AAA United B. V. alongwith Ashwell Holding Company Private Limited became persons acting in concert alongwith existing Promoters of the Company. The offer was open during the period from 4<sup>th</sup> November, 2011 and was closed on 23<sup>rd</sup> November, 2011. The shareholding of the Promoters and Promoter Group of the Company as on 30<sup>th</sup> September, 2011, was 34.15% of the total paid up capital i.e. prior to the opening of offer and then increased to 93.15% of the total paid up capital as on 31<sup>st</sup> December, 2011 i.e. post closure of open offer... SEBI had vide its letter dated 18<sup>th</sup> December, 2012, which was replied by the Company vide letter dated 21<sup>st</sup> January, 2013, mentioned the time period for compliance as on 3<sup>rd</sup> June, 2013 and further, discussion were held with SEBI on 21<sup>st</sup> November, 2013. In the month of February 2013, SBI Capital Markets Limited, Merchant Bankers had submitted the letter on behalf of the Company seeking approval from SEBI for increase in public shareholding by way of issuance of shares under ESPS. The Company had vide letter dated 31<sup>st</sup> May, 2013, appraised SEBI about the efforts taken by the Company for achieving the requirement of minimum public shareholding of 25% and confirm the compliance by July 2013...

Since the Company was facing financial stress, the Company was referred to CDR Cell in the month of July 2013. A LOA was issued by CDR on 27<sup>th</sup> September, 2013, approving the package of CDR. One of the stipulation of CDR was pledging of Promoters' shareholding in the Company. Pursuant to the (Interim Order dated June 4, 2013) the demat accounts of the Promoters were frozen and the compliance with regard to pledging of shares could not be complied with. ...the Company vide its letter dated 5<sup>th</sup> June, 2014, submitted an application for exemption from the requirement of Rule 19(2)(b) and Rule 19A of the SCRA, which was not acceded to by SEBI and communicated to the Company vide its letter dated 2<sup>nd</sup> July, 2014.

Further to that, the Company had vide its letter dated 27<sup>th</sup> August, 2014, explained to SEBI that significant time and efforts of the management were devoted for putting in place the CDR scheme which was approved on 26<sup>th</sup> September, 2013 by CDR forum and hence, the process of achieving minimum public shareholding was further delayed. It was informed that the Company proposed to convert part of debt into equity and since the same was not part of restructuring scheme approved earlier by CDR – EG, it was required to approach CDR – EG for approval of the same.

SEBI (vide the Confirmatory Order dated December 11, 2015) clarified that the directions issued vide Interim Order dated 4<sup>th</sup> June, 2013, shall not affect the rights of the lenders in any manner. The Company had written a letter dated 5<sup>th</sup> February, 2016, intimating the receipt of letter dated February 3, 2016, from CDR – EG conveying the decision for conversion of WTCL of ₹712.67 Crores and FITL of ₹221.58 Crores aggregating ₹934.26 Crores into equity in favour of lenders, subject to compliance of SEBI/RBI guidelines and requested for:

- *Approving the aforesaid method of conversion of debt into equity as the method for increasing the public shareholding under the criteria 'Any other method as may be approved by SEBI, on a case to case basis' pursuant to your Circular dated November 30, 2015; ...*

*SEBI vide its letter dated 21<sup>st</sup> March, 2016, had given approval for considering the preferential allotment by conversion of debt to equity shares to the lenders under CDR package as method for complying with the requirement of minimum public shareholding in terms of clause 2(vii) of the SEBI Circular dated 30<sup>th</sup> November, 2015.*

*On receipt of approval from SEBI, the Company conveyed the EGM of the shareholders of the Company on 9<sup>th</sup> May, 2016, for approval for allotment of equity shares on preferential basis to the lenders. The allotment were made to the lenders in the month of June 2016. ...*

*Post allotment, the shareholding of the Promoters has reduced to 67.70%. On allotment of equity shares to the lenders, the Company had approached SEBI vide its letter dated 12<sup>th</sup> July, 2016, requesting for issue of necessary directions for the release of restrictions imposed upon the Company, its Promoters and Directors pursuant to the (Interim Order) dated June 4, 2013. ..."*

#### **Consideration of Issues and Findings –**

1.25.1 In the instant proceedings, the issues for consideration are as under –

- a. *Whether Bombay Rayon is now compliant with the requirement of minimum public shareholding as stipulated under Rule 19(2)(b) and Rule 19A of the SCRR?***
- b. *Whether any further action as contemplated under the Interim Order dated June 4, 2013, is warranted against Bombay Rayon?***

1.25.2 I have considered the oral and written submissions made by Bombay Rayon during the hearing held on November 29, 2016 and vide letter dated December 2, 2016, alongwith all relevant material available on record. I shall now proceed to deal with the issues as under –

**1.26.1 *Whether Bombay Rayon is now compliant with the requirement of minimum public shareholding as stipulated under Rule 19(2)(b) and Rule 19A of the SCRR?***

1.26.2 It is reiterated that vide Notifications dated June 4, 2010 and August 9, 2010, the Ministry of Finance amended the SCRR to provide for minimum and continuous public shareholding requirements in listed companies as it was felt that a dispersed shareholding structure was essential for the sustenance of a continuous market for listed securities, to provide liquidity to the investors and to discover fair prices.

- 1.26.3 A result of the aforementioned Notifications was that all listed companies (other than PSUs) were mandated to have minimum public shareholding of 25%. Further, in listed companies where the public shareholding was less than 25%, such companies were mandated to raise the same to the minimum of 25% by June 3, 2013.
- 1.26.4 The methods by which listed companies could ensure compliance with the requirement of 25% minimum public shareholding were specified by SEBI under Regulation 38 of the LODR [erstwhile Clause 40A of the Listing Agreement], one of which included the following (introduced vide *Clause 2(vii) of the SEBI Circular no. CIR/CFD/CMD/14/2015 dated November 30, 2015*) –
- *Any other method as may be approved by SEBI on a case-to-case basis.*
- 1.26.5 On February 3, 2016, the CDR-EG approved the conversion of Bombay Rayon's WCTL of ₹712.67 Crores and FITL of ₹221.58 Crores (aggregating ₹934.26 Crores) into equity in favour of its lenders.
- 1.26.6 As noted from the SEBI letter dated March 21, 2016, SEBI relaxed the condition of compliance with the continuous listing requirement specified under Regulation 72(1)(c) of SEBI (ICDR) Regulations (conditions for preferential issue) to enable Bombay Rayon's lenders to convert part of its debt into equity. Further, as noted from the aforesaid letter, since the conversion of debt into equity (through issue of equity shares to Bombay Rayon's lenders by way of preferential allotment) would increase the public shareholding, the same would be considered as compliance with minimum public shareholding requirements in terms of the abovementioned Clause 2(vii) of the SEBI Circular dated November 30, 2015.

1.26.7 Accordingly, pursuant to *in-principle approval* granted by BSE (on June 1, 2016) and NSE (on May 24, 2016), the following allotments were made by Bombay Rayon to its lenders:

<b>SR. NO.</b>	<b>LENDER</b>	<b>SHARES</b>	<b>% AS TO TOTAL CAPITAL</b>
<b>Allotment made on June 15, 2016 – First Tranche converting ₹783,57,82,030 of FITL &amp; WTCL into equity.</b>			
1.	State Bank of India	23196889	12.68
2.	State Bank of Patiala	3188449	1.74
3.	Central Bank of India	1997226	1.09
4.	State Bank of Hyderabad	1872345	1.01
5.	Export Import Bank of India	1620955	0.89
6.	Allahabad Bank	1149023	0.63
7.	State Bank of Mysore	895828	0.49
8.	Axis Bank Limited	11586959	6.33
9.	Karur Vysya Bank Limited	418977	0.23
10.	State Bank of Travancore	405714	0.22
11.	State Bank of Bikaner & Jaipur	345246	0.19
<b>Allotment made on June 16, 2016 – Second Tranche converting ₹9,28,99,933 of FITL &amp; WTCL into equity.</b>			
12.	Indian Overseas Bank	560043	0.31
<b>Allotment made on June 27, 2016 – Third Tranche converting ₹19,31,86,737 of FITL &amp; WTCL into equity.</b>			
13.	Punjab National Bank	1164618	0.64
<b>TOTAL</b>		<b>48402272</b>	<b>26.45</b>

1.26.8 The shareholding patterns of Bombay Rayon (as obtained from the BSE website) as on March 31, 2016; June 15, 2016 and June 30, 2016, were as under –

<b>BOMBAY RAYON'S SHAREHOLDING</b>			
	<b>DATE</b>	<b>PROMOTER AND PROMOTER GROUP SHAREHOLDING IN %</b>	<b>PUBLIC SHAREHOLDING IN %</b>
1.	31.03.2016	92.04	7.96
2.	15.06.2016	68.34	31.66
3.	30.06.2016	67.70	32.30

1.26.9 From the preceding paragraphs, it is observed that Bombay Rayon is now compliant with the requirement of minimum public shareholding as stipulated under Rule 19(2)(b) and Rule 19A of the SCRR, w.e.f. June 15, 2016 (date of first tranche of preferential allotment to its lenders) i.e. when the public shareholding in the Company increased to 31.66%.

1.27.1 ***Whether any further action as contemplated under the Interim Order dated June 4, 2013, is warranted against Bombay Rayon, its Promoters and Promoter Group alongwith its Directors?***

1.27.2 As per the Notifications dated June 4, 2010 and August 9, 2010, which amended the SCRR, all listed companies were required to have minimum public shareholding of 25% and where the public shareholding in such companies was less than 25%, the same was required to be raise to the minimum of 25% by June 3, 2013.



- 1.27.3 As stated at paragraph 1.26.9, Bombay Rayon subsequently ensured compliance with the requirement of minimum public shareholding as stipulated under Rule 19(2)(b) and Rule 19A of the SCRR, on June 15, 2016 i.e. date of first tranche of preferential allotment to its lenders.
- 1.27.4 Bombay Rayon admittedly delayed in ensuring compliance with minimum public shareholding requirement by more than 3 years i.e. from June 4, 2013 till June 15, 2016.
- 1.27.5 Although the delay by Bombay Rayon in ensuring compliance with minimum public shareholding requirement was in violation of Rule 19A(1) of the SCRR read with Regulation 38 of the LODR read with Section 21 of the SCRA, the following facts are noted –
- i. Bombay Rayon was compliant with the requirement of minimum public shareholding as on June 4, 2010, but subsequently, became non-compliant with the said requirement in the year 2011.
  - ii. I note that as per the shareholding pattern of the company available on the BSE website, the Promoters and Promoter Group shareholding in Bombay Rayon as on June 30, 2010, was 42.26% of the total paid up capital and thereafter, became 45.24% as on September 30, 2011. On account of conversion of GDRs into equity shares by one of the existing shareholder of the Company i.e. AAA United B. V., open offer was triggered in the F. Y. 2011–12. As a result, AAA United B. V. alongwith Ashwell Holding Company Private Limited became *persons acting in concert* with the existing Promoters of Bombay Rayon. Consequent to completion of the open offer, the Promoters and Promoter Group shareholding in Bombay Rayon increased to 93.15% of the total paid up capital as on December 31, 2011.
  - iii. Bombay Rayon was referred to CDR Cell in July 2013 since the Company was facing financial stress. The CDR package for Bombay Rayon was approved by the CDR–EG and the LOA was issued by the CDR Cell on September 27, 2013. One of the stipulations of CDR package was the pledging of Promoters’ shareholding in Bombay Rayon, which could not be complied with in view of directions contained in the Interim Order dated June 4, 2013. Further, since Bombay Rayon’s proposal for conversion of part of debt into equity was not part of restructuring scheme approved earlier by CDR–EG, it was required to once again approach CDR–EG for approval of the same.
  - iv. Vide the Confirmatory Order dated December 11, 2015, SEBI while confirming the directions issued vide Interim Order dated June 4, 2013, also clarified that the said

direction shall not affect the rights of the lenders in any manner. The following observations contained in the Confirmatory Order dated December 11, 2015, are noted –

18. *“... I note that one of the main objectives of the CDR framework is to provide for timely and transparent mechanism for restructuring of the corporate debts, so that losses to the lenders can be minimized through an orderly and co-ordinated restructuring programme. CDR Empowered Group in the instant case has restructured the debt of the Company for its sound growth, which in effect will benefit its shareholders also.”*

- v. The CDR–EG approved the conversion of WTCL of ₹712.67 Crores and FITL of ₹221.58 Crores aggregating ₹934.26 Crores into equity in favour of lenders of Bombay Rayon on February 3, 2016.
- vi. Pursuant to SEBI letter dated March 21, 2016, wherein approval was granted to Bombay Rayon for conversion of debt to equity through preferential allotment of shares to its lenders in accordance with the approved CDR package as a method for complying with the requirement of minimum public shareholding in terms of clause 2(vii) of the SEBI Circular dated November 30, 2015, the Company ensured compliance with minimum public shareholding requirement on June 15, 2016.

1.27.6 Upon a consideration of the aforementioned, I find that the delay in compliance with minimum public shareholding requirement occurred on account of the CDR process pursued by Bombay Rayon with its lenders. I find that sufficient period had lapsed in ensuring implementation of the CDR package, which *inter alia* was also subject to necessary approvals from SEBI. As noted in the Confirmatory Order dated December 11, 2015, the restructuring of Bombay Rayon’s debt by the CDR–EG was for the Company’s *“sound growth, which in effect will benefit its shareholders also”*.

1.27.7 In this context, I note that Bombay Rayon, its Promoters and Promoter Group alongwith its Directors, have already undergone the restraint/prohibition etc., directed vide the Interim Order dated June 4, 2013 read with the Confirmatory Order dated December 11, 2015, for a period of approximately **3 years and 9 months**. In view of the same and for the reasons detailed in the preceding paragraphs, I find that no further action as contemplated under the Interim Order dated June 4, 2013, is warranted against Bombay Rayon, its Promoters and Promoter Group alongwith its Directors.

1.27.8 In light of the facts and circumstances of the instant proceedings, as the Promoters’ and Promoter Group’s shareholding in Bombay Rayon, has been brought below 75% (indicating compliance with the minimum public shareholding requirement of 25% stipulated under Rule 19A of the SCRR), the

directions imposed on the Company, its Promoters and Promoter Group alongwith its Directors, can now be revoked.

**Order –**

- 2.1 In view of the foregoing and in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(1), 11(2)(j), 11(4) and 11B of the SEBI Act and Section 12A of the SCRA, –
- i. I hereby revoke the directions issued against Bombay Rayon Fashions Limited, its Promoters and Promoter Group alongwith its Directors, vide the Interim Order dated June 4, 2013 read with the Confirmatory Order dated December 11, 2015.
- 2.2 This Order shall come into force with immediate effect.
- 2.3 A copy of this Order shall be served on the Stock Exchanges and Depositories for their information and necessary action.

Place: Mumbai  
Date: March 9, 2017

S. RAMAN  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA